

(1967) 04 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 254 of 1967

Bhiru Mal Alias Bhoju Mal and Another	APPELLANT
Vs	
The Financial Commissioner, Revenue and Others	RESPONDENT

Date of Decision : 10-04-1967

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 20, 40, 6(3)
Constitution of India, 1950 — Article 226
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 3(2)

Citation : (1968) 1 ILR (P&H) 160

Hon'ble Judges : R.S. Narula, J; D.K. Mahajan, J

Bench : Division Bench

Advocate : G.C. Mittal and Parkash Chand Jain, for the Appellant; Anand Swarup, General and J.C. Verma, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—My order dated March 16, 1967, in pursuance of which this reference has been made to a Division Bench, may be read as a part of this judgment. All the relevant facts have been detailed therein. To recapitulate them briefly in a strictly chronological order, it may be stated that the Deputy Secretary, Punjab Government had issued a circular letter on January 25, 1964, prohibiting the allotment of evacuee acquired agricultural land in the districts of Rohtak and Gurgaon, that in Civil Writ No. 1453 of 1964 (Gopi Chand v. Deputy Secretary to Government, Punjab, and Anr.), the said direction of the State Government was quashed by a learned Single Judge of this Court (Jindra Lal J.,) on December 17, 1965, that in reply to the application of the Petitioners for allotment of land in lieu of compensation found to have been payable to them for agricultural land left behind in Sind, a letter dated March 1, 1966 (Annexure "A") was issued to the Petitioners to give their choice for the allotment in any place in Punjab other than the districts of Rohtak and Gurgaon, that on the Petitioners' representation to the Chief Settlement Commissioner, Punjab (Financial Commissioner Revenue), their choice for Gurgaon District was accepted and they

were directed by a letter dated August 8, 1966 (Annexure "B") to appear before the Tahsildar (Sales), Gurgaon, on August 24, 1966, that before actual allotment could be made to the Petitioners in that district impugned instructions contained in letter dated February 2, 1967 (Annexure "C") were issued by the Deputy Secretary to the Government of Haryana (Rehabilitation Department) to the Assistant Registrar, Land Claims Organization, Haryana, in the following words, in pursuance of which the impugned order dated February 13, 1967, (Annexure "D") was passed by the Tehsildar (Sales), Gurgaon, for directing the Petitioners to take further action in view of the fact that allotment in Gurgaon had been stopped:

It has been decided by Financial Commissioner, Revenue that in future no allotment should be made in Gurgaon District because the remaining evacuee sites are of a "commercial" character and value. These should be disposed of by open auction with the maximum possible speed.

2. The first attack against the impugned order (Annexure "D") pressed by Mr. Mital, learned Counsel for the Petitioners is that it is based on no ground other than the directions given in the departmental instructions dated February 2, 1967 (Annexure "C"), and that the said instructions are without jurisdiction. It is not disputed by the learned Counsel for the Respondents that the impugned order (Annexure "D") was passed by the Tehsildar (Sales) only in view of the binding directions given by the Haryana Government to the Assistant Registrar, Land Claims Organization, Haryana (Annexure "C"). The only question, therefore, that calls for decision is whether the said instructions are duly authorized by the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954) hereinafter called the Act). The only provision of law, under which Mr. Anand Swaroop, learned Advocate-General for the State of Haryana, has tried to support the said instructions, in Sub-section (2) of Section 3 of the Act which is in the following terms:

Subject to the provisions of this Act, the Joint Chief Settlement Commissioner, all Deputy Chief Settlement Commissioners, Settlement Commissioners, Additional Settlement Commissioners, Assistant Settlement Commissioners Settlement Officers, Assistant Settlement Officers and Managing Officers shall perform the functions assigned to them by or under this Act under general superintendence and control of the Chief Settlement Commissioner.

