Delhi High Court
Sant Ram vs Union Of India And Ors. on 23 May, 1975
Equivalent citations: AIR 1976 Delhi 90
Bench: S Rangarajan
ORDER

1. This judgment will also dispose of writ Petitions 1036 to 1038 of 1967.

2. It is sufficient to state the facts in C. W. 1034 of 1967. The Petitioner (Sant Ram) as well as the other Petitioners in the connected Petitions claim to be occupants of five shops bearing municipal number 1/1147-51, situated on G. T. Road, Shahdara which originally belonged to a Muslim owner Fazil Jamil. Fazil Jamil had leased the said property to Respondents 4 and 5 (Harkishan Lal Malhotra and Krishan Gopal Malhotra) by means of lease deed dated 8-3-1948 with effect from 5-12-1947 for a period of five Years i. E., until 5-12-1952. After Fazil Jamil migrated to Pakistan the property was notified as evacuee property and Respondents 4 and 5 and applied for confirmation a the lease to them by the Muslim owner. They had sub-leased the shop No. 1/1147 to Parma Nand Talwar, shop No. 1/1149 to Puran Chand, shop No. 1/1150 to Kishan Singh, shop No. 1/ 1147-A to Sant Ram and shop No. 1/1148 to Harbans Lal.

3. The application by Respondents 4 and 5 to the Custodian for confirmation of the said lease under Section 40 of the Administration of Evacuee Property Act, l950 was initially rejected by the Assistant Custodian (J) an 18-11-1951 as barred by time. On appeal the authorised Deputy Custodian remanded the same to the Assistant Custodian for decision on merits who by his order dated 27-l0-1953 confirmed the lease. The tenants of the property were also informed by the Assistant Custodian on l8-5-1954 about the confirmation of the lease. The petitioners' revision against the same was dismissed. It is also to be noted that Respondents 4 and 5 who are brothers, had completed the construction at their awn cost (of Rs. 27001 and the Properties had been given to them on lease on a monthly rent of Rs. 106/4/-. This sum had been authorised to be spent by the tenants of the Muslim owner Wide the Custodian's order dated 9-4-1954, page 163 of Mile No. 114711151, Pt. II.). The Custodian had stated that the tenants had not got back anything: out of these amounts either from the owners or the petitioners. It is common ground that Respondents 4 and 5 had not occupied any of the shops personally and that they were under the occupation of sub-tenants. The tenants (respondents Nos. 4 and 5) had being: given the right to create subtenancies under the lease which they had got from the Muslim owner.

4. The property as a whole bearing Nos. 1/1117 to 1/1151 was a structure on the first floor of these shops (which no longer exists) and had been evaluated by the authorities as one unit for Rs. 8,212/-.

4-A. Early in 1959 when the question of the disposal of the shops In question was taken up by the Managing Officer the occupants of the shops appeared before him on 9-3-1959 and made an application stating that they and not Respondents 4, and 5 were entitled to the transfer of the shops in their respective occupation to them. Respondents 4 and 5 submitted their replies on 29-3-1959. After the case was adjourned for some time a report was called for from the Managing Officer, on 10-6-1959, by the Regional Settlement Commissioner. The Managing Officer submitted his report

on or about 12-6-1959 seeking direction as to whether the shops be transferred to the occupants or to Respondents 4 and 5. The Regional Settlement Commissioner on receipt of the report of the Managing Officer desired that the Managing Officer should send his final report after hearing the parties. The Managing Officer accordingly sent his final report after hearing the parties recommending the transfer of the shops to the respective occupants under Rule 26 of the Displaced Persons (Compensation and Rehabilitation) Rules. 1955 (hereinafter called the Rules). The Chief Settlement Commissioner agreed with the recommendation of the Managing Officer and passed an order on 22nd/25th September 1959 to the effect that the shops be transferred to the respective displaced persons in occupation under Rule 26 of the Rules.

