courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/08/2026

(1968) 05 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2189 of 1965

Basheshar Nath — APPELLANT

Vs

S.P. Jain and others — RESPONDENT

Date of Decision : 15-05-1968

Acts Referred:
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33

Citation : (1968) 05 P&H CK 0003

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : H.L. Sarin, H.S. Awasthy, Bhal Singh Malik and A.L. Bahal, for the Appellant; D.S. Nehra for Respondents Nos. 1 and 2, Messers H.S. Doabia, B.S. Shant for Respondents 3 to 5 and Mr. G.S. Grewal, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—Basheshar Nath in this writ petition against S.P. Jain. Deputy Secretary (Rehabilition) exercising the powers of the Chief Settlement Commissioner, Punjab, and six others has prayed for quashing of an order passed by respondent No. I on 27th July, i96a, annexure ''I'' and for directing him to allot the property in dispute in terms of the offer made by the Central Government previously in his favour. A few facts as alleged by him in support of his prayer may briefly be noticed He on migration from Pakistan in 1947 was allotted 22c Standard Acres of agricultural land in village Alarmgarh, Balunna etc. Tehsil Fazllka, district Ferozepore. In addition he was entitled to allotment of a residential house along with plots, cattle sheds and houses for his tenants. Since there were no such accommodation available in village Alamgarh he with the previous sanction of the Director General (Rehabilition), Punjab, dated the 29th March, 1950, annexure ''A'' was allotted house comprising three portions Nos. 160, 161 and 162 situate in Sukhera Basti Abohar by the Managing Officer on 27th December 1956 He spent Rs. l0,000/- to improve this building. The Chief Settlement Commissioner, Shri B.S. Grewal by his order dated the 10th May

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/basheshar-nath-appellant-hash-sp-...

1953, cancelled the above allotment in favour of the petitioner and directed that the fresh allotment of houses in Sukhera Basti Abohar be made in accordance with rules 44 and 57 of the Displaced Persons (Compensation and Rehabilitation) Rules, hereinafter referred to as the Rules, copy annexure ''B''. The petitioner against this order filed a petition u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, hereinafter referred to as the Act, which was heard by Shri L.J. Johnson, Joint Secretary (Rehabilitation) and dismissed with some modification on 21st November, 1958, annexure ''C'', In pursuance of his order the value of the house was fixed at Rs. 65,799/-. The petitioner did not accept this evaluation as correct and so filed a revision petition before the Chief Settlement Commissioner, Julludur, who dismissed it on the short ground that, he petitioner had no locus. standi to challenge the evaluation. The petitioner''s second revision petition u/s 33 of the Act against the aforesaid order was dismissed in liminie by the Central Government on 7th September, 1960. Thereupon the petitioner filed Civil Writ No. 1769 of 1960 Basheshar Nath v. The Central Government etc, where in the Central Government and the Chief Settlement Commissioner, Jullundur in their joint written statement give the following undertaking to him:

It is denied that any injustice has been caused to the petitioner. The house is being offered to him at the assessed price after applying 20 per cent reduction. The balance payable by the petitioner will further be reduced by Rs. 20,000/-. If in spite of above concessions the petitioner is not willing to accept the house, he is free to quit it. There is no question of his legal liability to purchase the house at the assessed price. He can get a fresh house allotted in case he is willing to part with the house in dispute." The petitioner on the basis of this undertaking withdrew the petition which was dismissed by Pandit J. on 2nd February, 1962, in the following terms:

Learned Counsel for the petitioner states that in view of the offer made by the Rehabilitation Department in paragraph No. 11 of their return, he does not wish to press this petition. The same is, consequently, dismissed. But there will be no order as to costs.

In the meantime the Chief Settlement Commissioner and his Subordinate initiated certain steps which indicated that they intended allotting the house-portions 160 and 162 to respondents Nos. 3, 4 & 6, Ipbal Singh, Inderjit Singh and Hardhian Singh and that portion 161 had been allotted to respondent No. 5 Inder Singh. The petitioner in order to safeguard his interest in the house against this fresh action of the Chief Settlement Commissioner, Jullundur, filed writ petition No. 1444/1931. This was also withdrawn by him in view of the undertaking given by the Central Government in their written statement filed in writ petition No. 1769 of 1960. The petitioner after the disposal of this writ petition applied to the Chief Settlement Commissioner, Jullundur, on 6th April, 1962, annexure ''E'' for transfer of the house in terms of the offer made to him but this failed to elicit any reply and so he repeated his request on 5th January,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/basheshar-nath-appellant-hash-sp-…

