

(1965) 12 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 588 of 1964 with Civil Application No. 2804 of 1965

Damomal Kausomal Raisinghani

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-12-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 6 Rule 2, 144
Constitution of India, 1950 — Article 226
Displaced Persons (Claims) Supplementary Act, 1954 — Section 12, 5, 5(1)

Citation : AIR 1967 Bom 355 : (1966) 68 BOMLR 474

Hon'ble Judges : Tambe, Acting C.J.; Abhyankar, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; G.N. Vaidya, for the Respondent

Judgement

Tambe, Ag.C.J.

1. Civil Application No. 2904 of 1965 was only an application for sending for the record. Certified copies of the relevant record have been produced and shown to the petitioner. This application no more survives.

(2) Special Civil Application NO. 588 of 1964 is a petition under Article 226 of the Constitution of India. By this petition the petitioner seeks to get quashed the order dated 31st October 1962 made by respondent No. 3 Mr. Ajwani, the Additional Settlement Commissioner with delegated powers of the Chief Settlement Commissioner. By this order the third respondent has reopened the verified claim of the petitioner and has in effect reduced it from Rs. 4, 710 to Rs. 500. The facts in brief are these. The petitioner originally belonged to Nawabshah, a place in Sind. That territory now is part of West Pakistan. The petitioner along with his brothers migrated to India leaving behind certain plots of land. According to the petitioner, he had a certain share in the Immovable property left by him and his brothers in urban area, that is, property within municipal limits. The petitioner as well as his brothers filed separate claims in

respect of the said property before the claims officer and the claims officer by his order dated 13th January 1953 held that the property was in urban area. It was within the municipal limits of Nawabshah. The value of the property was Rs. 18,840 and the share of the petitioner in this property was to the extent of its one-fourth. On these findings the operative order made by him was : "I accordingly verify and value the claimant's one-fourth share at Rs. 4,710."

The petitioner was not satisfied with the decision of the Claims Commissioner. Against the said order he preferred a revision before the Chief Claims Commissioner. The Chief Claims Commissioner, however, by his order dated 28th April 1953 dismissed the revision application and affirmed the aforesaid order of the Claims Commissioner. The order made by the Chief Claims Commissioner is of date 28th April 1953. The resulting position then was that the highest authority under the Displaced Persons (Claims) Act (Act XLIV of 1950) had held that the petitioner along with his brothers had left behind in West Pakistan Immovable property situate within municipal limits. The value of that property was over Rs. 18,000 and the value of the petitioner's one-fourth share therein was to the extent of Rs. 4710. The matters rested there for nearly nine years. It is not known how, but it appears that some time in the year 1962 the third respondent had issued notice to the petitioner as well as his brothers to show cause why action proposed by him should not be taken against them. He fixed the hearing at Bombay. The petitioner appeared at the hearing fixed by the third respondent in Bombay on 24th September 1962. Before the third respondent the petitioner again reiterated his claim that his property in Nawabshah within the urban area. The third respondent by his order of 31st October 1962 held that on consideration of the materials on record in his opinion there was no reliable documentary evidence to prove that the property was within urban limits. The record received from Pakistan showed that the property was not within limits and on these grounds he held that the property was situate wholly in the rural area and has valued it as an agricultural property. The material part of his order runs in the following terms:

".....the total area in the name of Damomal in the official record received from Pakistan comes to 12 acres 37 gunthas which is under Zamindari "Sharat",. so that 12 1/2 per cent would be deduced and the net area would come to 11 acres 12 1/2 gunthas which at 12 annas less 1 anna for rice restriction would stand valued at 7 standard acres 15 1/2 annas. Atomizing Wadhmal and Pritbai between themselves would take 3/5 share i.e., 4 standard acres 12 1/2 annas. Damomal would take 1/5 share i.e., 1 standard acre 9 1/2th annas and Dhanomal would take another 1 standard acre 9 1/2 annas.

Evidence produced earlier in the case has been scrutinized by me and I find that the same would stand superseded by the official record.

To the extent indicated above, the claims of the aforesaid persons would stand assessed and the earlier assessments would stand reviewed and modified accordingly."

It may be stated that the petitioner before us is Dermal. His share has been held to be 1 standard acre and 9 1/2 annals. The value of this comes to nearly RS. 500. As a result of the previous orders made by the Claims Comer. and confirmed by the Chief Claims Commissioner. the value of the verified claim was RS. 4710. That order has been reviewed by the third respondent by his aforesaid order of 31st October 1962 reducing the value of the petitioners' verified claim from Rs. 4, 710 to Rs. 500. It is this order that the petitioner has challenged by this petition which has been filed before us on 12th February 1964.