5. Respondents 4 and 5 filed a writ Petition being C. W. 30-D of 1961 in the Circuit Bench of the Punjab High Court challenging the order of the Chief Settlement Commissioner dated 22/25-9 1959. The writ petition was dismissed as premature on the ground that no final order had been passed by the Managing Officer, who was the authority to make the transfer. When the Managing Officer took up the case he gave opportunity to the parties to Prove their respective cases and ordered on 25-2-1966 holding that Parmanand, Sant Ram, Harbans Lal Talwar, Puran Chand and Kishan Singh were eligible for the transfer of the shops in their occupation. Separate valuation of each shop was called from the Assistant Valuation Officer and it was ordered that as soon as the separate valuations were received offers would be issued to the aforesaid occupants.

6. Respondents Nos. 4 and 5 filed an appeal before the Assistant Settlement commissioner (Appeal) which came up before the Settlement Officer (Shri A. L. Bahl), with delegated powers of Settlement Commissioner who agreed with the order of the Managing Officer but felt that before the transfer was made to the occupants it was necessary to make the evaluation, he remanded the case accordingly. Respondents Nos. 4 and 5 filed revision Petition before the Settlement Commissioner (Shri 0. N. Vohra) in so far as Shri A. L. Bahl had held, agreeing with the order of the Managing Officer, that the occupants were eligible for the transfer of the property. The occupants filed a revision before the same officer but from that part of the order of Shri A. L. Bahl by which he had remanded the case for enquiry regarding valuation of the property. Shri 0. N Vohra dismissed the revision petition filed by the occupants and accepted that filed by Respondents Nos. 4 and 5 on the ground that the expression "occupation" under Rule 26 did not mean actual occupation and hence the transfer of the shops had to be made to Respondents Nos. 4 and 5. The Present Writ Petition has been filed impugning the order dated 10-3-1967 (copy of which is Annexure Vi to the Petition). Among the grounds raised in the writ petition it had been stated that the occupants namely the petitioners in this Petition and in the connected petitions have not been heard. There is no substance in this contention because it hag been held by a Division Bench of this Court (to which I was a party) in Union of India v. Smt. Bishan Devi, 2nd (1970) 1 Delhi 1 that no such oral hearing is required.

7. The main question for consideration in this and the connected petitions is whether the word "occupant" employed in Rule 26 means a person who is entitled to occupation and who is said to be in occupation of the same through his sub-tenants, namely, the tenant or whether it means the person actually in occupation. The other incidental questions are whether for Rule 26 to apply each of the occupants should be in sole occupation of the entire unit of property; in other words, whether

Rule 26 would apply to a case like the present where five persons are separately in occupation of each of the five shops, which together form one unit for purposes of valuation and of transfer, yet another question, again of some importance, would be whether the Managing Officer. In any case, could effect a division of similar unit of property into five sub-units for the Purpose of effecting transfers to each of them for an appropriate valuation.

8. It is necessary, in the first place, to read Rule 26. which occurs in Chapter V of the Rules:

"Transfer of acquired evacuee Property which is an allottable property is in sole occupation of a person who does not hold a verified claim. - Where an acquired evacuee Property which is an allottable property is in the sole occupation of a displaced Person who does not hold a verified claim, the Property may be transferred to him -

(i) in the case of an industrial concern if he Pays at once not less than 25 % of the value thereof and agrees to Day the balance in installments spread over a period not exceeding 2 1/2 years from the date of the initial payment:

(ii) in the case of any other property-

(a) where the value of the Property does not exceed in the case of a shop in a rural area or in a town other than those mentioned in Appendix X. two thousand rupees and in the case of any other property five thousand rupees. If he Days at once 20 per cent of the value thereof and agrees to Pay the balance in four equal annual installments from the date of the initial Payment;

(b) where the value of the property exceeds the limits specified in clause (a) or where the property consists of a shop situated in a town specified in Appendix X. if he pays at once not less than 33 1/3 per cent of the value of the property and agrees to pay the balance in two equal annual installments from the date of the initial Payment:

Provided that in the case of acquired evacuee Property including an industrial concern which is an allottable property, he may, at his option pay at once 20 per cent of the value of the property in cash and agree to pay the balance with interest in seven equated annual installments.

Provided further that in the case of an acquired evacuee Property other than an industrial concern, the value of which is more than rupees ten thousand but does not exceed rupees fifteen thousand, the occupant shall be required to pay the balance together with interest at the rate specified in Rule 28. in three equal annual installments."