1964. He moved another application dated 29th March, 1966, annexure ''H'', claiming the same relief which was dismissed by respondent No. 1, on 27th July, 1965. The petitioner alleged that this order was illegal, arbitrary, without jurisdiction, mala fide and was thus liable to be quashed inter alia on the following grounds.-

(i) That it is well settled principle of law that a party to a litigation cannot be permitted to approbate and reprobate, and that being so respondent No. 1 could not ignore the offer which was jointly made by the said respondent and the Central Government in their joint written statement filed in this Hon''ble Court in C.W. No 1769 of 1960 and reproduced in paragraph No. 13 above. On the basis of the said offer and assurance given to the petitioner by the Central Government and respondent No. 1, the petitioner had not pressed his writ petition No. 1769 of 1960 and the same was thus dismissed Respondent No. 1 cannot be permitted to back out from the said offer as the same is binding on him as well as on the Central Government and on the basis of the same the petitioner is entitled to the transfer of the house in dispute in terms of the said offer;

(ii) That as the Central Government has not so far backed out from the said offer, respondent No. 1 had no power or jurisdiction to back cut from the same.

(iii) That in view of the offer to transfer the house in dispute to the petitioner at the concessional price as stated in paragraph No. 13 above, the petitioner withdrew his Civil Writ No. 1769 of I960 filed against the order dated 10th May, 1958 (vide annexure ''B'') of Shri B.S. Grewal exercising the powers of Chief Settlement Commissioner and order dated 21st November. 1958 (vide annexure ''C'') passed by the Central Government and Civil Writ No 1444 of 196l filed against the alleged allotments of the portions of the house in dispute in favour of respondents Nos. 3 to 6;

(iv) That offer to transfer the house in dispute as stated in paragraph No. 13 above made by respondent No. 1 and the Central Government was accepted by the petitioner vide his several applications dated 6th April, 1962 (vide annexure ''E'') and other applications as stated in paragraphs 19 and 20 above respondent No. I has acted illegaly, without jurisdiction, mala fide, arbitrary and against the principles of natural justice, equity and fair-play in refusing to transfer the house in dispute to the petitioner;

(v) That respondent No. 1 per his order dated 27th July, 1965 (vide annexure ''I'') has wrongly held that respondent Nos. 3 to 6 had acquired certain rights to the allotment of the house in dispute. There being no orders of allotment in favour of respondent Nos. 3, 4 and 6 as would be clear from the facts stated in paragraph Nos. 21 and 22 above and from annexures ''F'' and ''G'' and allotment of portion No. 161 in favour of respondent No. 5, if any, made during the pendency of the writ petition No. 1769 of 1960, would not under the law affect in any manner the rights of the petitioner qua the house in dispute and would not confer any rights on respondents Nos. 3 to 6 as against the petitioner.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/basheshar-nath-appellant-hash-sp-…

Respondent No. 1 has acted without jurisdiction, illegally and arbitrarily in holding to the contrary and has committed an error which is apparent on the face of the record;

(vi) That the petitioner being in possession of the house in dispute since 195 i, the alleged allotments in favour of respondents Nos. 3 to 6, if any, were never completed by delivery of possession and as such respondent Nos. 3 to 6 have acquired no right to the house in dispute The petitioner had made considerable improvements, repairs, alterations and additions to the house in dispute spending about a sum of Rs. 10,000/- and as such it is in the interests of justice, equity and fair-play that respondent No. 1 ought to have honoured the commitment made in the joint written statement as reproduced in paragraph No. 13 above to transfer the house in dispute to the petitioner and could easily allot any other house or houses to respondents Nos. 3 to 6;

(ix) That the mere fact that during the pendeney of C.W. No. 1969 of 1960 in this Hon''ble Court, respondents Nos. 3, 4 and 6 had selected portions 160, 162 of the house in dispute would not confer any right on them to transfer of those portions. Similarly the mere fact that portion No. 161 of the house in dispute had been allotted to respondent No 5 during the pendency of writ petition No. 1769 of 1960 in this Hon''ble Court would not confer any right to the transfer to him of the said portion. The petitioner submits that whatever was done during the pendency of the writ petition in which ad-interim stay order has been issued by this Hon''ble Court, was corum non-justice and without jurisdiction and hence of no legal consequence and efifc1 qua the right of the petitioner to get the house in accordance with forms of the offer made by he Central Government and respondent No. 1 and reproduced in paragraph No. 13 above;

