
(1989) 05 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5246 of 1988

Chand Krishan Mehta and another	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 26-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 20, 24

Citation : AIR 1990 P&H 110 : (1990) 2 ILR (P&H) 285

Hon'ble Judges : M.R. Agnihotri, J

Bench : Single Bench

Advocate : P.C. Mehta and Som Nath Saini, for the Appellant; S.K. Jain, for the Respondent

Judgement

1. In this petition filed under Arts. 226 and 227 of the Constitution of India, the short point involved for determination by this Court is, as to whether the rights of unsatisfied claimants whose claims stood duly verified and process to compensate them under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, had already started by allotment of sub-urban agricultural land, stand washed away automatically with the transfer of the evacuee land under the "Package Deal" or the authorities under the Act are still competent in law to finalise the allotments to the unsatisfied claimants for compensating them by accepting their applications for allotment of sub-urban agricultural land keeping in view the choice of lands made by them. The answer is in favour of the unsatisfied claimants as the matter stands already settled in principle by the Supreme Court and directions to that effect have also been issued to the authorities in a number of cases.

2. Briefly stating, one Shri Siri Ram Mehta who was a displaced person from West Pakistan owned certain rural agricultural land in districts Lyalpur and Montgomery before partition of the country in 1947. In lieu of the land abandoned in West Pakistan, Shri Mehta was allotted agricultural land to the extent of 55 Standard

Acres in Patti Insar and Patti Rajputan, Tehsil Panipat, District Karnal, in addition to an area of 12 Standard Acres and 13 1/2 Units allotted as a garden in lieu of the garden abandoned by him in West Pakistan. Later on, when it transpired that the land allotted to Shri Mehta was less than the area to which he was actually entitled, Shri Mehta made an application for making good the deficiency by allotting the remaining area of land as indicated by him in his application. Repeated requests of Shri Mehta bore no fruit and in the meantime he expired in 1975. Thereafter, his son Chand Krishan Mehta, petitioner No. 1, and daughter Smt. Kusham Lata Batla, petitioner No. 2, approached the Rehabilitation Authorities for making good the deficiency in the allotments made to their father. The request made by the present petitioners was inquired into and after verifying the claim made by them, the Assistant Registrar-cum-Managing Officer, Rehabilitation Department, Har-yana, issued the direction on 8th August, 1984, to the following effect:- -

"I am inclined to hold that the deficiency in the allotment of land made to the applicants' father, if any, should be made good. According to the account prepared by Shri Rajinder Krishan, Shri Sin Ram is entitled to the additional allotment of 7-13 1/2 S. As, of land. I, as a Managing Officer, allow the same and this allotment should be made to him in district Karnal, according to the availability of area and grade. Order to issue accordingly."

3. In pursuance of the aforesaid direction, the petitioners approached the Tehsildar (Sales), Karnal, for its implementation and signifying their choice of the sub-urban agricultural land situated in the Revenue Estate of Patti Insar, Panipat, District Karnal. As the petitioners' late father was a sitting allottee of that Patti and thus had a preferential right for allotment of the suburban area and because the area already allotted to the petitioners' father was contiguous to the area requested to be allotted by them in satisfaction of their claim, the Tehsildar (Sales)-cum-Managing Officer, respondent No. 4, found the request in accordance with law and after approving the same forwarded the necessary papers to the joint Secretary (Rehabilitation), respondent No. 3. Though this reference to the Joint Secretary (Rehabilitation) was not a statutory or procedural requirement, as the Managing Officer himself was competent to make the necessary allotment to the displaced person in satisfaction of their unsatisfied claims under S. 20 of the said Act, read with the provisions of the Land Resettlement Manual by Dr. Tirlok Singh, yet on the administrative side it was considered advisable and appropriate by the Tehsildar (Sales)-cum-Managing Officer to have the approval of the Joint Secretary (Rehabilitation) also as the decisions taken by him were subject to the final approval of the Joint Secretary (Rehabilitation). However, Tehsildar (Sales)-cum-Managing Officer, did not receive the requisite approval for quite some time despite repeated representations and requests made by the petitioners. Ultimately, on October 26, 1987, the communication (Annexure P. 5) was sent by the Assistant Registrar, Rehabilitation Department, Har-yana, to the Tehsildar (Sales), Karnal, intimating that the Government had not approved the proposal of sub-urban allotment in

village Patti Insar (Panipat). However, it was added that the "allottee may be allotted land in some other villages as per rules and instructions". Aggrieved by this refusal of the Government in the matter of approval of the allotment of land in village Patti Insar (Panipat) to the petitioners, vide communication dated 26th October, 1987 (Annexure P. 5), the petitioners have approached this Court for the quashing of the same on the ground, that it is wholly without jurisdiction, and also for the issuance of a writ of mandamus directing the authorities to make the necessary allotment to compensate the petitioners by making good the deficiency of their unsatisfied claim.

