

(1986) 09 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 1261 of 1984

Banarsi Dass

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-09-1986

Acts Referred:

Citation : (1986) 30 DLT 431 : (1987) 12 DRJ 58

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : Dewan Naubat Rai, U.L. Watwani and Daljit Singh, for the Appellant;

Judgement

Mahinder Narain, J.

(1) This writ petition has been filed by Banarsi Dass, son of Shri Bhag Mal, asserting that he is the sole owner of property No. 1/13-B, Hospital Road, Jangpura, New Delhi, which he acquired as a result of adjustment of his claims. It is asserted in the writ. petition that by purporting to review a revisional order by impugned order dated 31st January 1984, the Settlement Commissioner has gone wrong in re-opening matters. which had been closed in the year 1958.

(2) The petitioner asserts that he along with his father migrated to India from District Gujrat, now in Pakistan, where he lived along with his. father and brothers in the year 1947. The father of the petitioner left landed property and house property in village Kala Shadian, Tehsil Phalia, and village. Chak Lakhia, Tebsil Phalia. It is asserted by the petitioner that the entire property was partitioned in Pakistan and the house situated in village Kala Shadian fell to the share of the petitioner, while the house situated in village, Chak Lakhia fell to the share of Ram Lal, a brother of the petitioner, and" the agriculture land and plot fell to the share of Shri Bhag Mal and his other sons, namely, Bali Ram, Charan Dass and Ramji Lal.

(3) On migration to India the petitioner filed his claim with respect to his own house in village Kala Shadian, while Ram Lal filed his claim in respect of his

house in village Chak Lakhia, and the father of the petitioner Shri Bhag Mal and his other three sons filed a joint claim for verification under the Displaced Persons (Claims) Verification Act, 1950. The petitioner states that his claim was verified by the Claim Officer who passed his order dated 19th April 1952, and valued the claim at Rs. 3,484.00 in respect of the house at village Kala Shadian. No other member of the family had filed any claim with respect to the house at village Kala Shadian. The verified claim No. 1180 dated 19/4/1952 is annexed as annexure "A" to the writ petition.

(4) The claim of the other brother Ram Lal with respect to the house situated in village Chak Lakhia was also annexed as annexure "B".

(5) It appears that all the family members of Bhag Mal had filed such claims as they were entitled to file. They were separate claims, which were verified with respect to the two houses, as also with respect to the agricultural land. On the basis of the verified claim of the petitioner house No. A-13-B, Hospital Road, Jangpura, New Delhi, was conveyed to the petitioner and a conveyance was executed in his favor in 1958 with respect to the said house. It is stated by Dewan Naubat Rai, learned counsel for the petitioner that in view of the fact that the house was conveyed to the petitioner in 1958, with effect from the date on which it was conveyed to the petitioner, the same has gone out of the compensation pool, and as such no orders could be passed with respect thereto by any authority under the Displaced Persons (Claims) Verification Act, 1954. It is also stated by him that the petitioner and respondent No. 3 are living in the house which was conveyed to the petitioner for a considerable time, even now. It is further stated by him that the present proceedings have been initiated as a result of eviction proceedings having been commenced against Bali Ram, respondent No. 3 by Banarsi Dass, the petitioner.

(6) What has happened in this case is that respondent No. 3, Bali Ram, admittedly the elder brother of the petitioner, made an application for revision of the order dated 19/4/1952 u/s 5 of the Displaced Persons (Claims) Supplementary Act, 1954. This revision petition was disposed of in favor of the petitioner herein by an order dated 31st March 1981, passed by Shri Prem Narain, Deputy Chief Settlement Commissioner. In this order it is stated that the departmental representative clarified the position and argued that Bali Ram is not competent to file a revision petition as he is not a claimant, and moreover, he has come on the scene after a period of about 29 years. It was also deposed that he is not competent to file this revision petition u/s 5 of the powers conferred by Section 5(b) 5(l)(b) which were powers in the Chief Settlement Commissioner, and the period of limitation has already expired. It was contended that this revision petition was not maintainable and the petitioner Bali Ram had no locus standi." It was held by the Deputy Chief Settlement Commissioner, "I find that in this case the order was passed by the Claims Officer on 19/4/1952, i.e. 29 years ago, and there is no Explanation whatsoever as to why the petitioner chose to remain quiet in the matter all these three decades. I further find that Bali Ram is

