

(2008) 05 DEL CK 0045

In the Delhi High Court

Case No : Writ Petition (C) No. 58 of 1976

Attar Chand (Decd. Thr. Lrs.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Displaced Person (Compensation and Rehabilitation) Fifth Amendment Rules, 1962 — Rule 34A, 34C, 34D, 34E

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 24, 33

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 34A, 49, 62, 63, 87

Citation : (2008) 150 DLT 242 : (2008) 103 DRJ 425

Hon'ble Judges : Veena Birbal, J;T.S. Thakur, J

Bench : Division Bench

Advocate : S.S. Panwar and Navin Chawla, for the Appellant; Sanjay Katyal and Saurabh, for R-1, Avnish Ahlawat and Latika Chaudhary, Nidhi Gupta and Simran for R-4, Sangeeta Chandra, for R-6, S.P. Kalra A.S. Dateer, for R-7 and Sanjay Poddar, for LAC, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—Petitioner under Articles 226 and 227 of Constitution of India seeks a writ in the nature of certiorari for quashing the impugned orders dated 10.6.1971 and 25.8.1975 passed by respondent Nos. 2 and 3 respectively.

2. Briefly, the facts as alleged in the petition are that one Amir Chand, predecessor in interest of the present petitioner was a displaced person who had left behind agricultural land at West Pakistan. On that basis in the year 1950 he was allotted rural agricultural land in all measuring 18 bighas 12 bids was bearing khasra No. 2010/4(4-16), 10/8 (4-16), 10/13 (4-16) 43/17(2-3), 43/18(2-8) at village Khureji Khas, Delhi. Land allotted to Amir Chand was evacuee property vested in the custodian of evacuee property. Subsequently, by a notification issued by the Central Government u/s 12 of Displaced Person

(Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act) the above land was acquired in the year 1955. It is stated that after acquisition of aforesaid land the same was transferred, as owner, to Amir Chand (deceased) as a displaced person and a claimant under Rules 49, 62 and 63 of Displaced Person (Compensation and Rehabilitation) Rules 1955 (hereinafter referred to as the Rules) and at that material time there was no limit to transfer of rural agricultural land as an owner. It is alleged that according to the policy of government land was offered to Amir Chand, deceased at a price of Rs. 43,560/- vide letter dated 1.9.1958 annexed as Annexure A with the petition. It is further alleged that land was offered under Rule 87 of the Rules. Amir Chand produced relevant documents before the Managing Officer who passed an order on 23.5.1966 in favor of Amir Chand that agricultural land measuring 19 bighas and 4 bids was to be transferred in favor of Amir Chand on payment of Rs. 33,880/-. It is alleged that part payment was made in cash and rest was by way of adjustment of his compensations and that of his associates and thus entire amount of Rs. 33,880/- stood paid. On a reference being made by the Assistant Settlement Commissioner, the Chief Settlement Commissioner in exercise of power conferred u/s 24 of the Act vide order dated 10.6.1971 set aside the order of Managing Officer transferring the rural land measuring 19 bighas and 4 bids was and directed the department to reconsider the transfer of the land within the prescribed limit of Rs. 15,000/- to Amir Chand. The application filed by Amir Chand u/s 33 of the Act against the order of Chief Settlement Commissioner dated 10.6.1971 with the Central Government was dismissed by the Director (Department of Rehabilitation) vide order dated 20.8.1975. Aggrieved with the orders dated 10.6.1971 and 20.8.1975 the present writ petition is filed.

3. The case of respondents in counter affidavit is that Amir Chand was a landless claimant who had been allotted land as a measure of rehabilitation by the Department of Rehabilitation in the year 1950. The village was rural and was declared urban in 1957-58. It is alleged that Amir Chand was a landless claimant-allottee and had no right for the transfer of allotted land under Rules 49, 62 and 63 of the Rules, 1955. It is not disputed that in the year 1966 payment of initial Installment of reserved price was received from Amir Chand but it is stated that subsequently it was found that order passed by Managing Officer was in violation of law. It is further stated that the land originally allotted to Amir Chand was rural agricultural land but it was subsequently declared as urbanized land and so the Rules 49, 62 and 63 had no applicability. It is further stated that there is no order of Managing Officer available in the office records as is alleged in the petition and the payment of Rs. 5176/- which was made in cash was accepted provisionally.

