

(1961) 09 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil writ No. 277-D of 1959

Beli Ram Malhotra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-09-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 33, 34, 34(1)

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 22, 30

Citation : AIR 1962 P&H 164

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Judgement

(1) The dispute in this case relates to House No. 8936-37, situated in Mohalla Pul Bangash Delhi, which is an evacuee property and is double storeyed. The rehabilitation Authorities have valued this house at Rs. 7,083/- and it is therefore, an allottable property as contemplated by Rule 22 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. In March, 1949, the first floor of this house, along with one room on the ground-floor was allotted to the petitioner by the Custodian. Some time later in the same year entire ground-floor minus the aforesaid one room was allotted to Shri Gopal Singh. It is not disputed that the petitioner, as well as Shri Gopal Singh are displaced claimants and are in occupation of the property as displaced persons. Towards the end of July 1956, the house was ordered to be sold. On 4-8-1956 the petitioner filed an application that the property was an allottable one and instead of being sold, it should be allotted to the petitioner. This application was accepted on the 28th of August, 1956, and the order of sale was set aside.

Claims of the petitioner with regard of the property left by him in Pakistan were verified and net compensation payable to him was initially found to be Rs. 8,660/-. One more urban claim was later verified and by adding the amount of the same to the amount of his other claims the net compensation payable to the

petitioner came up to Rs. 9,191/-. Out of this amount has petitioner received Rs. 8,000/- in cash, with the result that the balance of compensation payable to him came down to a figure of Rs. 1,191/- only.

Shri Gopal Singh's claims with regard to the property left by him in Pakistan were verified and compensation payable to him on the basis of the same was assessed at the figure of Rs. 3,202/-. Towards the end of December, 1957, the Managing Officer issued notices both to the petitioner and to Gopal Singh to appear before him for the purposes of having it determined as to which of the two parties was entitled to the transfer of the property in question. On 15-1-1958 both these parties appeared and made rival claims. The petitioner's case was that his net compensation, amounting to Rs. 9,191/-, was nearer to the assessed value of the house and he was, therefore, entitled to its transfer. The claim of respondent No.3 was that the petitioner having already received Rs. 8,000/- in cash, the compensation payable to him must be taken to be Rs. 1,191/- only which was not nearer to the assessed value of the house than Rs. 3,202/- which was the amount of compensation due to him (Gopal Singh).

The Managing Officer passed an order transferring the house to Gopal Singh. In view of the language of Rule 30 he had to determine whether the house was divisible and on this point he came to the conclusion that it was not. The petitioner filed an appeal before the Assistant Settlement Commissioner but did not meet with any success. He then filed a petition for revision to the Chief Settlement Commissioner u/s 24 of the Act. This petition was accepted on the 18th of September 1958, on the finding that the property was clearly divisible. It was observed in that order that it was wholly unnecessary to go into the other point whether the compensation of the petitioner was nearer to the assessed value of the house or that of respondent No.3 Gopal Singh then filed a petition to the Central Government u/s 33 of the Act which was accepted on 14-4-1959. The Deputy Secretary to the Government of India, who decided that application on behalf of the Government, observed in his judgment as under:

""The main question the determination in this case is whether the house in dispute is divisible. The learned D. C. S. C. has held that this property is divisible as the two occupants of the house, namely, Shri Gopal Singh and Shri Beli Ram are occupying separate portions of the house, having no common amenities to be shared. Shri Gopal Singh is in possession of the ground floor, excepting one room, and Shri Beli Ram is in possession of the room on the ground floor and the entire first floor. In the event of the separation of the two portions as occupied by Sarvshri Gopal Singh and Beli Ram there will be both vertical and horizontal division of the property. In terms of the instructions issued by the Chief Settlement Commissioner vide his letter. . . . the division of the property should be either vertical or horizontal, which, unfortunately, cannot be made in the present case. In the circumstances, it cannot be held that the property is divisible."

After making these observations he came to the conclusion that the petitioner

having already received Rs. 8000/- in cash the net amount of compensation so far as he was concerned must be taken to be Rs. 660/- and not Rs. 8660/- and this figure was certainly not nearer to the assessed value of the house than that of Gopal Singh whom compensation over Rs. 3,000/- was payable. Feeling aggrieved against this decision of the Central Government the petitioner has come up to this Court with a petition under Article 226 of the Constitution of India and seeks to have an appropriate writ, order or direction quashing the said order.

(2) No one has appeared on behalf of the Union of India to oppose this petition but there is a serious opposition to it on behalf of Shri Gopal Singh, respondent No. 3.

(3) On behalf of the petitioner Mr. R. S. Narula has raised the following four contentions before me:

(1) that Shri S. Prasada, Deputy Secretary to the Government of India, had no authority to decide the matter at the time he decided it,

(2) that he did not exercise any independent judgment of his own but felt bound to rest his judgment on some instructions issued by the Chief Settlement Commissioner in the letter referred to in his judgment;

(3) that the executive instructions relied upon by the Deputy Secretary to the Government of India do not possess the force of law and could not form the basis of an order u/s 33 of the Act; and

(4) that for the purposes of determination whether the net compensation payable to the petitioner was nearer to the assessed value of the house the entire compensation amounting to Rs. 9191/- should have been taken into consideration and that the amount of Rs. 8000/- should not have been excluded therefrom.