(3) The contention of the petitioner, who argued his case before us, is that the third respondent had no jurisdiction to set aside the order of the Chief Claims Commissioner where under he had confirmed the value of the petitioner's claim at Rs. 4,710. The argument is that there is no power conferred by any statute on the third respondent to review the order of the Chief Claims Commissioner, the highest authority under Act XLIV of 1950. Before we deal with these contentions on merits it would be convenient to dispose of three preliminary objections raised by Mr. Vaidya, learned counsel for respondents.

(4) In the first instance, Mr. Vaidya contends that the petition should be dismissed in limine on the ground of delay in prosecuting this application. It is his argument that the order impugned was made on 31st October 1962. The petitioner has come to this Court after one and a half years. He has not approached this Court with due diligence. Therefore the petition should be dismissed. The petitioner had given explanation in para 10 (e) of his petition. It has been stated therein that he had moved respondent No. 3 to set aside the aforesaid impugned order of 31st October 1962 and in spite of reminders he was not informed as to what happened to his application. Waiting for certain time, he had also made several representations to the Ministers, but he had received no replies. Therefore, he ultimately has moved this Court by his petition. It is stated by Mr. Vaidya that the statement made therein that he was not informed is not correct. He was informed that there was no case made out to set aside. the order of 31st October 1962. Whatever may be the case, it does appear that the petitioner had before moving this Court again approached the third respondent as well as the Minister of the Ministry concerned to get relief against the aforesaid order. It is indeed true that normally this Court would not accept the plea of the petitioner having made representations in considering the issue as to whether the petitioner has moved this Court with de diligence. But in the peculiar circumstances of this case, in our opinion, it is not necessary to reject this explanation. The petitioner is a displaced person and feels that more or less he is at the mercy of the officers concerned. Further, we find that the order made by the third respondent is clearly without in jurisdiction and has resulted in a grave injustice to the petitioner, inasmuch as his verified claim has been reduced from Rs. 4, 710 to Rs. 500. The first preliminary objection therefore, in our opinion, should fail.

(5) The next contention of Mr. Vaidya is that we have no jurisdiction to entertain

this petition because the impugned order has been made by an authority located outside the jurisdiction of the Court. It is the argument of Mr. Vaidya that the third respondent's office is in Jaisalmer House, New Delhi. The third respondent therefore is not an authority located in the territories in relation to which this Court exercises jurisdiction. This Court therefore has no jurisdiction to quash that order. It is indeed true that the office of the third respondent is located in New Delhi and in that sense the third respondent is not a person residing within the territory in relation to which this Court exercises jurisdiction. Article 226 has however been recently amended and clause (1-A) has been added to Art. 226 after clause (1). It reads in the following terms:

"The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

The question that arises is whether the cause of action for the exercise of the power invoked by the petitioner arose wholly or in part within the territories in relation to which this Court exercises jurisdiction. The petitioner, as it appears was a resident of Ullasnagar, a place situated in the District of Thana of Maharashtra State. The impugned order itself shows that the case was heard in Bombay. It is indeed true that the order on the face of it does not show the place where it was made. Even assuming that this order was made by the third respondent in New Delhi, there can hardly be any doubt that the effect of this order fell on the petitioner at Ullasnagar where he resides. It is also not in dispute that the proceedings that would be taken against the petitioner in consequence of the impugned order would be by officers located within the territories in relation to which this Court exercises jurisdiction. Though in different context, the question arose as to the place where the cause of action would arise, the question was considered by a Division Bench of which I was a member in *W.W. Joshi and Others Vs. State of Bombay and Others*, . A Civil servant was removed from service and the question arose as to where the cause of action to get quashed the order of the removal from service arose. and it was held that the cause of action would arise at the place where the order of termination of service was made and also at the place where the consequences fell on the servant. In view of this decision, there can hardly be any doubt, that the place where the consequences of the order fell on the petitioner would be a place where at least the cause of action in part would arise. No good ground is shown to us by Mr. Vaidya to differ from the view taken by the Division Bench in the aforesaid case. The second ground also should fail.

(6) Lastly Mr. Vaidya says by way of a preliminary objection that the petition is premature and therefore it should be dismissed. It is his argument that no action has been taken against him in pursuance of the impugned order. The petitioner

therefore could have no grievance to get that order quashed till the date any officer proposes to start action against him. Now the first and the third contentions, if I may say so, are mutually destructive. In the first contention Mr. Vaidya had argued that the petition should be dismissed on the ground of delay and now he is arguing that the petition is premature. There is little merit in this contention. It cannot be disputed that the rights of the petitioner to get a set off against the property that may be allotted to him to the extent of Rs. 4,710 is in great jeopardy. If he had already obtained a set off to that extent and a property had been allotted to him, he would be required in consequence of the order made to refund the excess over Rs. 500. In this aspect of the case also the petitioner has been placed in jeopardy. It therefore cannot be said that the petition is premature. All these three preliminary objections therefore fail and are overruled.

