

Bombay Salt & Chemical Industries vs L.J. Johnson & Ors on 4 October, 1957

Equivalent citations: AIR 1958 SUPREME COURT 289

Author: A. K. Sarkar

Bench: S.K. Das, A.K. Sarkar

CASE NO. :
Appeal (civil) 406 of 1956

PETITIONER:
BOMBAY SALT & CHEMICAL INDUSTRIES

RESPONDENT:
L.J. JOHNSON & ORS.

DATE OF JUDGMENT: 04/10/1957

BENCH:
S.R. DAS (CJ) & T.L.V. AIYYAR & S.K. DAS & A.K. SARKAR & V. BOSE

JUDGMENT:

JUDGMENT 1958 AIR (SC) 289 The Judgment was delivered by : A. K. SARKAR A. K. SARKAR, J. : This appeal by special leave granted by this Court under Art. 136 of the Constitution is from an order passed on 20-4-1956, by the Chief Settlement Commissioner appointed under the Displaced Persons' (Compensation and Rehabilitation) Act, 1954. It is principally concerned with that Act.

2. The appellants are a firm of which the partners are displaced persons within the meaning of the Act. There are certain salt pans in Wadala, Bombay, known as Salamati Salt Factory. The salt pans were evacuee property and formed part of the compensation pool constituted under the Act. On 7-11-1950, a lease of the salt pans was granted to the appellants for a period of three years. This lease was renewed from time to time, and on 2-12-1955, it was renewed for a period ending on 13-2-1956. On 23-12-1955, the Regional Settlement Commissioner, an officer appointed under the Act, who is respondent No. 3 in this appeal, advertised that the salt pans should be sold by public auction on 6-1-1956. The appellants moved the High Court at Bombay under Art. 226 of the Constitution challenging the validity of the proposed sale on the ground that the value of the property did not exceed Rs. 50, 000 and consequently it could not, under the provisions of the Act, be sold without first offering it to the appellants in lieu of compensation payable to them under the Act. The High Court stayed the sale pending the hearing of the application. On 2-2-1956, the lease to the appellants was renewed for the last time for a further period ending on 15-4-1956. Thereafter, the application under Art. 226 of the Constitution came up for hearing and was dismissed. The appellants filed an appeal in the same Court from the order of dismissal and again applied for a stay of the sale. The

Court however, refused to stay the sale further and only ordered that the sale was not to be confirmed for a week and expedited the hearing of the appeal. On 31-3-1956, the property was put up to auction and Parvatibai Wadhmal and Kakanbai Tulsimal, respondents Nos. 4 and 5 who offered a bid of Rs. 4, 40, 000 were declared the highest bidder. At the sale the appellants themselves had bid up to Rs. 4, 39, 000. Thereafter on 6-4-1956 the appellants withdrew the appeal pending in the High Court at Bombay. They state that they did so as it involved disputed or controversial questions of fact as to the value of the property which would not have been decided by the Court in an application under Art. 226. The sale had not till then been confirmed.

3. On 11-4-1956, the appellants made an application to the Chief Settlement Commissioner who is respondent No. 1 in this appeal, for the following orders :

- (a) that the confirmation of the sale in pursuance of the auction held on 31-3-1956, be stayed;
- (b) that they be given an opportunity to substantiate their case on the merits;
- (c) that they be not evicted till the disposal of their case;
- (d) that the lease granted to them be extended till end of the working season.

The grounds on which this application was made were two, namely, (1) Under S. 29 of the Act, the appellants who were in lawful possession of the property had statutory immunity from eviction for a period of two years.

(2) That the property was not liable to be sold but should be allotted to the appellants at its value did not exceed Rs. 50, 000.

The Chief Settlement Commissioner granted a stay of the confirmation of the sale pending the hearing of the application. On 15-4-1956, the lease expired and thereafter on 20-4-1956, the Chief Settlement Commissioner made an order dismissing the application but giving the appellants 14 days time to remove the salt lying in the pans. The order also stated that the sale to respondents Nos. 4 and 5 was confirmed and possession of the salt pans should be given to them forthwith. On 25-4-1956, the Managing Officer of Evacuee Property, also an officer appointed under the Act, and respondent No. 2 in this appeal, wrote to the appellants that the possession of the property would be taken over from them immediately and requiring the appellants to make over possession forthwith and further stating that in default they would be evicted from it with such force as might be necessary. It appears that on the same day the appellants were forcibly ejected from the property and respondents Nos. 4 and 5 were put in possession. Thereafter, the appellants applied to this Court for leave to appeal from the order of the Chief-Settlement Commissioner, dated 20-4-1956, and such leave was granted on 28-5-1956.

