

(6) For the reasons recorded above, we answer the question in favour of the assessee, that is, in the negative, with costs quantified at Rs. 500.

P.C.G.

Before G. R. Majithia, J.

VED KUMARI,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 518 of 1983

February 10, 1989.

Transfer of Property Act (IV of 1882)—S. 41—Petitioner purchasing shop from auction purchaser of evacuee property—Show-cause notice served on the auction purchaser for cancellation of sale—Petitioner bona-fide purchaser for consideration—Petitioner taking extra care to ascertain that transferee had the power to make the transfer and acted in good faith—Alienee from an ostensible owner is protected if he or she can establish that the sale in their favour was with express or implied consent of the true owner.

Held, that the provisions of S. 41 of the Transfer of Property Act protects the bona fide purchaser for consideration from true owner. There can be no dispute that the entire sale consideration was paid by the present petitioner to her vendor. An alienee from an ostensible owner is protected under S. 41 of the Transfer of Property Act if he or she can establish that the sale in their favour was with the consent, express or implied, of the true owner and that it was for consideration and that they had taken reasonable care to ascertain that the transferee had the power to make the transfer and acted in good faith. In the present case the petitioner fulfils all the tests. (Para 4)

Petition under Article 226 of the Constitution of India, praying that :—

(i) *that a writ of certiorari may be issued thereby quashing orders passed by the Chief Settlement Commissioner and confirmed by the Secretary, Rehabilitation on revision and review and sale of the shop in dispute may be restored;*

Or

(ii) *Such other appropriate writ, order or direction as may be deemed fit under the circumstances of the case may*

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be issued in favour of the petitioner and against the respondents.

It is further submitted that the shop in dispute is in possession of the petitioner and she is carrying on business in the shop in dispute. Respondents Nos. 3 and 4 are taking steps to advertise and auction the shop in dispute. The petitioner would suffer irreparable loss and injury if the shop in dispute is auctioned during the pendency of the writ petition. It is further prayed that :—

- (iii) auction of the shop in dispute may be stayed during the pendency of the writ petition and the petitioner may not be dispossessed from the shop in dispute till the final disposal of the writ petition;*
- (iv) Costs of the writ petition may be allowed to the petitioner against the respondents.*
- (v) Issuance of advance notice of motion may be dispensed with at this stage.*

K. P. Bhandari, Sr. Advocate with Ravi Kapur, Advocate, for the Petitioner.

B. S. Malik, Addl. A.G., Haryana, S. P. Soni, Advocate, for Respondents No. 5 to 9.

ORDERS

G. R. Majithia, J.

(1) The petitioner has challenged the order passed by the delegate of the Central Government under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, (for short the Act), in this writ petition:

Facts first :—

(2) Shop No. E-236, situate in Ward No. 4, Jagadhri, was an evacuee property. It was put to auction by the Rehabilitation Department on July 27, 1967. The reserve price of the shop was Rs. 1,238 and Shri Som Parkash gave the highest bid for Rs. 3,600. A sale certificate was issued in favour of Shri Som Parkash on November 4, 1967. He sold the property to the present petitioner,—vide registered sale deed dated December 2, 1974 for Rs. 19,500. The Chief Settlement Commissioner served a show cause notice dated January

9, 1975 on Shri Som Parkash deceased as to why the sale by auction in his favour be not cancelled. In the show-cause notice two grounds were given, namely :—

- (i) The property in question had already been sold by auction in the year 1958 in favour of one Shri Devi Dayal for Rs. 5500 and this sale does not appear to have been set aside by any competent authority.
- (ii) The re-auction of the property in question in the year 1967 for Rs. 3600 in your favour appears to be a collusive sale and the property could not be re-auctioned without any orders from the competent authority.

The Chief Settlement Commissioner found that the auction sale was invalid because no proper publicity was made in the locality. The shop is situated in Jagadhri, a flourishing town, and the property was sold in auction at ridiculously low price of Rs. 3,600. The order of the Chief Settlement Commissioner was affirmed by the delegatee of Central Government under section 33 of the Act.