9. It would appear from the scheme of the Rules that they have been framed broadly with a view to rehabilitate displaced Persons who were uprooted from their original homes because of the Partition of the country and also to make provision for transfer of evacuee allottable Property. The petitioners in these connected petitions as well as Respondents Nos. 4 and 5 are displaced persons. The further idea also seems to be that as far as possible the persons in occupation became the owners thereof so that there is the least dislocation of persons in occupation on account of transfer. The rent control

law can reasonably be expected to take care of it when such complaints arise between a tenant and his sub-tenant, in areas like Delhi where such legislation exists.

10. The scheme of the Act and the Rules were explained by H. R. Khanna, J. (as he then was) when he spoke for the Full Bench of the Punjab High Court in Smt. Jamuna Bai v. Union of India, . The expression 'occupation' in Rule 30, since deleted, fell for consideration. It was held that the said expression denoted a person being in occupation in one's own right but not a person in occupation as licensee at the sufferance of an allottee. There are also observations therein to the effect that the framers of the Rule 30 intended that the person in occupation should remain the actual allottee as one. whose occupation has been recognised by the Department. But Mr. D. D. Chawla says that the Property vested as evacuee property in the Custodian with effect from 30-7-1951, the date on which notice was issued under Section 7(1) of the Administration of Evacuee Property Act. This fact appears from the order of Custodian of Evacuee Property (Mr. U. S. Dixit) dated 9-8-1951 (which is on pages 919-20 of file Part I No. 1-1147-1151). His contention is that once the property is vested in the Custodian under Section 8 of the said Act he could take possession of the property, so vested in him, under Section 9. An application had to be made under Section 40 to the Custodian to confirm any lease by the evacuee-owner to any other person. It may be recalled that the tenancy was confirmed by the Custodian in favor of Respondents Nos. 4 and 5 on 27-10-1973. Mr. D. D. Chawla argues that before the said tenancy was confirmed the sub-tenants concerned (the Petitioners in this case) were in actual possession and in one of the files produced by the Department (No. Part II-1/1147-1151, P. 78) there is a Receipt No. 508428 dated 27-4-1953 - Receipt Book No. 5085 - for a sum of Rs. 15/4/- in favor of Parmanand (one of the sub-lessees) issued by the office of the Custodian of Evacuee Property, Delhi Province.

11. Reference has also been made in the above said case to the observations of Wanchoo, J. (as he then was) speaking for the majority of the Supreme Court in Upper Ganges Sugar Mills Ltd. v. Khalilul-Rehman. while dealing with Section 20 of the U. P. Zamindari Abolition and Land Reforms Act, 1951. The expression "occupation" therein was stated to be not a term of art. Reference has also been made to another decision, Amiba Prasad, v. Mahaboob Ali Shah, , where Hidayatullah, J. (as he then was) spoke for the Supreme Court in a case arising under Section 20 of the U. P. Zamindari Abolition and Land Reforms Act and observed that "occupant" must mean a person actually holding the land in -possession; in other words, the person in actual Possession for the Purpose of that Act was the tenant when the conflict was between a proprietor and a tenant: between a tenant and the sub-tenant it was the latter. Explaining the scheme of the said Act Hidayatullah, J., observed that it was the only logical way to interpret the above section of the Act which had done away with all intermediaries.

12. Mr. D. A Chawla, learned counsel for the petitioner wanted that the same interpretation should be adopted with reference to the word "occupant" occurring in Rule 26. Having given this argument which at first sight appeared attractive, my earnest consideration it does not seem to me that such- a construction can be adopted having regard to the scheme of the Present Act and the Rules framed there under because of the vital difference that there is between the present Act and the U. P. Act; there is no question in the present case of any extinction of any one's title or of the extinction of title of any intermediary: the acquisition under Section 12 of the Act vests it "free from all

encumbrances". On the other hand, as Pointed out by H. R. Khanna. J., in Jamna Bai. the framers of the present rules had clearly intended that the person in occupation should be the actual allottee whose occupation has been recognised by the Department (vide page 400 of the report). The conclusion was expressed on this aspect as follows by H. R. Khanna, J., speaking for the Full Bench:

"I would accordingly hold that the word 'occupation' used in Rule 30 refers to the case of a person to whom part of the Property has been allotted or who has otherwise been recognised by the rehabilitation department as occupant of that property. It denotes occupation in one's own right and would not cover the case of persons in occupation as licensees at the sufferance of an allottee" (vide pages 401-02).

