

(2018) 11 DEL CK 0130

In the Delhi High Court

Case No : Civil Writ Petition No.2787 Of 1983 & Civil Miscellaneous Nos. 16133 Of 2013 & 16134 Of 2013

Bhupinder Pal Singh

APPELLANT

Vs

K.C.Gehani & Ors

RESPONDENT

Date of Decision : 19-11-2018

Acts Referred:

Displaced Persons {Compensation and Rehabilitation} Act, 1954 — Section 22, 24, 33

Citation : (2018) 11 DEL CK 0130

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : S. S. Ahluwalia, atin Teotia, Monika Arora, Harsh Ahuja, Kushal Kumar

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning the orders dated 30.06.1983, 13.09.1982 and 15.04.1982 passed by Deputy

Secretary to Government of India, Department of Rehabilitation and Settlement Commissioner (Judl.) under Displaced Persons (Compensation &

Rehabilitation) Act, 1954 (hereafter "the Act"). The said orders are, hereinafter, referred to as the impugned orders.

2. By an order dated 30.03.1981, the Managing Officer had accepted the petitioner's contention that he was entitled to 1/6th share in the property

bearing no. 1/7, Malviya Nagar, New Delhi (hereafter "the said property") as an heir of Late Sh. Gurdit Singh. Sh. Harbhajan Singh, who was

one of the son of Late Sh. Gurdit Singh, had appealed against the said decision under Section 22 of the Act. His appeal was allowed by the impugned

order dated 15.04.1982. The petitioner preferred a revision under Section 24 of the Act, which was dismissed by the Chief Settlement Commissioner

by the impugned order dated 13.09.1982. Aggrieved by the same, the petitioner preferred a petition under Section 33 of the Act, which was also

rejected by the Central Government by the impugned order dated 30.06.1983.

3. The controversy involved in the present petition relates to the petitioner's claim in respect of the property which belongs to his Late Grand Father

Sh. Gurdit Singh.

4. Sh. Gurdit Singh (since deceased) was allotted a Government built property bearing no. 1/7, Malvia Nagar, New Delhi. He expired on 16.03.1964

and was survived by his (i) widow, Smt. Suhag Bai; (ii) son, Sh. Harbhajan Singh; (iii) son Sh. Inder Singh; (iv) his daughter Smt Viran Bai; and (v) his

daughter Smt Ranjit Kaur. The petitioner is the son of Sh. Attar Singh who was the pre-deceased son of Sh. Gurdit Singh.

5. After the demise of Late Sh. Gurdit Singh, one of his sons, Sh. Harbhajan Singh (original arrayed as respondent no.5), made an application dated

24.01.1968 seeking determination of the legal heirs of deceased Sh. Gurdit Singh. He claimed that he was the successor in interest of his Late grand

Father Sh. Gurdit Singh in respect of the said property as other heirs had relinquished their right, title and interest in his favour. He also produced

affidavits filed by other heirs of Late Sh. Gurdit Singh affirming that they had relinquished their interest in the property in his favour. In his application,

Sh. Harbhajan Singh did not disclose that Late Sh. Gurdit Singh had a pre-deceased son Sh. Attar Singh or that Sh. Attar Singh was survived by his

son (the petitioner herein).

6. Sh. Harbhajan Singh's application was accepted by the Settlement Officer and by an order dated 30.12.1968, he was held to be the sole legal heir

and successor in interest in respect of the said property.

7. Thereafter, a lease deed and conveyance in respect of the said property was executed by the Office of the Regional Settlement Commissioner, in

favour of Sh. Harbhajan Singh.

8. Thereafter, on 26.08.1970, the petitioner made an application claiming that he was entitled to a share in the said property being the pre-deceased

son of Late Sh. Gurdit Singh.

9. The petitioner's application was not accepted by the Managing Director (GBP) and the petitioner was informed by a letter dated 16.11.1970 that a

lease deed and a conveyance deed had been executed in favour of Sh. Harbhajan Singh and he could seek legal remedies under the Act.

10. The petitioner, thereafter, preferred an appeal before the Settlement Officer. Sh. Harbhajan Singh contested the said appeal as being barred by

limitation as well as on merits.

