



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 869 OF 2011**

RANI CHANDER KANTA (D) THR. LRS. & ORS. ...
Appellant(s)

VERSUS

UNION OF INDIA & ANR. ...
Respondent(s)

J U D G M E N T

RAJESH BINDAL, J.

1. The judgment¹ of the High Court in second appeal² has been challenged before this Court in the present appeal. Vide the aforesaid judgment, the High Court³ had upheld the judgment and decree⁴ passed by the lower Appellate Court⁵ and the judgment and decree⁶ of the Trial Court⁷ was reversed. The

1 Judgement dated 15.06.2009

2 Regular Second Appeal No.197 of 1997 dated 15.06.2009

3 High Court of Himachal Pradesh at Shimla

4 Judgement and decree dated 30.04.1997

5 Additional District Judge, Shimla

6 Order dated 31.05.1988

7 Senior Sub Judge, Shimla

suit was filed by the appellants for declaration to the effect that the appellants/plaintiffs are in possession of the suit property as absolute owners.

2. Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellants, submitted that Md. Yahya Khan, an evacuee was the owner of the entire property 'Spring Field', which comprised of Khasra Nos.233, 233/1, 233/3, 233/6, 233/7 and 234/4. Late Raja Dhian Singh was the Raja of Shiekhupura (now in Pakistan). He had taken the entire property including the buildings constructed thereon except Tarik Cottage and Coal Shed, measuring 10,500 sq. yards from Md. Yahya Khan on an annual rent of ₹2500/- in the name of his wife. He used the place as his holiday home, whenever he visited Shimla before partition of the country. After partition, Md. Yahya Khan migrated to Pakistan. The property in question became an evacuee property. It was to be administered in terms of the 1947 Act⁸. In terms thereof late Raja Dhian Singh became a temporary allottee of the said property on payment of an annual rent of ₹2500/- to the custodian. The rent was regularly paid. At the time of partition, even Raja Dhian Singh migrated to India. As he himself was a displaced person from West

⁸ East Punjab Evacuee's (Administration of Property) Act, 1947

Pakistan, he was also entitled to benefits conferred on the displaced persons under various enactments including the 1950 Act⁹ and 1954 Act¹⁰. The property in-question came in the compensation pool under Section 12 of the 1954 Act.

3. In September 1954, Rehabilitation Department through Regional Settlement Commissioner, Jullundur, invited tenders for sale of 'Spring Field' described as property No.268/5. Vide the aforesaid tender, the entire evacuee property was put to sale. Raja Dhian Singh being in occupation of the said property was given first option to purchase the same vide letter dated 03.12.1954. Immediately thereafter, *vide* letter dated 10.12.1954, late Raja Dhian Singh gave his consent to purchase the property in-question, known as 'Spring Field' for consideration of ₹40,000/-. The sale was confirmed in his favour vide letter dated 17.12.1954. Letter of allotment dated 03.02.1955 was issued in favour of late Raja Dhian Singh regarding the property in question. It was also stated that the compensation due to him will be adjusted against the sale price. On 02.02.1957, Raja Dhian Singh expired. A fresh sale certificate was issued in favour of the legal heirs of Late-Raja Dhian Singh on 24.03.1976. After the aforesaid certificate, the

9 Administration of Evacuee Property Act, 1950

10 Displaced Person (Compensation and Rehabilitation) Act, 1954.

appellants approached the revenue/municipal authorities for transfer of the property in their names. However, the municipal authorities raised objection stating that serial number and evacuee number were not in consonance with the land in their possession. The area and boundaries of the property had not been provided. Thereafter, the appellants approached the Chief Settlement Commissioner. Letter dated 28.03.1976 was issued by the Tax Superintendent, Municipal Corporation, Shimla stating that Spring Field comprised of 10,582 square yards. On 05.05.1976, another sale certificate was issued by the Department of Rehabilitation mentioning the area of the property as 2,786 square yards. Conveyance deed was also executed on 05.10.1977. Immediately thereafter, the appellants made representation for correction of the area, as mentioned in the conveyance deed and the sale certificate. The Chief Settlement Commissioner, treating the representation of the appellants as revision petition, passed an order dated 25.06.1979, in exercise of powers under Section 24(1) of the 1954 Act. It was held that the area sold to the appellants was 2,786 square yards, however, at the spot it was found as 3,836.06 square yards. The appellants were directed to pay cost of the additional area of 1,050.06 square yards @ ₹4/- per

square yard, according to the reserved price. Review petition was filed by the appellants against order dated 25.06.1979. However, the appellants deposited a sum of ₹4200.24 for the additional area without prejudice to their rights. On 21.08.1979, a fresh conveyance deed was executed in favour of the appellants with reference to the boundaries and the area mentioned in the sale certificate dated 05.05.1976 i.e. 3,836.06 square yards.