13. In Chapter V of the Rules the following are material: Rule 22 provides for classes of allottees acquiring evacuee property: Rule 22 (b) refers to a shop in the occupation of a displaced person, the value of which does not exceed fifteen thousand rupees (it was Rupees ten thousand until substituted by Gsr 750 dated 22-5-1962). Rule 24 Provides that where any acquired evacuee Property, which was an allottable property, is to be transferred to any Person in occupation thereof in satisfaction of the whole or Part of the compensation payable to such Person, the value shall be determined having in mind the considerations set out in that rule. R. 25 relates to an applicant for payment of compensation, in the sole occupation of acquired evacuee property which is allot table evacuee property; the same may be transferred to him in lieu of compensation payable to him under the Act. The details as to how the compensation is to be worked out and adjusted have also to be provided in the rules. Rule 26, set out above deals with acquired evacuee property which is an allottable Property when the same is in the sole occupation of a, displaced person who does riot hold a verified claim; the Property may be transferred to him in the manner provided therein. There is only a discretion to transfer to such a Person(s) who cannot claim such transfer as a matter of right (vide Sodhi Harbaksh Singh v. The Central Government, (1962) 64 Pun Lr 629 (AIR 1964 Punj 137)).

14. It is also necessary to set out Rules 30 and 31, both of which have since been deleted: the former with effect from 20-12-1960 and the latter w.e.f. 10-8-1961:

"30. Payment of compensation where an acquired evacuee property which is an allottable property is in occupation of more than one person. If more persons than one holding verified claims are in occupation of any acquired evacuee Property which is an allottable Property, the Property shall be offered to the Person whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired evacuee property which is allottable as may be available:

Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the Property and allot to each such person a Portion of the Property so partitioned having regard to the amount of net compensation payable to him.

Explanation 1. - The Provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allottable Property hold verified claims and some do

not hold such claims.

Explanation II. - If any acquired evacuee property has been allotted to a member of a family as defined in sub-rule (3) of Rule 7 who does not hold any verified claim and if another member of the family holding a verified claim is in occupation of such property, the compensation payabI6 to such other member of the family may be adjusted against the value of the property.

31. Transfer of acquired evacuee property in occupation of displaced persons none of whom holds a verified claim Where an acquired evacuee property which is an allottable property is in occupation of more than one displaced person none of whom holds a verified claim the property may be transferred to the displaced Person who occupies the largest Portion of the property or where two or more such displaced persons occupy a portion of the property which is equal in area, the Property may be transferred to the-displaced person who has been in occupation of such portion for a longer Period.

2. The Provisions of Rule 26 shall apply to the transfer of acquired evacuee property under this rule in the same manner as they apply to the transfer of such property under that rule."

15. When Rule 31 was deleted there was an amendment to Rule 22 also. Before the amendment Rule 22 did not contain the provision which has now been added that the property referred to in sub-clauses (a) and (b) would not be allottable if it was in the occupation of two or more Persons, whether any or all of them were displaced Persons or not. It is in this setting that Rule 22 (as it has been amended) has to be read along with Rule 26. which alone applies to the present case, in the background of omission of not only of Rule 30 but also along with the omission of Rule 31 at the same time as an amendment to Rule 22. In this context it may also be noticed that there was no justification for importing into Rule 26 an obligation on the part of the authorities to transfer property to non-claimants in whose occupation such property may happen to be: Rule 26 merely vested Dower in the authority concerned to make the transfer or not according to circumstances. Persons who are not the sole occupants of the unit of Property, but have no verified claim cannot, therefore, claim a transfer of such poverty as a matter of right despite there being displaced persons in occupation of it. In other words even in the view most favorable to the petitioners in the connected writ petitions, namely, that they are "occupants" of the property within the meaning of Rule 26, still they could not ask for the property to be transferred in this writ Petition because the expression employed therein is only "may". Besides, between two sets of rival claimants, both of them displaced evacuees without any verified claim. recognition of occupation by the department would be determinative.