11. By an order dated 24.02.1971, the Settlement Officer rejected Sh. Harbhajan Singh's contention that the petitioner's appeal was barred by

limitation. Subsequently, by an order dated 30.03.1972, the Settlement Officer allowed the petitioner's application and remanded the matter for

consideration afresh. The operative part of the order dated 13.03.1972 is set out below:-

It is agreed by the parties that the case may be remanded to the lower tribunal for recording evidence on this issue. Accordingly the case is

remanded to the Settlement Officer for deciding the matter afresh as indicated above. In case the respondent is able to prove that the appellant's

father was separated by Shri Gurdit Singh, deceased, then the conveyance deed already issued in his favour shall stand. In the event of his failure to

prove that the appellant will be entitled to 1/6th share in the amount adjusted from the compensation of the deceased allottee and the payments if any

made by the deceased in respect of the quarter.

The appeal is, therefore, accepted and the case remanded to the Settlement Officer for a fresh decision in the light of the observations made above.

Parties may be informed. They can have a copy of the order on the usual terms.

12. Aggrieved by the said decision, Sh. Harbhajan Singh preferred a revision petition under Section 24 of the Act, which was rejected by the Chief

Settlement Commissioner on 29.08.1972. Sh. Harbhajan Singh appealed against the said decision by filing a petition under Section 33 of the Act before

the Central Government. The said petition was also rejected by an order dated 13.06.1974.

13. In view of the above, the Managing Officer (Government Built Property) took up the matter for re-consideration of Harbhajan Singh's

application to be considered as a sole successor in interest of Late Sh. Gurdit

Singh. In the said proceedings, Sh. Harbhajan Singh produced the farakhtinama, which was a document indicating that Late Sh. Gurdit Singh had separated his son Sh. Attar Singh (father of the petitioner) from his properties. The said document was dated 04.05.1940 and was written by one Sh. Bhagat Ram Arneja. Sh. Harbhajan Singh claimed that in view of the said document, Sh. Attar Singh and his heir were not entitled to the property of Late Sh. Gurdit Singh.

14. The Managing Officer considered the evidence produced by the parties and held that the said document (farakhtinama) had no evidentiary value.

He, accordingly, held that the petitioner was entitled to 1/6th share in the said property.

15. Aggrieved by the same, Sh. Harbhajan Singh preferred an appeal under Section 22 of the Act, which was allowed by the impugned order dated 15.04.1982.

16. The petitioner's revision petition preferred under Section 24 of the Act was rejected by the impugned order dated 13.09.1982. The petitioner also filed a petition before the Central Government under Section 33 of the Act, which was dismissed by the impugned order dated 30.06.1983.

17. Thereafter, the petitioner filed the present writ petition impugning the orders dated 15.04.1982, 30.09.1982 and 30.06.1983 and, inter alia, praying that he be declared to be entitled to 5/6th share in the said property. The petitioner also claimed that the legal heirs of Late Sh. Gurdit Singh (respondent nos. 6 to 8) as well as Smt Suhag Bai had relinquished their rights in the said property in favour of the petitioner.

18. The principal controversy in the present petition is whether the petitioner could be excluded as a legal heir of Late Sh. Gurdit Singh. As noticed above, the petitioner is sought to be excluded on the basis of a document (farakhtinama) executed by Late Sh. Gurdit Singh. It is relevant to note that the document was neither referred nor produced by Sh. Harbhajan Singh, at the time of applying for being accepted as the successor interest to the said property belonging to his father. There is no denying the fact that this document was concealed and suppressed by Sh. Harbhajan Singh at the material time. This document was produced before the Managing Officer after matter had been remanded by the Settlement Officer by an order dated 13.03.1972 and after Sh. Harbhajan Singh had exhausted all his remedies

against the said order.

19. The Managing Officer had examined the said document and had rejected the same, principally, for the several reasons. First, that the witnesses

produced by Sh. Harbhajan Singh to prove the farakhtinama were unable to establish the same. The farakhtinama was not written in the presence of

said witnesses nor was read to the witnesses. Second, that the Managing Officer was of the view that the witnesses could not sustain cross

examination and his testimony did not inspire any confidence. Third, that the farakhtinama was written on a plain paper which was not registered.

Fourth, that the document had not been produced in any Court nor was any evidence led to establish that the document was disclosed to any witness

at the material time. Fifth, that the document had been concealed by Harbhajan Singh at the material time and was produced in the proceedings that

were commenced on remand to the Managing Officer. And Sixth, that the document was not written by Late Sh. Gurdit Singh but by Sh. Bhagat Ram

Arneja.