4. The Chief Settlement Commissioner allowed the review petition vide order dated 07.05.1980 holding that the entire area of Spring Field was sold to late Raja Dhian Singh but it was not shown in the sale certificate and the price for the whole area was not paid, hence, for the additional area of 7,599.94 square yards, the appellants were directed to pay @ ₹4/- per square yard. Even this was paid by the appellants to avoid any litigation, however, under protest. Aggrieved against the aforesaid order passed by the Chief Settlement Commissioner, both the parties preferred revision petitions before the Financial Commissioner (Revenue) Appeals-cum-Secretary (Relief and Rehabilitation) to the Government of Himachal Pradesh, Shimla. It was submitted that the order

passed by the Chief Settlement Commissioner was totally without jurisdiction for the reason that after his transfer from the post, he had ante-dated the order. The certified copy was applied on 12.06.1981, however, the same was made available to the appellants on 12.10.1982. He had set aside the order passed by the Chief Settlement Commissioner, whereby the additional area of 7,599.94 square yards was directed to be transferred to the appellants on payment of additional price. However, sale of 3,836.06 square yards was upheld. Thereafter, the appellants filed civil suit¹¹ for declaration of title and ownership of the entire property known as 'Spring Field'. The Trial Court, vide judgment dated 31.05.1988 decreed the suit. The appeal filed by the respondents was allowed by the first Appellate Court vide judgment and decree dated 30.04.1997. Thereafter, the appellants preferred second appeal before the High Court, which was dismissed vide impugned judgment dated 15.06.2009.

5. The argument of learned senior counsel for the appellants is that the property which was sold initially was mentioned as 'Spring Field' with ID No. 268/5. The entire area measuring 11435 square yards was in possession of the

¹¹ Civil Suit No. 25 of 1983

predecessor-in-interest of the appellants. The tender notice did not mention any specific area or the boundaries thereof, hence it was understood that the entire area was forming part of the identity of the property or the popular name, was put to sale. The offer was submitted by the predecessor in interest of the appellants keeping that in view. It was totally unreasonable on the part of the respondents to have reduced the area later on.

6. It was further submitted that under similar circumstances, other properties were also sold, which were having different identity numbers and popular names. There also, the entire area, which was forming part of that property, was transferred. Only the appellants have been discriminated.

7. On the other hand, learned counsel for the respondents submitted that, whatever was proposed to be sold, was transferred to the predecessor-in-interest of the appellants. Initially, the area transferred was 2,786 square yards, which was in consonance with the covered area and reasonable open area, however, later on even 1,050.06 square yards area was also transferred in favour of the appellants, on payment of additional price, to which no issue was raised. However, the appellants became more greedy. They may be in possession of

large area as lessee from Md. Yahya Khan before partition and thereafter as tenants on that property under the Rehabilitation Department, however, that would not mean that the entire area was proposed to be sold. Major part of the area was and still a forest. He further submitted that the documents, which are available on file clearly establish that. At the time of valuation of the property before it was put to sale, Valuation Form 'A' clearly noticed the same as 2,786 square yards. The value thereof was calculated in terms thereof. The draft thereof was prepared on 13.08.1954 which was approved on 25.08.1954. However, by tampering the year '1954', it has been made as '1956'. The tender notice was issued in September 1954. The calculation of area and the cost thereof was made much prior thereto. The area, which was proposed to be sold, was transferred in favour of the predecessor-in-interest of the appellants. The sale certificate was also issued on 03.02.1955. From the subsequent events also, the entire factual matrix is clear as the authorities also found that the initial area sold to the appellants was 2,786 square yards, however, on account of some error, additional area of 1,050.06 square yards was required to be given, which was directed on payment of additional price, which was paid by the appellants. Even

thereafter, the Chief Settlement Commissioner also directed for transfer of additional area of 7,599 square yards in favour of the appellants on payment of additional price, which was also paid by the appellants. The Trial Court had erroneously decreed the suit. The error was corrected by the lower Appellate Court and the judgment and decree passed by the lower Appellate Court was rightly upheld by the High Court. The same does not call for any interference by this Court.