16. The expression "occupation" in Rule 26 would thus seem to take colour from its context the same not having been defined either in the Act or in the Rules. One cannot always go by the ordinary dictionary meaning. It will be useful to recall the observation of Judge learned Hand (vide 148 F 2d 737, 739) that "it is one of the surest indices of a mature and developed jurisprudence not to make a fortress of the dictionary but to remember that statutes have always some Purpose and object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning". It is in the same way that one has to understand the decision of the Supreme Court in the Cantonment

Board v. Dipak Parkash, where the expression "occupation" in Section 99(2)(c) of the Cantonments Act. 1924 was construed in the context of liability for tax. There was a lease taken by the Central Government of half a bungalow which was being used at the relevant time by some Military officer as his residence. It was held that the occupation was that of the Central Government through the Military Officer whom it had permitted to reside in it. In paragraph 13 (P. 965) Das Gupta, J., while reaching the above said conclusion also made the following observations: "Where the Central or the State Government after obtaining the lease under Section 7 leases it out to any Person, it is itself not entitled to actual occupation but has to put the sub-lessee into occupation. In such a case, it may be reasonably said that the Government has ceased to be in occupation."

These observations were made in the context of explaining how the Central Government continued to be liable for the assessed tax because it had only permitted the Military officer to occupy the building. It does not seem to me that the said observations may support the contention of Mr. D. D. Chawla that because there were sub-leases to the petitioner in these connected Writ Petitions they must be considered to be in occupation and not the tenants whose lease from the original Muslim owner, effective from 9-12-1947, was confirmed on 27-10-1953, He could not get any assistance likewise from the passage which he has cited from Stroud's dictionary (volume 3 (1953) Edn,). pages 1954-55) which has culled out different meanings from the word "occupation" from different statutes. In these circumstances any payment of rent by Parmanand, one of the petitioner sub-tenants, to the Custodian on 27-4-1971 (Department File Part 11 page 78) or the survey report (p. 227 of the same file) showing that Kishan Chand, one of the subtenants, was in occupation since Sept. 1949, could not be of any avail. Nor can any useful reliance be placed by Mr. D. D. Chawla on what Shri A. L. Bahl said in his order (copy of which is Annexure T to the petition) that "three out of five respondents were regular tenants of the department and they had been paving rent to the Custodian direct" because this is totally opposed to the fact, which is now well-known and is common ground, that there had been and could be no Payment of rent by the sub-tenant to the Custodian after the confirmation of the leases to Respondents Nos. 4 and 5 on 27-10-1953. In such a situation the confirmation of the lease would really relate back to 9-12-1947 from which date the lease in favor of Respondents Nos. 4 and 5 of the original Muslim owner became effective. Anything that happened in 1949 is also something which is not relevant because the Custodian himself could not have taken any step to take possession of the property prior to 27-1-1951 on which date alone the property was declared as evacuee property. I have highlighted these details because any omission to refer to them may lead to a possible confusion, as it did at the earlier stages of the argument before me about there being any recognition of the sub-tenants in this case.

17. It is also necessary to repel another inference which is sought to be drawn by Mr. D. D. Chawla based on a note of the Managing Officer (Shri K. K. Mittal) dated 24-6-1959 (in the Department File Part Ii Pages 38 to 40) suggesting that there had been recognition of the sub-tenants. This view had been fully repudiated by his superior officer. Shri I. D. Chaudhary, Assistant Settlement Commissioner by his letter dated 2nd/3rd July, 1959 (pages 33-34 of the same file). He stated: "I have gone through the reports of the Managing Officer carefully. I am, however, not inclined to endorse the view taken by the Managing Officer as I do not see any reason for debarring the original tenants i. e., Sarvshri Harkishan Lal Krishan Gopal from the right of allotment of the property which is a rightful one under the Displaced Persons (Compensation and Rehabilitation) Act Particularly

when they still continue to be the ten-ants of the department. The sub-tenants Shri Parmanand etc., who are in actual occupation of the property cannot be taken as tenants of the department as they have no such relationship. The responsibility for Payment of arrears of rent/lease money has been fixed by the department on the original lessee and as such they can be held eligible for transfer of the Property. Since the property as one unit is worth below Rs. 10,000/- it can be allotted as such to the original allottees irrespective of the fact whether there are one or more shops in it. "