not claimant and as such is not entitled to file a revision petition against the order passed in favor of some other person. If he had any grievance against the claim filed by any person, he could very well seek such remedy as was available to him in the proper time. . Even on merits, I find that the petitioner has no case. As such, the revision petition is dismissed being not maintainable."

(7) Against this order, Bali Ram filed a review petition on 16/8/1981. This was decided against him on 18/2/1982.

(8) Not satisfied, Bali Ram filed another application on 8/8/1983 for reviewing the order dated 19/4/1952 and of order dated 31/3/1981 passed by Shri Prem Narain and order dated 18/2/1982 passed by Shri M.P. Misra, rejecting the petition for review.

(9) This application for reviewing the revisional order and reviewing an earlier order rejecting the review petition, has been allowed by the impugned order dated 31/1/1984 by Shri M.K. Kansal, Settlement Commissioner with delegated powers of Chief Settlement Commissioner.

(10) I put it to Mr. Daljit Singh, learned counsel for Bali Ram, to show to me any provision in the Displaced Persons (Claims) Verification Act, 1954, and/or the Displaced Persons (Claims) Supplementary Act, 1954, and the Rules framed there under which permit making of an application for reviewing an order passed on review petition. He has referred to Rule 3(d) of the Displaced Persons (Verification of Claims) Supplementary Rules, 1954, which reads as under:- "3(d) reviewing an order on any of the following grounds, namely :- (i) the discovery of any new or important matter or evidence which after the exercise of due diligence was not within the knowledge of, or could not be produced by, the claimant at the time when the claim was verified ; or (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason." He asserts that the review of the order can be made on discovery of any new or important matter or evidence which after the exercise of due diligence was not within the knowledge of, or could not be produced by the claimant at the time when the claim was verified. As far as this matter is concerned, the petitioner and respondent No. 3 are brothers, both independently ought to have known what the real position of the family property was, all along and equally. The question of discovery of new or important matter or evidence would not, Therefore, arise. Merely because it is asserted by one person that there is a fraud, it cannot be said that there has been a fraud, particularly after a lapse of almost 29 years, as is the case in the instant petition.

(11) In the case The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, , it has been decided that three year limitation operates with respect to any application made under any act. This was a judgment given with respect to Article 137 of the Limitation Act, which is a residuary Article. In the case before me, the order in favor of the petitioner was passed in 1958. The time for making the application for revision or review would have expired latest by

1961. The application which has given rise to this petition was filed some time in the year 1981, more than 20 years after the limitation for filing such application would have expired.

(12) In my view the respondents had no jurisdiction to review the orders which have been passed in favor of the petitioner Banarsi Dass after the expiry of period of limitation. The impugned order dated 31st January, 1984 having been passed by the Settlement Commissioner was passed when he had no jurisdiction to pass such an order. The same is, Therefore, liable to be set aside. This writ petition, Therefore, has to succeed and the order dated 31/1/1984 has to be quashed.

(13) Besides, there is another reason for allowing this writ petition. The property having been mutated, conveyed to the petitioner in the year 1958, the same went out of the compensation pool and Therefore no authority, functioning under the Act, had power to pass any orders which will impinge upon the title to said property. This was the view taken in the judgment of this Court, reported as (Mohd. Yusuf v. Union of India), Air 1970 Delhi Law Times 371. I have also followed the same view in my judgment in Civil Writ No. 347 of 1978, decided by me on 5/5/1986.

(14) This writ petition is accordingly allowed. The impugned order dated 31st January 1984 is quashed. The parties are, however, left to bear their own costs.