

(2023) 03 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.2571 Of 2017

Chander Pal Singh And Another

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 07-03-2023

Acts Referred:

Citation : (2023) 03 SHI CK 0023

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : G.D. Verma, Sumit Kumar, Lokender Pal Thakur, Pushpender Jaswal, Baldev Negi

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of the present writ petition, the petitioners have prayed for the following reliefs:-

i) That appropriate orders and directions may be issued to the respondents to make allotment of suitable plot in favour of the petitioners in or around Station Ward Bara Shimla or anywhere in Shimla Town.

ii) That the respondents may be ordered to pay suitable amount of compensation to the petitioners over and above the amount as offered to the tune of Rs. 3,13,480/- and in any case, they may be held entitled to get at least a sum of Rs. 5.00 Crore as amount of compensation.

2. The case of the petitioners is that their predecessor-in-interest late Shri Sardar Jagat Singh was displaced from West Pakistan on account of partition of the country. As a result of said displacement, predecessor-in-interest of the petitioners had no alternative except to settle at Shimla. Late Smt. Man Kaur (maternal grandmother of the petitioners) filed civil writ petition bearing No. 2633 of 1995 for allotment of land on the ground that they were displaced

persons on account of partition of the country. This writ petition was disposed of by this Court with the direction to the respondents to process and settle the claim of the petitioners within a period of two months in terms of order dated 08.12.2014. The decision was challenged by way of LPA No. 168 of 2015, which was decided on 19.07.2016. In compliance to the judgment passed by this Court, Sub Divisional Officer(Civil)-cum-Settlement Officer, while making reference to the recommendations of State of Himachal Pradesh dated 11.11.2016, restricted the recommendations only qua payment of compensation and ignored the claim of the predecessor-in-interest of the petitioners for allotment of land out of the pool area. In these circumstances, on 16.11.2016, the petitioners made a representation and submitted that they were not interested in monetary compensation but are interested in allotment of property. Another representation was made on 22.03.2017, in pursuance whereof, Sub Divisional Officer, Shimla, wrote a letter to the Joint Secretary (R&R) to the Government of Himachal Pradesh, for reconsideration of the matter. This was followed by communication dated 14.06.2017, in terms whereof, Joint Secretary (Revenue) to the Government of Himachal Pradesh informed the Sub Divisional Officer (Civil), Shimla, that monetary compensation already stood sanctioned by the government on 24.01.2017. The petitioners made representation against the said communication, however, as respondents did not pay heed to the requests of the petitioners, hence the present writ petition.

3. In terms of the reply filed by the respondents-State, the petition has been opposed inter alia on the ground that predecessor-in-interest of the petitioners, namely, Smt. Man Kaur, issued a legal notice through counsel, in terms whereof she claimed payment of Rs.34,000/- w.e.f. 09.04.1948 till the date of realization. A copy of the legal notice has been appended with the reply as Annexure R-1. It is further the stand of the respondent-State that from the very beginning, the claim of the predecessor-in-interest of the petitioners was only with regard to payment of Rs. 34,000/-and not with regard to allotment of the land. According to the State, the petitioners were raising the claim for allotment of land for the first time, which stood rightly rejected. It was further the stand of the respondent-State that as far as the payment of compensation was concerned, the same was rightly calculated by the respondents vide letter dated 11.11.2016 (Annexure R-2), which comes to Rs. 3,13,480/-up to October, 2016, qua which approval also stood granted and this was also conveyed to the petitioners vide letter dated 05.06.2017 (Annexure R-4). It is further the case of the respondents-State that the petitioners were called upon to provide details of their bank accounts so that payment as per approval could be made but rather than furnishing the bank details, the petitioners initially filed the representations and thereafter, the writ petition.

4. By way of rejoinder, the petitioners have reiterated their stand as spelled out in the writ petition.

5. I have heard learned Senior Counsel appearing for the petitioners as also

learned Senior Panel Counsel for respondent No. 1-Union of India and learned Additional Advocate General and also carefully gone through the record of the case.

