

(2014) 06 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5101 of 1985 (O&M)

Charan Dass

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 06 P&H CK 0076

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : K.S. Jetley, Advocate for the Appellant; Gourav Verma, AAG, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Kannan, J.—The above writ petition had been disposed of on 31.10.2011 dismissing the writ petition. It was disposed of on merits even though there had been no representation on behalf of the petitioner, considering the fact that the case was old and the case would, therefore, require to be disposed of on merits. I had examined the case with the assistance of the State counsel and passed the order on 31.10.2011. An application for review has been filed stating that the petitioner has important documents to rely on and that the disposal of the case made without advertting to the facts on merely the issue of limitation was not justified.

2. Under the normal circumstances, there is no scope for a court to dispose of the case on merits, when there was no representation on behalf of the petitioner. It should been only dismissed for default if at all, but there were extraordinary circumstances and, therefore, it came to be disposed of in the manner it was done. I do not want to take away the right of a person by the default of appearance and, therefore, I have allowed the counsel for the petitioner to argue on merits.

3. This is a case relating to an allotment which was made to a displaced person

on 19.05.1959 by the authority under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. This was in relation to a property bearing No. 40/41 in Ghosi Mandi at Ambala Cantt. The dispute was with reference to a rival claim made by Sunder Singh and Kartar Singh who were also granted half of the property by virtue of the fact that they were seen to be in possession of the property at that time. The petitioner had a contention to make that only he had made a verified claim while Kartar Singh or Sunder Singh had not made any such claim. There was yet another lady Krishnawanti who was staking a claim in relation to the very same property on a plea that she was also in possession of the property. When the order was passed originally, it appears that not only both, the petitioner Charan Dass and Krishna Wanti had preferred the respective appeals, but the appellate authority disposed of the case against Charan Dass holding that it was barred by limitation and dismissed the appeal filed by Krishnawanti also. The matter went to the High Court which rejected the claim and the matter went to the Supreme Court. It was decided through a decision reported in Charan Dass Vs. Union of India (UOI) and Others, . The Supreme Court considered the issue of retrospectivity of Rule 30 which was repealed and directed a fresh consideration of the matter. When the matter was sent back to the authority, he disposed of the case holding that he had the property examined through the Tehsildar (Sales) and he had found that the property was partible and hence, Kartar Singh and Sunder Singh would also be entitled to the property in which they were in possession. Against this order, the petitioner had preferred an appeal but the appellate authority merely held that the order had been passed on 06.07.1981, but the appeal had been filed only on 28.05.1982. The limitation prescribed under the Rules is 30 days. The counsel says that the order had not been actually communicated and only after he came to know about the order that the appeal could be filed, I examined the order and I find that it was not pronounced in the presence of the petitioner and, therefore, he was entitled to prefer an appeal within 30 days from the day when he came to know about the order. I would, therefore, hold that the appeal could not have been dismissed on merely an issue of limitation in not filing the appeal within 30 days from the date of passing of the order.

4. I thought for a while whether any purpose would be served in reopening the issue of where allotments had gone to the contesting respondents as early as in 1951. Litigation had started soon after the allotment was made and it had stood on all these years. The first time when the Supreme Court was disposing of the case in the year 1980 and the case was brought for hearing again before the Settlement Officer, he noticed that the private respondents had actually been in the petitioner's property and he also found that the Tehsildar had given a report that the property was disposable. These are, in my view, essential questions of fact of how the property was and whether it was possible to make an allotment in the manner it did. The counsel for the petitioner refers me to the interpretation given by the Supreme Court as regards Rule 30 in respect of which matter was actually remitted. As regards Rule 30, the Supreme Court had stated

that where a payment of compensation on an acquired evacuee property was allotable but in the occupation of more than one person, one holding verified claim in the occupation of any acquired evacuee which is an allotable property shall be offered to the person whose right compensation is the highest and the other persons may be allotted such other acquired evacuee property which is allotable that may be available. There is no doubt that if the petitioner as an evacuee had a verified claim and the compensation payable to him was more than or equivalent to the value of the property, the whole of the property could have been offered only to him. There is no question of making the allotments to persons only because more than one was actually residing at the property. But the point is whether that could be given effect to at this length of time. Even if the matter were to be taken up immediately after the Supreme Court judgment and disposed of and parties' rights had been readjusted, then it should have been served the ends of justice. It will be unfair to dislocate the persons who have been in possession for more than 50 years and the person, who had been fighting is also no more.

5. The only benefit which in my view that could be given to the petitioner would be to examine the question of compensating the petitioner to the extent to which there has been a deficit in the compensation that was assessed as payable. If there was a verified claim, the authority shall examine the verified claim from the records which are available and if the verified claim is not available, the amount of compensation as assessed to be payable to the petitioner and the value of the property which was assessed at that relevant time. For the shortfall, the present valuation of the property may be taken and the extent to which there has been a deficit by grant of wrongful judgment to the other private respondents, the petitioner's legal representatives could be compensated. I am trying to readjust the rights by taking note of the fact that admittedly, the private respondents, who are also displaced persons and it will be unfair to dislocate them to leave them on the seat waiting for the State to find yet another property are reallocate the same. Many a time, justice gets derailed by sheer delay. In this case, the man, who was fighting for his right was not alive at the time when his right was assessed. I cannot find any virtue in rewarding the legal representatives with a situation of ejection of the persons, who are in possession of the property for more than five decades. After all, they were not illegal occupiers. They were, on the other hand, persons, who had claimed allotments from the State as displaced persons. The compensation in relation to the property shall be the only appropriate action that is possible and that also cannot be made to be paid by private respondents, for, they have come by allotments in their capacity as displaced persons and if the State had erred in not granting the whole of the property to the petitioner, then it must take the responsibility for compensating the legal representative at least for the deficit in value of the property that had resulted by a wrongful judgment.

6. The writ petition is dismissed in so far as it seeks for annulment of the impugned orders passed by the authority, but is disposed of with the direction to

assess the present value of the property that had been allotted to the private respondents and the extent to which, the deficit had arisen after determining the compensation payable to the petitioner at the relevant time when the allotment was made. The amount shall be reckoned and paid to the petitioners within 3 months from the date of the order.

7. The writ petition is disposed of on the above terms.