(3) The State in its reply practically reiterated what was stated by the Chief Settlement Commissioner in the show-cause notice. Mr. Bhandari, learned Senior Advocate for the petitioner, has raised two principal submissions at the time of arguments, namely, the petitioner is a *bona fide* purchaser and her rights are protected under section 41 of the Transfer of Property Act, and that the sale cannot be set aside after an inordinate delay. The sale certificate was issued by the Rehabilitation Department in favour of Shri Som Parkash, predecessor-in-interest of the present petitioner, on November 4, 1967 and the proceedings under section 24 of the Act were initiated on January 9, 1975. The auction purchaser had transferred the property to the present petitioner on December 2, 1974 and in these circumstances there was no justification for Chief Settlement Commissioner to re-open the settled matters after inordinate delay.

(4) The provisions of Section 41 of the Transfer of Property Act protects the *bona fide* purchaser for consideration from true owner. In the present case, there is no doubt that the petitioner is a *bona fide* purchaser for consideration from the true owner. As stated supra, Shri Som Parkash purchased the property in dispute in public auction on July 27, 1967. The sale was confirmed on August 17, 1967 and the sale certificate was issued on November 4, 1967 and he sold this property to the present petitioner on December 2, 1974 for

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Rs. 19,500. Out of the sale price, Rs. 15000 were paid before the Sub-Registrar to the vendor. The property was under mortgage with the mortgagee,—*vide* registered mortgage-deed dated December 3, 1972 and the mortgage amount was kept as trust with the vendee for payment to the previous mortgagee Smt. Bhagdai and Rs. 2,000 were received under agreement of sale dated November 17, 1974. Thus, there can be no dispute that the entire sale consideration was paid by the present petitioner to her vendor. An alienee from an ostensible owner is protected under section 41 of the Transfer of Property Act if he or she can establish that the sale in their favour was with the consent, express or implied, of the true owner and that it was for consideration and that they had taken reasonable care to ascertain that the transferee had the power to make the transfer and acted in good faith. In the instant case, the present petitioner fulfils all the tests. A somewhat identical matter came up for consideration before a Division Bench of this Court in *Damodar Dass and others v. Joginder Singh and others* (1). In the case before the Letters Patent Bench, the material facts were that the property of a Muslim was declared evacuee and allotted to some displaced person. The Muslim Evacuee land-lord moved the authorities that he did not migrate to Pakistan and his land could not be declared evacuee property. The Rehabilitation authorities did not disturb the allottee but gave an equivalent land to the Muslim landlord who contended that he did not become evacuee. The allottee affected sales for consideration out of the land allotted to him. The Rehabilitation authorities retrieved part of the land allotted to him for the reasons that excess land had been allotted to him. The transferee from the Muslim landlord approached the High Court and raised the plea that the transfer in their favour could not be invalidated and sought protection under section 41 of the Transfer of Property Act and on these premises the Bench observed as under :—

“We feel that it is also necessary to deal with another important aspect of this case. Even if the Rehabilitation Authorities had sought the remedy in the civil Court, that would not have been granted to them in view of the provisions of section 41 of the Transfer of Property Act, 1982 which are fully attracted in this case. That section reads as under :—

‘41. Where, with the consent, express or implied, of the persons interested in immovable property, a person

(1) L.P.A. No. 181 of 1972

is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.'