6. Before proceeding further, it is relevant to refer to the writ petition which was initially filed by the predecessor-in-interest of the petitioners, namely, Smt. Man Kaur, who incidentally died during the pendency of the writ petition, i.e. CWP No. 2633 of 1995, titled as Chander Pal Singh and another vs. Union of India and others. A perusal of the reliefs claimed in the said writ petition demonstrates that the petitioners had sought the following reliefs therein:-

(i) It is, therefore, humbly prayed that the respondents may please be directed to allot the land to the petitioner for house construction and in the alternative the respondents be directed to pay the compensation to the petitioner within increase including interest since 1948, which is necessary in the interest of justice and fair play.

(ii) Any other relief, including cost of this petition and cost of Counsel fee, may please be directed to be paid alongwith compensation, which is necessary in the ends of justice and fair play.

7. The relief clause thus clearly demonstrates that the prayer made by the petitioners was for issuance of a direction to the respondents to allot land to the petitioners for construction of the house or in the alternative to pay compensation to the petitioners. This writ petition was disposed of by this Court in terms of judgment dated 8. 12.2014 with the direction that the claim instituted be possessed and settled within a period of two months. Incidentally, no mandamus was issued by the Court in the said writ petition that the predecessor-in-interest of the petitioners be compensated for displacement by way of allotment of land. The judgment of the learned Single Judge when assailed in LPA No.168 of 2015 stood decided by way of order of the Hon'ble Division Bench dated 19th July, 2016, which reads as under:-

"This appeal is directed against the judgment and order, dated 8th December, 2014, passed by a learned Single Judge of this Court in CWP No.2633 of 1995, titled Chander Pal Singh and another vs. Union of India & others, whereby the writ petition came to be disposed of with a direction to the writ respondents/appellants to process and settle the claim within a period of two months, (for short, the impugned judgment).

2. It is apt to reproduce the relevant portion of the impugned judgment hereunder:

".....Therefore it is deemed it fit, just and expedient that the claim admittedly instituted by the predecessor-in-interest of the petitioners herein, be processed and settled by the respondents within a period of two months hereafter. In view of the above, the present petition stands disposed of, as also the pending applications, if any."

3. It is apparent from the perusal of the operative portion of the impugned judgment, referred to above, that the writ respondents/ appellants have been directed to process and settle the claim of the predecessor-in-interest of the petitioners as per law applicable. Therefore, it is astonishing why the appellants/ writ respondents chose to file the instant appeal.

4. Having glance of the above, there is no merit in the instant appeal and the same is dismissed, alongwith pending CMPs, if any. Consequently, the impugned judgment is upheld.”

8. Thereafter, the respondents processed the case and have sanctioned the monetary compensation, which according to the respondent-state, is payable now to the petitioners. This Court is of the considered view that there was no indefeasible right created upon the predecessor-in-interest or the petitioners for allotment of the land and land itself, on account of this displacement at the time of partition. Incidentally, even in the writ petition which was filed by the predecessor -in-interest of the present petitioners, while claiming relief or allotment of land, alternative relief for payment of compensation was also made. When this writ petition was disposed of by the learned Single Judge with issuance of a direction to the competent authority to decide the case of the petitioners therein within a time bound period, without issuance of any mandamus that land be allotted to the petitioners, said judgment was not assailed by the petitioners, meaning thereby that they were satisfied with the said verdict. In these circumstances, when the prayer made by predecessor-in-interest of the petitioners was either for the allotment of land or compensation and the respondent authority has exercised its discretion and granted compensation and not land, the exercise of said discretion cannot be faulted with and the decision which has been taken by the competent authority to compensate the petitioners by way of award of compensation thus cannot be said to be bad in law. In fact, no mandamus can be issued to the respondents-State, as prayed for, for allotment of land and the grant of compensation by the competent authority is held to be a fair decision taken by the competent authority pursuant to the direction passed by the learned Single Judge in the earlier writ petition.

9. Accordingly, in view of above discussion, as this Court does not find any merit in the present petition, the same is accordingly dismissed. It is made clear that in the event of the petitioners furnishing particulars as demanded by the authority, the amount of compensation as assessed, be paid to them as expeditiously as possible. Pending miscellaneous application(s), if any, also stand disposed of accordingly.