20. The Settlement Officer had allowed the appeal preferred by Sh. Harbhajan Singh under Section 22 of the Act and had accepted that the said

document (farakhtinama) is establishing that Sh. Attar Singh had been separated and disinherited by his Late father Sh. Gurdit Singh. A plain reading

of the order indicates that the Settlement Officer had not accepted the reasoning of the Managing Officer that the document had little evidentiary

value, as it had not been stamped. He held that once the document had been exhibited, the same could not be ignored. However, it is seen that the

Settlement Officer did not consider that the Managing Officer had also indicated several other reasons for rejection of the said document. Thus, this

Court is, prima facie, of the view that the impugned orders are unsustainable.

21. The next question to be addressed is whether any relief can be granted to the petitioner at this stage.

22. The petitioner insists that he is entitled to the share of other legal heirs as well, as they have submitted letters of relinquishment. However, Sh.

Harbhajan Singh had also produced affidavits of other legal heirs of Late Sh. Gurdit Singh relinquishing their shares of the said property in his favour.

The controversy that the said documents are forged and fabricated cannot be examined in this petition. Further, the petitioner's application before the

Managing Officer (as initially filed) was limited to only claiming 1/6th share of the said property. Thus, the issue whether other heirs of Late Gurdit

Singh had relinquished their share in favour of the petitioner cannot be adjudicated in these proceedings.

23. It is relevant to note that the present petition was moved on 19.12.1983 and by an order dated 23.01.1984, Sh. Harbhajan Singh (arrayed as

respondent no.5) was restrained from alienating or otherwise encumbering the said property. However, the petitioner did not appear in the proceedings

on some of the subsequent dates of hearing and the present petition was dismissed in default on 30.10.2002.

24. Thereafter, the petitioner filed an application for hearing of the case (CM No.12356/2013) in September, 2013. The petitioner also filed application

for restoration and for directions (CM No. Nos. 16133/2013 and 16134/2013). The petitioner, thereafter, filed an application (CM No. 34914/2016)

seeking restoration and directions of the writ petition (on or about 22.09.2016). Notices in the application were issued. However, it took considerable

time for notices to be served as respondent no.5 has since expired and his heirs had shifted from the address as provided. Respondent no.7 had also

expired and his legal heirs were brought on record. None appeared for the legal heirs of respondent no.5. The petition was finally restored on

11.09.2017.

25. It is relevant to state that in the meantime, on 25.11.1999, Sh. Harbhajan Singh had filed an application for conversion of the property from lease

hold to free hold. His application was accepted and a conveyance deed was executed on 06.10.2003.

26. This Court is informed that Sh. Harbhajan Singh (respondent no.5) was survived by his daughter (Smt. Pritam Kaur). By an order dated

24.01.2018 and 01.03.2018, notices were directed to be issued to Smt. Pritam Kaur but she has remained unserved. On 07.08.2018, this Court was

informed that Smt. Pritam Kaur has also expired.

27. Mr Ahluwalia, learned counsel appearing for the petitioner at the material time could not provide any information regarding the legal heirs of Smt.

Pritam Kaur. He appeared before this Court and submitted that the petitioner had withdrawn the instructions for him to appear in this petition. The

petitioner, who was present in person, insisted that the matter be heard without

taking any further steps for bringing the legal heirs of Smt. Pritam

Kaur on record. This Court had explained to him that it could be difficult to grant any relief against respondent no.5 without bringing all his legal heirs

on record. However, the petitioner insisted that the matter be decided on the basis of the submissions dated 26.02.2018, a copy of which was handed

over by him.

28. This Court is also informed that the said property is no longer in possession of the heirs of respondent no.5.

29. As is apparent from the above, no effective relief can be granted to the petitioner in respect of the said property in question since the legal heirs of

respondent no.5 or the persons to whom the said property has ultimately been conveyed are not before this Court. This Court is of the view that the

failure of the petitioner to pursue this petition at the material time (which resulted in the petition being dismissed in default on 30.10.2002) has rendered

it unfeasible for this Court to consider any relief in favour of the petitioner.

30. It is also relevant to note that the petitioner's effective relief is against respondent no.5 (Late Sh. Harbhajan Singh), and since his legal heirs have

not been impleaded in the present petition, no relief can be granted in favour of the petitioner which is adverse to the interest of the legal heirs of

respondent no.5.

31. The petition is, accordingly, dismissed. The pending applications are also disposed of.