(4) I shall deal with these contentions seriatim as under:

(5) Contention No. (1). Shri S. Prasada, Deputy Secretary to the Government of India, passed the impugned order on the 14th of April, 1959. By means of a notification dated the 23rd of June, 1959, the Central Government directed that any power exercisable by it under the Act shall be exercisable also by Shri S. Prasada and that this notification shall take effect retrospectively with effect from 12-3-1959. Relying on a Division Bench judgment of this Court in *Bhagwat Dayal v. Union of India* ILR (1960) 2 Punj 410 Mr. Narula argues that the Government could not have delegated the powers to any officer with retrospective effect and that the acts done by such officer previous to the date of the notification could not possibly be validated by such a delegation. The respondents reply to this argument is that the rules of business always permitted Shri Prasada, Deputy Secretary to act on behalf of the central Government in this matter and that even if the notification in question had not been made, his order could not be held to be without jurisdiction. Reliance is placed by the respondents for this proposition

on an unreported judgment of this Court in Shrimati Raj Dulari v. Central Government Civil Writ No. 1169 of 1959, D/- 29-4-1960.

(5a) After hearing the learned counsel for the parties at considerable length. I am of the view that the contention of Mr. Narula has no force. Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, empowers the Central Government to call for the record of any proceeding under this Act and to pass such order in relation thereto as in its opinion the circumstances of the case require. Obviously the Government has to act through some agency and this agency is provided by the rules of business framed for the purpose. Sub-section (1) of Section 34 of the Act reads as under:

"The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act shall in such circumstances and under such conditions, if any, as may be specified in the direction be exercisable also by such officer of authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be specified in the notification/"

The word "also" after the word "exercisable" and before the words "by such officer" is very significant. It evidently means that sub-section (1) of Section 34 only aims at providing some additional authorities to whom the Central Government may delegate their powers in respect of Section 33 of the Act. This provision of law correctly interpreted. means that the Central Government may either act themselves or may delegate their power to any officer or authority subordinate to them or even to the State Government or an officer or authority subordinate to the said Government.

The authority, when delegated to an officer under the Central government, will be exercisable irrespective of the fact whether or not he could have represented the government in that matter under the rules of business. This section therefore, authorizes the Central Government to delegate the authority on any officer and it does not mean that the officer, otherwise entitled to act on behalf of the Central Government under the rules of business, will not be able to act in the absence of delegation of authority contemplated by Section 34. The Central Government can obviously pass orders u/s 33 and in that matter any officer entitled to act on behalf of the Central Government under the rules of business acts as the Central Government itself. If the Central Government wishes that some other officer should also be able to exercise this power, it has to delegate its authority to such officer under the provisions of Section 34.

In Civil Writ No. 1169 of 1959, referred to above, the question involved was whether Shri S. Prasada, Deputy Secretary, who has passed the impugned order in this case, could have in passed a similar order in this case. The order in that case had also been passed on a date prior to the 23rd June, 1959, and the said order was held to be with jurisdiction. The basis of the decision of the said case was that Shri S. Prasad, Deputy Secretary had, under the rules of business,

authority to act as the Central Government and no notification for this purpose was necessary u/s 34 of the Act. I am in respectful agreement with the view taken in that case and hold that Shri S. Prasada Deputy Secretary, had authority to decide the matter.

(6) Contentions Nos. (2) and (3).-- It is urged by Mr. Narula that Shri S. Prasada himself has not exercised any individual judgment of his own in coming to the conclusion whether or not the property could be partitioned. This appears to me to be correct. Relevant portion of his order, which I have reproduced in the earlier part of this judgment, clearly shows that the property could have been partitioned provided it was not forbidden to have vertical as horizontal partitioned. By horizontal partition the first-floor of the house could have fallen to the present petitioner and the ground floor to that of Gopal Singh. Ground-floor had, however, to be partitioned vertically also to the extent that one room was occupied by the petitioner and had according to the rules, to be allotted to him. It is clear to me that the Deputy Secretary felt bound by the instructions contained in the letter of the Chief Settlement Commissioner, referred to in his order, and without bringing his own mind upon the matter he decided it on the basis of the said instructions.

The powers given to the Central Government by Section 33 are of quasi-judicial nature and have to be exercised in a judicial manner and in accordance with the rules of natural justice. One of the essential requirements of the aforesaid rules is that the officer dealing with the matter should bring his own mind upon the problem and exercise his own discretion and authority unfettered by executive or other instructions issued by other authorities even though they may be superior. I have no doubt that the Deputy Secretary did not apply his judicial mind to the point whether the property in question could be divided into two portions, more especially, when the access and amenities of each of them had been held by the amenities of each of them had been held by the Deputy Chief Settlement Commissioner to be different and independent. These two contentions of Mr. Narula must, therefore prevail.

(7) Contention No. (4). This contention has obviously no force. For the purpose of determination whether the net compensation payable to the petitioner was nearer to the assessed value of the house, the Rehabilitation Authorities could obviously take into account only the amount of compensation which was left to be paid to the petitioner and this could not include the amount which he had already received. The amount, which was now to be paid to him amounted only to Rs. 1,191/- and as compared with the amount due to Gopal Singh this could not be nearer to the assessed value of the house.

(8) In the result, I allow this petition and set aside the impugned order, but in the peculiar circumstances of the case leave the parties to bear their own costs.

KE/VSB

(9) Petition allowed.