25-A That per notification No. MC II (XIII) 12-59/64708, dated 6th February, 19bl, issued by the Punjab Government under the Punjab Municipal Act, Sukhere Basti Abohar which was a rural area prior to the issue of the said notification and where the house in dispute is situated was converted into urban area. That being so, the respondents Nos. 1, 2 and 7 had no power or jurisdiction to allot or select the house in dispute or any portion thereof in favour of respondent Nos. 3 to 6.

2. Respondents Nos. 1, 2 and 7 in their written statement pleaded that houses 160, 161 and 162 had been allotted to respondents Nos. 3 to 6 in the allotment register but no formal allotment orders had been issued and that the copies of the entries in the allotment register, however, were supplied to the petitioner which he has reproduced in the writ petition. They did not dispute the correctness of the contents of paragraph No. 13 of the writ petition which indicated that respondent No. 1 gave an undertaking to transfer the house in favour of the petitioner on certain terras They also admitted that writ petition No. 1444 of 1961 was dismissed as withdrawn on 24th October, 1963, but denied their knowledge about the fact, as alleged by the petitioner that it was withdrawn on account of the undertaking given by the Central Government and respondent No. 1. They further explained that when the assurance referred to above was

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/basheshar-nath-appellant-hash-sp-…

given to the petitioner, the houses had already been allotted to respondents Nos. 3 to 6 an implementation of the dilutions given by Shri B.S. Grewal in his order dated the 10th May, 1988, and since these respondents were hot parties to the assurance, hence it could not be implemented. They also added that the allotment orders in favour of respondents Nos. 3 to 6 were assailed by the petitioner in his writ petition No 1444 of 1961 which was dismissed as withdrawn and as such he could not attack the same in the present proceedings.

3. Respondents Nos. 3 to 5 in para No. 13 of their written statement pleaded that the houses had been allotted to them on 3rd August, 1961. and that the assurance was given on behalf of the Central Government and the Chief Settlement Commissioner, Jullundur in writ petition No. 1769 of 1960 on 6th December, 1962, hence it was not valid against them They further added that the petitioner''s writ petition No. 1444 of 1961 stood dismissed, therefore he cannot now challenge the validity of allotment of houses Nos. 160 and 161 in their favour in the present proceedings. According to them the impugned order dated the 27th July, 1965, is in accordance with the provisions of the Act and the Rules made thereunder.

4 There is no denying the fact that the Central Government and the Chief Settlement Commissioner in their written statement filed by the petitioner in Civil writ No. 1769 of 1980 gave the above undertaking The petitioner in view of the above undertaking withdrew the petition which was dismissed as such by Pandit J on 2nd February 1962 It is equally true that the petitioner subsequent to the withdrawal of his writ petition has been applying to respondent No. 1 from time to time to transfer the property in his favour as undertaken by him but to no effect. Finally his prayer was rejected by respondent No. 1 by his order dated the 27th July, 1965, annexure ''I''. Respondent No. 1 has given in para No. 4 of his order that houses 160, 161 and 162 were allotted in favour of respondents Nos. 3 to 6 on 3rd August, 1961. He expressed his inability to give effect to the undertaking extended by him and the Central Government to the petitioner in writ petition No. 1769 of I960 because these three houses previous to the undertaking had been allotted in favour of respondents Nos. 3 to 6, and that there was hardly any ground for cancellation of these allotments.