8. Heard learned counsel for the parties and perused the paper book.

9. As is evident from the record of the case, an estimate was proposed on 12.08.1954 for an area of 2,786 square yards on Valuation Form 'A', which was forming part of 'Spring Field'. The same was approved on 25.08.1954. Tender notice was issued in September 1954. The predecessor-in-interest of the appellants being in occupation of the said property was given first option to purchase the same vide letter dated 03.12.1954. He consented for purchase of the property on 10.12.1954. His offer was accepted which was confirmed on 17.12.1954. Allotment letter was issued on 03.02.1955 in his favour. Raja Dhian Singh expired on 02.02.1957. His legal

representatives were substituted. A fresh sale certificate was issued in their favour on 24.3.1976. The sale certificate, which was issued in favour of the appellants on 05.05.1976 clearly mentioned the area as 2,786 square yards. As is evident from the record, first representation was made by the appellants on 22.11.1976 after issuance of sale certificate on 05.05.1976. Despite filing the representation, they got the conveyance deed registered in their favour for 2,786 square yards on 05.10.1977 but still continued to file representations. The Chief Settlement Commissioner had taken up the matter and after examining the case found that as per the site plan, the area would come out to 3,836.06 square yards, which should prevail over the area mentioned in the conveyance deed, hence the additional area of 1,050.06 square yards was directed to be transferred in favour of the appellants @ ₹4/- per square yard. The balance area of 7,599.94 square yards was directed to be put to public auction.

10. Section 25 of the 1954 Act, which provides for review of the orders passed under the Act, mentions that any person aggrieved by an order of Settlement Officer under Section 5, from which no appeal is allowed under Section 22, may, within

thirty days from the date of the order, file a review petition. It further provides that a clerical or arithmetical error in any order passed by an officer or authority under the Act may be corrected by such officer or authority or the successor-in-office. In the facts of the case, a review petition may not be maintainable as it was not a case of an error arising from any accidental slip or omission. In the earlier order dated 25.06.1979, the Chief Settlement Commissioner considered the case of the appellants threadbare, on application filed by the appellants. In fact, the appellants re-argued the matter on merits which was not the scope of jurisdiction as provided in Section 25 of the 1954 Act.

11. Even otherwise, it is evident from the order dated 07.05.1980 passed in the review petition that the entire matter was considered afresh. Merely because the appellants were in possession of the entire area, which was forming part of 'Spring Field', was presumed to have been sold. Whereas on the other side, it was admitted that the amount paid by the appellants was not with reference to the entire area in their possession but was only for 2,786 square yards. In the revisions filed by both the parties, the Financial Commissioner had considered the

issues raised threadbare. It has even noticed that before the property was put to sale, the estimated cost thereof was calculated with an initial area of 2,539 square yards, which was later on corrected as 2,786 square yards. It was finally approved on 25.08.1954, however the figure '4' in the year mentioned was tampered as '6' to make it as 25.08.1956. It may be for the reason to show that this exercise was done after the sale was complete, whereas it was done before that. In continuation of the aforesaid calculation on Valuation Form 'A', the property in question was put to sale. The amount charged from the appellants was also in terms thereof. It is so evident even from the subsequent orders where also the additional area was directed to be transferred to the appellants, they were directed to pay additional price. Entire case built up is on presumption only that the entire area in possession of the appellants was put to sale, though the position was otherwise.

12. In fact, the aforesaid clinching evidence was ignored by the Trial Court while decreeing the suit in favour of the appellants. The issue was considered by the lower Appellate Court in detail. Considering that fact and the other material on record, the judgment and decree of the Trial Court was

reversed. The finding recorded by the lower Appellate Court on the issue of tampering of record and the fact that valuation of the property to be sold was done prior to when the same was put to sale, clinched the issue regarding the area proposed to be sold and actually sold to the appellants. The High Court also opined that valuation of the property sold to the appellants was not made after the sale had been completed, rather it was done before the same was put to sale. There was no answer to the aforesaid findings of the lower Appellate Court and the High Court. Merely with the identity of the property or its number, no title can be passed on any prospective buyer, once a conscious decision had been taken by the authority concerned to sell only a portion thereof and not the entire area.

13. The other examples given by the appellants would also not come to their rescue for the reason that no such detailed documents have been placed on record except the identity number or the popular name of the property.

14. For the reasons mentioned above, we do not find any merit in the present appeal. The same is accordingly dismissed, with no order as to costs.

.....J

(VIKRAM NATH)

.....J
(RAJESH BINDAL)

New Delhi
January 24, 2024.