4. While admitting the writ petition on 16th June, 1988, it was directed by the Motion Bench that the disposal of the property recommended to be allotted to the petitioners shall remain stayed and the main petition was also ordered to be listed within one year.

5. When the case came up for hearing today, Mr. S. K. Jain, learned counsel appearing on behalf of respondents Nos. 2 to 5, requested for adjournment of the case so as to enable him to file the written statement which had not been filed during the last about one year. The prayer made was declined as no satisfactory explanation was forthcoming for its non-filing for such a long time.

6. However, during the course of arguments, the learned State counsel contended that the Joint Secretary (rehabilitation), respondent No. 3, was competent to dispose of the evacuee property after the transfer of the same by "Package Deal" in 1961, and, as such, he was competent to reject the recommendation made by the Tehsildar (Sales-cum-Managing Officer for allotment of the land in favour of the petitioners. The learned counsel further contended that assuming that the case of the petitioners was covered by the provisions contained in Dr. Tirlok Singh's Land Resettlement Manual, the said Manual could not be relied upon for the purpose of making allotment after 1961 when the transfer of evacuee land by "Package Deal" was made by the Central Government. Resultantly, according to the learned State counsel, no direction could be issued under Art. 226 of the Constitution for making the allotment in favour of the petitioners in accordance with the said Land Resettlement Manual, nor was the State Government bound in law to make the allotment of the land to the petitioners in accordance with the choice of area made by them.

7. Having heard the learned counsel for the parties at length and after examining the precedents cited by them, I am of the considered view that the stand taken by the respondents is only hypertechnical and is not sustainable in law and the writ petition deserves to be allowed. Originally, immediately after partition of the country, when the question of allotment of agricultural/ suburban lands to the displaced persons arose, a broad-based and elaborate method was evolved after thorough deliberations by the experienced officers of the Central/State Government. It was as a result of the same that the Land Resettlement Manual was prepared by Dr. Tirlok Singh. Undoubtedly, the allotments were made by the Rehabilitation authorities strictly in accordance with the said Manual right up to

1-1961, when the evacuee property was transferred by way of "Package Deal" under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Even thereafter, the system of allotment continued as before and it was rather reinforced by the State Government vide their policy instructions dated 20th August, 1962 (Annexure P.6). According to these policy instructions, the allotment of land to unsatisfied claimants was to be made strictly in the following manners:--"

"...Allotment should now be made to unsatisfied claimants according to their choice subject to the scheme of grading of villages and other rules on the subject. Partially unsatisfied claimants should be given allotment in the villages of their original allotment and if there is no area available, then in the neighbouring villages.

2. Before lands are sold in a particular village at the fixed price to the occupants, all unsatisfied claimants who have applied for allotment in the village or whom allotment is to be given in the village according to rules should be satisfied first. The usual rule of following the Radief of Khasra Numbers should be observed and any occupant whose land is required for allotment purposes, should not be able to purchase the same.

3. By observing these instructions it will be seen that the surplus lands are to be utilised in the following order of priority:--

- (a) Allotment of land " to unsatisfied claimants;
- (b) By sale at fixed price to eligible occupants; and
- (c) By public auction."

Thus, allotment to unsatisfied claimants was continued to be considered as first priority by the State Government even in 1962 and it is strictly in accordance with" this policy decision that allotments have to be made by the respondents. This policy decision notified to the concerned authorities in the form of executive instructions on 20th August, 1962, Annexure P.6, has not been superseded withdrawn or modified so far. During the course of arguments, it was specifically enquired from the learned counsel for the respondents as to whether the decision has been superseded or withdrawn or not, but no subsequent, policy decision was shown by which the aforesaid decision had been specifically superseded. This being the position, the respondent authorities are duty bound to make the allotment of the lands to the petitioners strictly in accordance with their aforesaid policy decision even after the transfer of the evacuee land by way of "Package Deal" under the 1954 Act.

8. The effect of the "Package Deal" vis-avis the rights of the unsatisfied claimants has already been considered in the two Division Bench judgments of this Court reported as Bishan Singh v. Chief Settlement Commr. 1973 P LJ 183, and Gram Sabha and Gram Panchayat Daba v. Chief Settlement Commr. 1973 P LJ 398. In nutshell, in both these judgments, Harbans Singh, C.J. and B. R. Tuli,

J., while holding that the authorities under the Rehabilitation Act had no jurisdiction to deal with property which had been acquired by the State Government under the "Package Deal", observed-- same, stands repelled and is without any basis. This would be evident from a number of judgments of this Court as well as of the Supreme Court in which Dr. Tirlok Singh's Land Resettlement Manual specifically finds mention. To mention a few, in *Sucha Singh v. Gurdial Singh* (DB) 1977 P LJ 6, Mr. Justice O. Chinnappa Reddy, Acting Chief Justice of this Court, as his Lordship then was, while upholding the action of the Managing Officer and the Assistant Settlement Commissioner, held that,--