3. The question then boils down to this : Do the powers of general superintendence vested in the Chief Settlement Commissioner by the above-quoted provision authorize him to deprive a particular Managing Officer of his jurisdiction to allot acquired evacuee agricultural land in his district to a displaced person who holds a verified claim for allotment of such land and against whom there is no bar of getting land in that district? I have started dealing with this matter on the assumption that the impugned directions contained in letter dated February 2, 1967 (Annexure "C") should be deemed to have been issued by the Chief Settlement Commissioner, Punjab though the letter is expressly stated to

have been issued by the Deputy Secretary to Government, Haryana (Rehabilitation Department), Chandigarh, under the signatures of a Deputy Superintendent of that Department and only a copy thereof purports to have been endorsed to the Chief Settlement Commissioner, Jullundur. It is conceded that the Deputy Secretary to the Government of Haryana had, in any case, no jurisdiction to issue any directions under the Act. It has, however been contended that the Deputy Superintendent was merely conveying the decision of the Financial Commissioner (Revenue) who was admittedly the Chief Settlement Commissioner for the State of Punjab under the Act. As stated above. I am, therefore treating the impugned instructions as having been issued by the Chief Settlement Commissioner.

4. In our opinion the powers of general superintendence and control vested in the Chief Settlement Commissioner u/s 3(2) of the Act are intended only to control the power vested in the authorities subordinate to the Chief Settlement Commissioner by virtue of any specific provision of the Act or the rules framed there under but are not intended to confer on the Chief Settlement Commissioner any authority or jurisdiction to give any directions or instructions which are outside the scope of the Act and the rules framed there under, that is, which are either not authorized by any provision of law or which are contrary to any provision of the Act or the rules. Mr. Anand Swaroop has not been able to point out any provision of the Act or the rules under which a direction of the type impugned before us could be given by the Chief Settlement Commissioner. In *Dunichand Hakim and Others Vs. Deputy Commissioner (Deputy Custodian Evacuee Property) Karnal, State of Punjab and Others*, . it was held that mere instructions issued by the Central Government pending proposed amendments to certain rules did not acquire any statutory force so long as no rules had been framed to give effect to those instructions. The question of the meaning, effect and scope of the expression, "general superintendence and control" occurring in Section 6(3) of the Administration of Evacuee Property Act, (31 of 1950), whereby such powers are conferred on the State Custodian, came up for consideration before a Division Bench of this Court in *The State v. Mehr Singh* 1959 P.L.R. 68. The Bench held that the provision conferring powers of general superintendence and control on the Custodian did not in law enable either the Custodian or any other officer to issue executive instructions as to the manner in which an Assistant Custodian should exercise the discretion conferred on him by Section 40 of the said 1950 Act. It was specifically held by the Division Bench in the above said case that the power of general superintendence cannot be exercised to control the discretion of a subordinate tribunal. The aforesaid judgment in *The State v. Mehr Singh* 1959 P.L.R. 68 appears to cover the point raised before us fully. Statutory power is vested by the Act on the Managing Officer of the district to allot or to refuse to allot for valid reasons any allot able acquired evacuee property within his jurisdiction to any displaced person armed with a verified claim. The exercise of such power by the Managing Officer is subject to an appeal and a further revision under the Act. The power of the

Managing Officer is derived from the Legislature and the extent of any discretion in the exercise of such power must, in terms of the judgment of the Division Bench, depend upon the language which the Legislature has chosen to employ. The discretion must be exercised in good faith and in the best interest of the displaced person in consonance with the principles of justice, equity and good conscience. If an order passed by a Managing Officer shows on its very face that he was prohibited by administrative instructions from exercising his discretion or even from bringing to bear upon the question before him his own independent mind by certain administrative instructions or a circular letter issued by a superior authority, the order has to be held to be based on extraneous reasons and must be set aside on that short ground. The power to transfer property from the compensation pool is vested in a Managing Officer u/s 20 of the Act. The powers under that section have to be exercised subject to any rules that may be made under the Act. The only relevant rules made in connection with payment of compensation in respect of verified claims for agricultural lands situated in rural areas are contained in Chapter VIII of the 1955 Rules framed under the Act. None of those rules vests any authority in the Chief Settlement Commissioner to control the discretion of the Managing Officer vested in him by Section 20 of the Act. In *Ram Nath v. Central Government* 1960 P.L.R. 353, a learned Single Judge of this Court (Bishan Narain. J.) held that the relevant authorities could not dispose of urban agricultural lands without framing rules for that purpose. A Division Bench of this Court (Tek Chand and Pandit. JJ.) held in *Bishan Singh v. The Central Government and Ors.* ILR (1961) 1 P&H 415 : 1961 P.L.R. 75 that press notes which had been issued by the Central Government and by the Chief Settlement Commissioner dealing with the manner for disposal of acquired urban agricultural land were not valid and no action could be taken thereon, and that the Central Government could not sell such land without framing relevant rules. Similarly, the Banjar Cut Formula contained in a memorandum issued by the Government was struck down by another Bench of this Court (Mehar Singh, J., as my Lord, the Chief Justice, then was, and Grover. J.) in *Mohan Lal Sharma v. The Central Government and Ors.* I.L.R (1963) 1 P&H 389 : 1963 P.L.R. 139. In short, no authority to the Chief Settlement Commissioner to issue instructions of the type contained in Annexure "C" having been shown to have been conferred upon him by any provision of the Act or the rules framed there under the said departmental instructions must be held to be wholly devoid of force and must be quashed as such and declared to be ineffective. Since the impugned order (Annexure "D") was passed by the Managing Officer solely on the basis of the said instructions, the said order must fall therewith.