4. It is contended by learned Counsel for petitioner that present is a case of purchase of land by negotiations and, Therefore, Chapter VA of Rules has no applicability. It is further contended that assuming though not admitting, nothing precluded respondents and predecessor in interest of petitioner i.e. Amir Chand (deceased) from entering into negotiations and purchase of land on the basis of

negotiations.

5. On the other hand, contention of respondent is that Chapter VA of the Rules is applicable in the present case and accordingly Amir Chand had no right to claim land valued at more than Rs. 15000/- and as such the impugned order dated 18.5.1966 of the then Managing Officer was rightly set aside by respondent No. 3 and the impugned orders dated 10.6.1971 and 29.8.1975 are rightly passed.

6. We have heard counsel for the parties and perused the record. The main contention of respondents is that the allotment of land is in favor of Amir Chand was vocative of Chapter VA of the Rules which contention has found favor with the authorities below whereby it is held that Amir Chand is entitled to transfer of urban land of value of Rs. 15000/- and not Rs. 33000/- as is alleged by the Managing Officer (Rural) in his impugned order dated 18.6.1966 and it was also held that Chapter VA of the Rules is applicable in the present case.

7. Rule 34A provides applicability of Chapter VA of the Rules. Rule 34A reads as under:

34A Application - The provisions of this Chapter shall apply to evacuee agricultural lands situated in urban areas and acquired u/s 12 of the Act.

Chapter VA of the Rules so far as relevant for the present case are as follows:

34C. Allotment of agricultural land of the value of Rs. 10000/- or less - where any land to which this chapter applies has been leased to a displaced person and such land consists of one or more Khasras and is valued at Rs. 10000/- or less, the land shall be allotted to the lessee

Xxx xxx xxx 34D. Allotment of agricultural lands consisting of more than one khasra, the value of which exceeds Rs. 10,000/-

(1) Where any land to which this Chapter applies has been leased to a displaced person and such land consists of more than one Khasra, the aggregate value of which exceeds Rs. 10,000/- such portion of the land, the value of which does not exceed Rs. 10,000/- as the Regional Settlement Commissioner may select, shall be allotted

Xxx xxx xxx (2) In selecting area for allotment under Sub-rule (1) the Regional Settlement Commissioner shall have regard to the compactness of the area and other relevant matters.

(3) For the purposes of allotment of land under this rule, no khasra shall be sub divided

34.E. Maximum area of land allottable under this Chapter - Notwithstanding anything contained in the foregoing provisions of these rules:

(a) no khasra the value of which exceeds Rs. 10000/- shall be allotted;

(b) the maximum area of land allotted to any one person shall not exceed Rs.

10,000/- in value.

By Displaced Person (Compensation and Rehabilitation) Fifth Amendment Rules, 1962, a sum of Rs. 10,000/- was substituted by Rs. 15000/- w.e.f. 14.7.1962 in Rules 34C, 34D and 34E of the Rules.

It is not disputed that present is an evacuee agricultural land which was acquired u/s 12 of the Act. It is also not disputed that land in question was declared urban in the year 1957-58. Accordingly, we are of the opinion that provisions of Chapter VA of Rules are applicable as per provisions of Rule 34A.

8. It is next contended that assuming the provisions of Chapter VA were applicable to the land in issue and Amir Chand could not have been allotted land in excess of Rs. 15000/- under Chapter VA, nothing precluded Amir Chand from purchasing remaining land through negotiations. In this regard reliance is placed on Rules 49, 62 and 63 of the Rules. We are not in agreement with the submission of the counsel for the petitioner. Rules 49, 62 and 63 are part of Chapter VIII of the Rules which is applicable to agricultural land situated in a rural area as is apparent from the heading of Chapter VIII itself while the land in issue is in urban area.

9. In view of the above discussion, we are of the opinion that the orders dated 10.6.1971 and 29.8.1975 passed by the authorities below are in conformity with law and need no interference from this Court.

10. Writ petition stands dismissed. No costs.