"there is no prohibition against the allotment of Grade I land to persons entitled to Grade II and Grade III lands, but the Land Resettlement Manual prepared by Shri Tar-lok Singh indicates that owners of Grade I lands should receive preference in the allotment of Grade I lands, paragraph 18 at page 89 of Chapter IV of the Land Resettlement Manual is as follows :-

In *Om Prakash and Others Vs. Union of India (UOI) and Others*, , while considering the nature, extent or quality of the land for the purposes of allotment, the Supreme Court observed as under (para 10) :--

"The surplus property which is the subject-matter of the "Package Deal" belongs to the State Government, but the same is impressed with a charge for the satisfaction of the unsatisfied claimants.So far as payment of compensation to the unsatisfied claimants is concerned, notwithstanding the transfer of the surplus property in the compensation pool to the State Government under the "Package Deal" the authorities under the Rehabilitation Act continue to have power, as they had before the "Package Deal".... In a way, therefore, the unsatisfied claimants have got a sort of charge over the entire compensation pool for the satisfaction of their claims in accordance with the rules."

9. With regard to the question as to whether reliance could be made on the Land Resettlement Manual by Dr. Tirlok Singh, the plea of the respondents that it has become irrelevant after the "Package Deal" of 1961 and no reference whatsoever could be made to the same, stands repelled and is without any basis. This would be evident from a number of judgments of this Court as well as of the Supreme Court in which Dr. Trilok Singh's Land Resettlement Manual specifically finds mention. To mention a few, in *Such a Singh v. Gurdial Singh* (DB) 1977 P LJ 6, Mr. Justice O. Chinnappa Reddy, Acting Chief Justice of this Court, as his Lordship then was, while upholding the action of the Managing Officer and the Assistant Settlement Commissioner, held that,--

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In *Om Prakash and Others Vs. Union of India (UOI) and Others*, , while

considering the nature, extent or quality of the land for the purposes of allotment, the Supreme Court observed as under (para 10):--

"The learned Advocate has referred us to page 49 of Land Resettlement Manual by Tarlok Singh which is said to be a standard work. It is therein stated that for class of land the entry in the Jamabandis is to be followed strictly."

Therefore, in view of this position, the rights of the unsatisfied claimants, like the petitioners in the present case, are still to be honoured and the claims satisfied by compensating them, by making the allotment of suburban lands as prayed by them and recommended by the Tehsildar (Sales)-cum-Managing Officer.

10. This being the consistent view of law, the Tehsildar (Sales)-cum-Managing Officer was fully competent to give the allotment to the petitioners in satisfaction of their unsatisfied claims under S. 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, in accordance with the relevant provisions of the Land Resettlement Manual by Dr. Tarlok Singh. No approval whatsoever was necessary to be sought by the Managing Officer from any Higher authority like the Joint Secretary (Rehabilitation) and any such reference made was only a surplusage and redundant having no effect whatsoever on the competence and jurisdiction of the Tehsildar(Sales)-cum-Managing Officer. The fact that the choice of the land and the ground of contiguity or vicinity of the area already held by the claimants have to be accepted by the authorities while making the allotment would be evident from the following direction issued by the Supreme Court in *Sadhu Singh (Deceased) and Others Vs. Union of India (UOI) and Others*, :--

"The allotment of the area to which the respondent may be found entitled shall, as far as possible, be made in the vicinity of the area already held by him."

11. To be fair to the learned counsel for the respondents, it will be noticed that an argument was also advanced that this Court should not interfere with the power exercised by the authorities under the Act as has been held by the Supreme Court in *Pala Singh (Deceased) by Lrs Vs. Union of India (UOI) and Others*, . With respect, that was a case of allotment of land in excess of entitlement to a displaced person by mistake. It was in that context that the Supreme Court held that since the excess land allotted to the displaced person was "Package Deal" property, the same could not be sold nor could it be allowed to be sold to the person by the Managing Officer and that the Chief Settlement Commissioner was competent under S. 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, to cancel the allotment of land in excess of the area the person was entitled to get under the provisions of the Act. The judgment nowhere lays down that the Tehsildar (Sales) -cum-Managing Officer was not competent to make the allotment of land to unsatisfied claimants for making good the deficiency in their allotments.

12. Consequently, I allow this writ petition by issuing the writ of certiorari, quash the impugned order dated 26th October, 1987 (Annexure P.5), by which the respondents have declined to allot the land in dispute to the petitioners, and

further by issuing a writ of mandamus direct the respondents to make the quasi permanent allotment of the suburban agricultural land situated in Patti Insar (Panipat), District Karnal, as applied for by the petitioners and recommended by the Tehsildar (Sales) -cum- Managing Officer, respondent No. 4 and thereafter to confer proprietary rights in respect thereof on the petitioners in accordance with law, within a period of three months from the date of receipt of this judgment. The petitioners shall also be entitled to the costs of this petition which are quantified at Rs. 1,000/-.

13. Petition allowed.