The land in dispute being evacuee property had vested in the Central Government. Hence, the Central Government which were interested in that property, gave its express consent when that property was given to the Muslim owners in lieu of their land which had been erroneously treated as evacuee property and then allotted as such to some displaced persons. Thus, the Muslim owners, the predecessors-in-interest of respondents Nos. 1 to 6, who were the ostensible owners of that land with an express consent of the Central Government which were interested in that land, sold the same in that capacity to the petitioner-respondents Nos. 1 to 5, and one Chanan Singh, the predecessor-in-interest of Smt. Devi, petitioner-respondent No. 6 for consideration of Rs. 30,000 by means of the registered sale-deed, dated 21st June, 1965. That being so, the transfer of the land in question made in favour of respondents Nos. 1 to 6 could not be got declared voidable by the Rehabilitation Authorities on the ground that the transferors were not empowered to make it because it appears that the transferees after taking reasonable care to ascertain from the revenue record that the transferors being the ostensible owners had the power to make the transfer, had acted in good faith while purchasing the land for consideration as stated above. In view of this matter, respondents Nos 1 to 6, could not be ousted from the land in dispute even if the Rehabilitation Authorities had sought the remedy in the Court of law, because the provisions of section 41 of the Transfer of Property Act, would have been attracted and created a hurdle in the way of the Rehabilitation Department if it had sought relief of getting the land in dispute retrieved from the transferees in the court of law".

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This judgment was followed in *Kali Ram v. Union of India* (2). Identical matter came up for consideration in a judgment reported as *Shri S. R. Dass v. State of Haryana and others* (3), and it arose in the following circumstances :—

(5) One Shri Ram Krishan got a plot of land from the discretionary quota in the Urban Estate in the State of Haryana. Successive ministries had been allotting residential plots in various urban estates in the State of Haryana from the discretionary quota. The State Government by an executive order cancelled the allotments and the action was challenged in this Court. The original allottee transferred the plot in favour of the writ petitioner for valuable consideration and the transfer was sanctioned by the Estate Officer and the conveyance deed was also executed by the Estate Officer in favour of the transferee. The transferee obtained permission from the Estate Officer and constructed a house on the plot. He even obtained loan from the urban authorities. The transferee submitted that he was a bonafide purchaser for consideration and in view of Section 41 of the Transfer of Property Act, the State and its Officers could not cancel the allotment in his favour. On these facts, the Bench observed as under :—

“We find force in the argument. Section 41 provides that where with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it. It was not disputed before us that the original allottee had an allotment letter in respect of the said plot from the HUDA in his favour. The entire consideration was paid by the petitioner to the allottee and it was after the permission was granted by HUDA, the plot was transferred. It is not proved that the petitioner was a privy to the allotment of the plot by the Government from its discretionary quota to the original allottee. Even the Estate Officer accepted the sale and executed the Conveyance Deed in petitioner's favour. Thus, the petitioner is a *bona fide* purchaser of the plot. From Ram Krishan for valuable consideration and is protected by the provisions of section 41. Therefore, the allotment of the plot which now stands transferred in favour

(2) 1976 P.L.R. 475

(3) (1988-1) P.L.R. 430

of the petitioner cannot be cancelled by the respondents. A *fortiori* the plots of all the *bona fide* transferees for consideration from the original allottees cannot be cancelled."

(6) Thus, there is no escape from the conclusion that the petitioner's rights are protected under section 41 of the Transfer of Property Act. The auction and sale in favour of Som Parkash could not be set aside as it will affect the rights of the petitioner which are protected under section 41 of the Transfer of Property Act.

(7) On the second point Mr. Bhandari, the learned senior Advocate, is not on firm footing. Section 24 of the Act reads as under :—

"24. Power of revision of the Chief Settlement Commissioner :—(1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, An Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit."

(8) The Chief Settlement Commissioner has, in the exercise of his revisional jurisdiction, unrestricted power and can, at any time, call for the records of any case decided by his subordinate officers under the Act. The orders passed by the subordinate officers under the Act are liable to be revised by the Chief Settlement Commissioner under section 24 of the Act if these have been passed in infringement of any rule or law. It will not be proper to give any exhaustive list of supervisory or revisional power of Chief Settlement Commissioner as every thing will depend upon the circumstances of each particular case.

(9) For the reasons recorded above, this writ petition is allowed. The order of Chief Settlement Commissioner dated June 17, 1977 and that of the Delegate of Central Government under section 33 of the Act dated December 7, 1982, are quashed. However, I leave the parties to bear their own costs.

R.N.R.