4. Mr. Purshottam Trikamdas appearing in support of the appeal contended that it was S. 19 of the Act alone which gave a power to evict by force, but that section had no application in the present

case and therefore, the eviction of the appellants was illegal and should be set aside. That section provides that subject to the rules made under the Act the Managing Officer may terminate a lease under which any evacuee property is held and where by reason of such termination any person has ceased to be entitled to possession of any evacuee property, he shall on demand surrender possession thereof and that if he fails so to surrender possession, the Managing Officer may eject such person and take possession and may for such purpose use such force as may be necessary. The section as summarised above is as it stood prior to its amendment by Act LXXXVI of 1956. We are not concerned with the amendment because it came into force long after the appellants had been evicted. Mr. Pursushottam Trikamdas pointed out that there had been no cancellation of the appellants' lease in this case and that, therefore, the section had no application. Hence he said, the eviction of the appellants was illegal and should be set aside.

5. This, however, is not a point that arises on the facts of this case. The case is not concerned with any eviction under S. 19. In their application to the Chief Settlement Commissioner the appellants had not made a case under S. 19 nor could they make one. At the date of the auction and also of the application the lease was running and there was no question of the Managing Officer terminating it under S. 19 or at all. The appellants had not then been evicted nor threatened with any eviction under S. 19. In fact, in the application the appellants had asked that they should not be evicted because the property should not have been sold but allotted to them as its value was less than Rs. 50, 000 and that, even if the sale was good, they could not be evicted because of the provisions of S. 29 of the Act. They had asked for a stay of the eviction not because of S. 19 but because they felt that their lease would run out before the application could be decided. None of the grounds, therefore, on which they sought to resist eviction turned on S. 19 of the Act. It is not the respondents' case either that possession was taken from the appellants under S. 19. Whether the eviction was illegal or not for any other reason besides those on which the application is based is irrelevant. There had, in fact, been no eviction at the date of the application to the Chief Settlement Commissioner nor when he made his order. This point of Mr. Purshottam Trikamdas, therefore, fails.

6. We come now to the first point on which the application was based, namely, that the property being of a value lower than Rs. 50, 000 should have been allotted to the appellants and not sold. This point was not pressed in this Court.

7. The next question to be considered is the contention based on S. 29 of the Act. That section reads thus :

29. (1) Where any person to whom the provisions of this section apply, is in lawful possession of any immovable property of the class notified under sub-section (2) which is transferred to another person under the provisions of this Act, then, notwithstanding anything contained in any other law, such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer :

Provided that notwithstanding anything contained in any such terms and conditions, no. such person shall be liable to be ejected from the property during such period not exceeding two years as may be prescribed in respect of that class of property, except on any of the following grounds, namely :

.....

.....

Mr. Purshottam Trikamdas and that under this section the appellants were entitled to continue in possession of the property as tenants of respondents Nos. 4 and 5 and were not liable to be ejected for a period of 2 years, that being the period prescribed by R. 121 of the Rules made under the Act. It was not disputed that the appellants were persons to whom the provisions of the section applied, nor that the property was of the class notified under sub-sec. (2) S. 29, nor further that none of the grounds on which an ejectment was permitted by the section existed. Mr. Purshottam Trikamdas had, however, to show that there was a transfer of the salt pans and that his clients were in lawful possession of them. The learned Solicitor-General opposing the appeal contended that there had been no.

transfer of the property and that the appellants were not in lawful possession of it. First then, was there a transfer of the property? Mr. Purushottam Trikamdas said that the auction on 31-3-1956, was a sale to respondents Nos. 4 and 5 and amounted to a transfer. We have to decide if he is right.

8. The power to sell is given by S. 20 of the Act which provides as follows :

Subject to any rules that may be made under this Act the managing officer may transfer any property out of the compensation pool -

(a) by sale of such property to a displaced person or any association of displaced persons, whether incorporated or not; or to any other person whether the property is sold by public auction or otherwise.