5. The only argument advanced by Mr. Anand Swaroop, the learned Counsel for the Respondents, to defeat the claim of the Petitioners for quashing the impugned orders is that the Petitioners, according to counsel, have no right to claim allotment of land in any particular district. The argument proceeds that if the Petitioners have no statutory right to insist on such allotment and there is no infringement thereof, they have no locus standi to invoke the extraordinary

jurisdiction of this Court under Article 226 of the Constitution on the authority of the law laid down by the Supreme Court in *State of Punjab Vs. Suraj Parkash Kapur etc.*, . It is emphasized by the learned Advocate-General that the existence of a right and the infringement thereof are the very foundations of the exercise of the jurisdiction of a High Court under Article 226 of the Constitution. In that case allotment of land was made in consolidation proceedings not in strict compliance with the provisions of the relevant Act but pursuant to administrative directions given to the Consolidation Officer concerned by the State Government. A writ petition was filed in the High Court for quashing the scheme of consolidation. The High Court allowed the objection and issued a direction to the Consolidation Officer to proceed with the matter before him in accordance with law. The State of Punjab went up in appeal to the Supreme Court where it was argued, *inter alia*, that Suraj Parkash and others had no legal right to maintain the petition under Article 226 of the Constitution. While observing in that context that the existence of a right and the infringement thereof are the foundations of exercise of jurisdiction under Article 226 of the Constitution their Lordships of the Supreme Court held that on the date on which Suraj Parkash and others had filed the petition in the High Court, they held a very valuable right in the properties allotted to them which entitled them to ask the High Court to give them relief under Article 226 of the Constitution. In the instant case the Petitioners held verified claims. The law entitled them to obtain acquired evacuee agricultural (rural) property. There may be no law which may compel Government to give such allotment on the Petitioners in any particular district in the absence of any statutory rule to that effect, but the Petitioners having approached the Managing Officer-cum-Tehsildar (Sales) Gurgaon in pursuance of the directions of the Land Claims Organization (Annexure "B"). it was the duty of the Managing Officer to decide that application on the merits himself. In so far as he was debarred by the impugned directions from applying this mind to the case and giving his own decision thereon, the legal right of the Petitioners was infringed. If a Petitioner has direct individual personal interest in a certain matter which is being affected prejudicially by a quasi-judicial order in a proceeding to which he is a party, it cannot be said that he has no right to invoke the extraordinary jurisdiction of a High Court under Article 226 of the Constitution merely because no law confers on such a person the absolute right to claim the very relief for which he had applied and which has been denied to him. Each case would depend upon its own facts and it does not appear to be unsafe to hold that if a quasi judicial order is passed on extraneous considerations or in pursuance of an unauthorized direction by a superior authority, the person affected thereby is entitled to pray for the order to be quashed by a writ in the nature of certiorari irrespective of whether he has or has not a right to obtain the precise relief which has been denied to him by the impugned order. We would, therefore hold that there is no merit in this technical objection raised by the Advocate-General.

6. No other point was argued before us. The Petitioners appear to have been treated rather shabbily and are, therefore, entitled to get their costs of the

proceedings in this Court from the Respondents.

7. We, therefore, allow this petition with costs and set aside the impugned directions and orders (Annexure "C" and "T")) and direct the Respondents to deal with and dispose of the application of the Petitioners for allotment of land to them in the district of Gurgaon in accordance with law.

D.K. Mahajan, J.

8. I agree.