5. In my opinion the allotment of houses 160 to 162 in favour of respondents. Nos. 3 to 6 was not valid in law. It is common ground that village Sukhera Basti Abohar was a rural area from 1947 up to 6th February, 1981, when for the first time it was included within the limits of Abohar Muncipal Committee, district Ferozepore. After Sukhera Basti has been included in the limits of Abohar Muncipality the houses situate therein had to be treated as urban area as defined in rule 2(h) of the rules and as such could be disposed of as urban property and indeed could not have been allotted to respondents Nos. 3 to 6 as appendages to their land allotment. In this connection reference may be made to my decision in Civil Writ No. 1509 of 1961-Mohri Ram v. The Deputy Secretary etc. C.W. 1509 of 1961 decided on 15th February, 1968.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/basheshar-nath-appellant-hash-sp-…

6. The Learned Counsel for respondents Nos. 3 to 6 urged that the petitioner in his writ petition No. 1444 of 1961 had impugned the validity of allotment of these three houses in favour of respondents and since the writ petition stood dismissed as withdrawn the same question could not be agitated in the present proceedings. The Learned Counsel for the petitioner on the other hand maintained that the writ petition was withdrawn on account of the undertaking given by the Central Government and the Chief Settlement Commissioner, therefore the order in that writ petition did not operate as res-judicata. He relied on a case Municipal Board Sikandra Rao, District Aligarh v. State of U. P. 1967 A.L.J. 767 Wherein it was laid down-

If the previous petition is dismissed as not pressed without discussion on its merits it would not operate as a bar between the parties.

The Learned Counsel for the respondents in support of his arguments referred me to a case Hakim Mahboob Ali Khan v. H. S. Nair (1962) 64 P.L.R. 1116, where Grover J, at one place has observed-

The facts which have already been set out are sufficient to indicate that the petitioner has certainly been guilty of laches and delay. He also accepted the ex-gratia grant of the sum of Rs. 88, 808/- which may justify the respondents invoking the rule of acquiescence. It is also true that the previous writ petition was not pressed and was dismissed and there is nothing in the order showing that it was withdrawn with liberty to file a fresh petition. Thus a bar may be created under Order 23, rule 1 of the CPC to the filing of the present petition. I am, however, not inclined to dismiss this petition on these grounds alone as I am satisfied that the petition must fail even on the merits.

The observations of the learned Judge, "thus a bar may be created under Order 23, rule I of the Code of Civil Procedure, to the filing of the present writ petition" cannot be said to lay down any law. These observations were sort of obiter as the writ petition was dismissed mainly on other grounds. I am in respectful agreement with the rule laid down in Municipal Board Skiandra Rao''s case2. The petitioner in this petition could legitimately urge that the allotment of houses in favour of respondents Nos. 3 to b was not valid in law. There is no bar from agitating this point simply because his previous writ petition No. 1444 of 1961 had been dismissed as withdrawn particularly as stated therein that he withdrew the petition in view of the undertaking given by the Central Government and the Chief Settlement Commissioner. Therefore the reason given by respondent No. 1 for not giving effect to the solemn undertaking given by him and the Central Government to the petitioner in Civil Writ No 1769 of 1960 was not truly available to him. He could legitimately revoke the allotment of this house in favour of respondents Nos. 3 to 6 because this was contrary to the rules and was thus void ab initio. In view of the decision of the Supreme Court in Civil Appeals No. 885 to 893 of 1967. Union of India and others v. M/S Indo Afghan Agencies Ltd , decided on 22nd November, 1967, I am of the opinion that respondent No. 1 and the Central Government were bound to give effect to the undertaking

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/basheshar-nath-appellant-hash-sp-…

given by them to the petitioner. The Supreme Court while disposing of the appeals has observed:

Under our jurisprudence the Government is not exempted from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex-parte appraisement of the circumstances in which the obligation is claimed not to be enforceable. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central Government imposing out in the import entitlement by the respondents should be set aside and quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by then unless there is some decision which falls within column 10 of the Scheme in question." 7. I would like to mention here that the Central Government and respondent No. 1 could transfer the house in favour of the petitioner on the terms indicated by them in the written statement under Rule 87 of the Rules which runs as under:

Any property forming part of the compensation pool may be sold by public auction or by inviting tenders or in such other manner as the Chief Settlement Commissioner may, by general or special order, direct.

There was thus nothing in the way of respondent No. 1 or the Central Government to carry out the undertaking given by them to the petitioner which was indeed accepted by him.

8 For the above reasons, the writ petition is allowed and the allotment of three houses 160 to 162 in favour of respondents Nos. 3 to 6 being against the law are set aside Respondent No. 1 is further directed to transfer this property in favour of the petitioner in terms of the undertaking given by him and the Central Government of the petitioner in their written statement filed in Civil Writ No. 1769 of 1960. Keeping in view the facts and the circumstances of the case, the parties are left to bear their own costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/basheshar-nath-appellant-hash-sp-…