18. In this case, as it is seen from Annexure R-1 to the return filed by Respondents Nos. 4 and 5 the Assistant Custodian had by his order dated 18-5-1954, asked the sub-tenants to attorn to the tenants. The authorisation was only in favor of the tenants; they were the persons from whom the Custodian could collect the rents.

19. Shri 0. N. Vohra has taken a relevant factor into account namely. That Rs. 2,7001- had been spent by the tenants In order to complete the building, this factor had been taken into account by the authorities concerned repeatedly when ever the question of the arrears of rent due by the tenants was taken up by the concerned Department. In addition to this factor, it was also obvious that the sub-tenants had not Paid any rent to the tenants; the tenants themselves had not got back anything from either the original owners or from the sub-tenants. These considerations did weigh with Shri 0. N. Vohra when he directed that the transfer should be made to Respondents 4 and 5. The expression in Rule 26 being "may" and not "shall" the sub-tenants could not obviously challenge the exercise of such discretion in this writ petition. Realizing the difficulty which he faced not only on this account but also by reason of the fact that a single unit was in the possession of five persons which may involve a fresh valuation if transfers to each of them could be made and the possibility of the valuation itself, in such a case, even going beyond Rupees 15,000/-, in which event there would have to be a sale. Mr. D. D. Chawla realised at the final stage of the argument, that he could not ask in these Writ Petitions, for any transfer being made to the petitioners. All that he claimed, later was that being persons in Possession they had sufficient interest to file these Writ Petitions (as decided by me in Chakravarti Malhotra v. Union of India, (C. W. 119 of, 1972 decided on 18-9-1974) (Delhi)) and that his clients had sufficient standing for questioning the legality of the transfer effected in favor of Respondents Nos. 4 and 5. This again depends only on the question whether the tenants could be said to be Persons in "occupation" within the meaning of Rule 26. If the criterion, as expressed in the Full Bench decision of the Punjab High Court in Smt. Jamna Bai , is that the Person in occupation should be one who is recognised by the Department; it is not possible to regard any of the petitioners in these connected Petitions as Persons whose possession was recognised by the Department. Recognition cannot be afforded to two rival sets of persons with reference to the same property at the same time. By reason of the leases in favor of Respondents Nos. 4 and 5 having been confirmed on 27-10-1953 which, as I said, would relate back to the date-9-12-1947, Respondents Nos. 4 and 5 alone were the recognised occupants of the building in question but not all or any of the Petitioners.

20. Mr. D. D. Chawla raised a further contention that the lease in favor of Respondents Nos. 4 and 5 also ceased when the -property was acquired by the Custodian as provided under Section 12 of the Act. All that Section 12(2) Provides is that on the Publication of notification under sub-section (1) acquiring some evacuee -property the right, title and interest of the evacuee would be extinguished

and the evacuee property would vest absolutely in the Central Government "free from all encumbrances". But then a lease confirmed by the Custodian is obviously no such encumbrance. This will be clear from Section 19 of the Act which gives the power to the Custodian to vary or cancel a lease or allotment of any Property acquired under the Act clearly; if a lease is an encumbrance and if the acquisition by the Central Government under Section 12 was sufficient to vest the evacuee Property in the Central Government free from leases confirmed by the Custodian then there would be no need for a provision like Section 19.

21. In the result, none of the petitioners in these Writ Petitions has been able to successfully assail the order of transfer of the property to Respondents No. 4 and 5 the value stated by the officers concerned having been even less than Rs. 10,000/ - and hence allottable property which did not require to be sold.

22. The writ Petition accordingly fails and is dismissed but in the circumstances without costs.

23. Writ Petition dismissed.