Mr. Purushottam Trikamdas contended that under this section the sale could be by auction and that is what had happened in the present case. He said that the sale was complete as soon as respondents Nos. 4 and 5 were declared the highest bidder at the auction and thereupon the property stood transferred to them. We are unable to agree that because the section permits a sale by auction, whenever there is an auction the sale must be deemed to be complete. Whether there is a transfer or not depends on the conditions of the auction and these have to be examined to find out when a transfer of the property auctioned takes place. There may be a sale by auction where the sale is not complete till, for example, a document is executed. The section, furthermore, states that the transfer under it would be subject to the rules made under the Act. Turning to the Rules we are unable to say that the declaration of a bidder at the auction as the highest bidder amounts to a completed sale and to a transfer of the property to be sold. Rule 90 of the rules framed under the Act lays down the

procedure of sale by public auction. Sub-rule (3) of R. 90 provides that a notice of the intended sale shall be given fifteen days before the proposed sale and such notice shall state among other things the terms and conditions of the sale. Sub-rule (8) provides that the person declared to be the highest bidder at the auction shall pay immediately on the fall of the hammer a deposit not exceeding 10 per cent. of the amount of his bid and in default of such deposit the property may be resold. Sub-rule (10) states that the bid in respect of which the initial deposit has been accepted shall be subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose - provided that no. bid shall be approved until after the expiry of 7 days from the date of the auction. Sub-rule (11) provides that the intimation of the approval of a bid or its rejection shall be given to the highest bidder, thereafter referred to in the Rules as the auction purchaser, and the auction purchaser shall when the bid has been accepted, be required within 15 days of the issue of such intimation to send or produce a Treasury challan in respect of the deposit of the balance of the purchase money. Sub-rule (15) provides that when the purchase price has been realised in full from the auction purchaser, the Managing Officer shall issue to him a sale certificate in the form specified in appendix 22 or 23 as the case may be. Form 23 relates to a sale of lease-hold property and with this we are not concerned. Form 22 is in respect of freehold properties and is in these terms :

"This is to certify that has been declared the purchaser at a sale by public auction held in pursuance of the powers conferred upon me under section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (XLIV of 1954) on the day of 195 of the property described in the schedule."

By virtue of Rs. 15, this certificate has to be signed by the Managing Officer.

9. In this case certain conditions of the auction sale had been imposed and set out in the notice of sale. Imposition of such conditions is permitted by R. 90 (3) already referred to . The notice stated that the sale was subject to the provisions of the Act, and the Rules. Condition No. 2 provided that no. initial deposit was required from bidders who were displaced persons but that they would have to file an Indemnity Bond while others had to pay the initial deposit. It also provided that the filing of the Indemnity Bond or the receipt of the initial deposit constituted no. commitment as to the acceptance of the bid which would be subject to the approval of the Regional Settlement Commissioner and that such officer was not bound to accept the highest bid but the bidder would be held to his bid for a period of six months. Conditions No. 4 stated that within 15 days of the issue of the intimation of the approval of his bid the auction- purchaser had to send a receipted Treasury challan in respect of the deposit of the balance of the purchaser money. Condition No. 7 was to the effect that when the purchase price had been realised in full from the auction-purchaser, the Managing Officer should transfer complete ownership of the property and issue a sale certificate in the prescribed form.

10. It is clear from the rules and the conditions of sale set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction-purchaser has no. right at all. It would further appear that even the approval of the bid by the Settlement

Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of the purchase money and the rules provide that if he fails to do that he shall not have any claim to the property. The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provision as to the sale certificate would indicate that only upon the issue of it a transfer of the property takes place. Condition of sale No. 7 in this case, furthermore, expressly stipulated that upon the payment of the purchase price in full the ownership would be transferred and a sale certificate issued. It is for the appellants to show that the property had been transferred. They have not stated that the sale certificate was issued, nor that the balance of the purchase money had been paid. In those circumstances, it must be held that there has as yet been no. transfer of the salt pans to respondents Nos. 4 and 5. The appellants cannot therefore claim the benefit of S. 29 and ask that they should not be evicted. Mr. Purshottam Trikamdas contended that the sale certificate will in any event be granted and that once it is granted, as the form of this certificate shows, the transfer will relate back to the date of the auction. It is enough to say in answer to this contention that assuming it to be right, a point which is by no. means obvious and which we do not decide, till it is granted no. transfer with effect from any date whatsoever takes place and none has yet been granted.

11. In the view that we have taken on the question of transfer it is not necessary to decide the other point as to whether the appellants can be said to have been in lawful possession. In the absence of a transfer the question does not arise.

12. The appeal, therefore, fails and is dismissed with costs.