(7) Turning to the merits of the case, the question which we have to consider is whether the third respondent had any power to review the order dated 28th April 1953 made by the Chief Claims Commissioner confirming the value of the petitioner's verified claim at Rupees 4,710. We have already stated that the Chief Claims Commissioner was the highest authority under Act XLIV of 1950. It is a matter of history that after independence a large number of Indians who were residing in territories which now form part of West Pakistan had to return to India leaving behind their properties. Having regard to the circumstances, Parliament of India with a view to provide for registration and verification of claims of these displaced persons in respect of their Immovable property in Pakistan, enacted an Act called, "The Displaced Persons (Claims) Act (ACT XLIV of 1950)" Section 4 of this Act empowered the Central Government by notification in the official Gazette to appoint a Chief Claims Commissioner, a Joint or Deputy Chief Claims Commissioner, and as many Claims Commissioners and Claims officers as may be necessary for the purpose of discharging the duties imposed on them by or under this Act, and may be general or special order, provide for the distribution or allocation of work to be performed by them under this Act. Sub-sec, (2) of Section 4 provides that subject to the provisions of this Act, the Joint or Deputy Chief Claims Commissioner, all Claims Commissioners and Claims Officers shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Chief Claims commissioner. The Chief Claims Commissioner thus was the highest authority appointed by the Central Govt. for the purposes of administration of this Act. It is not necessary to go into the provisions of this Act in details. The object was to verify claims of these displaced persons from West Pakistan in respect of their properties left behind by them in West Pakistan at the time of their return to India. The claims proved by these persons on verification were registered and the value of the claim determined as provided in the Act. Now the period within which the aforesaid Act XLIV of 1950 was to remain in force was only two years. By a later amendment the said period was extended to three years. The said period of three years was to have expired on the 18th of May 1953. But the situation then obtaining was that the work of

verification of the claims which had till then been lodged had not been completed. In order to provide for the disposal of proceedings that were incomplete and pending on 17th May 1953, i.e., the date of expiration of Act XLIV of 1950, the President promulgated an Ordinance on 18th January 1954 called "The Displaced Persons (Claims) Supplementary Ordinance, 1954", and it has been given retrospective effect. clause (a) of Section 2 of the Ordinance provides that "Appointed day" means the 17th day of May 1953. Clause (d) defines "Principal Act" as meaning the Displaced Persons (Claims) Act, 1950 (XLIV of 1950), and clause (b) of the said section provides that "claim" means (i) any claim registered under the principal Act and pending on the appointed day; or (ii) any claim submitted to any authority under the principal Act by any person migrating to India from any tribal area and pending on the appointed day. The combined effect of these provisions is that under the Ordinance the claims which were pending on the date of expiry of Act XLIV of 1950 were revived and the officers appointed under the Ordinance were empowered to deal with those claims. Section 3 deals with appointment of officers for purposes of working of the administration of this Ordinance, and sub-section (1) of S. 3 empowered the Central Government by notification to appoint a Chief Settlement Commissioner, a Joint Chief Settlement Commissioner, a Deputy Chief Settlement Commissioner and as many Settlement Commissioners, Additional Settlement Commissioners and Settlement Officers as may be necessary for the purposes of performance of functions assigned to them by or under this Ordinance and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Ordinance. Sub-section (2) provides that all the aforesaid officers have to perform their duties under the general superintendence and control of the Chief Settlement Commissioner. It would be noticed that though object sought to be achieved by the principal Act and the Ordinance is the same, i.e., verification of claims of displaced persons in respect of the Immovable property left behind by them in West Pakistan, the designation or nomenclature of the officers under the Principal Act and the Ordinance are different. For instance, the highest authority under the principal Act has been designated as Chief Claims Commissioner, while the highest authority under the Ordinance is designated as Chief Settlement Commissioner. After Parliament was next in session, an Act identical in terms of the provisions of the Ordinance has been enacted called the Displaced Persons (Claims) Supplementary Act, 1954.

(8) The question to be considered is whether the third respondent had under the aforesaid Supplementary Act any power to review the aforesaid order of 28th April 1953 made by the Chief Claims Commissioner finally disposing of the claim made by the petitioner in respect of the property left behind by him in West Pakistan. An identical question arose before this Court in Special Civil Appln. No. 1392 of 1964 and Special Civil Application No. 847 of 1965: reported in *Saraswatibai and Others Vs. Gulab Ajwani and Others*, . Both these applications were disposed of by a common judgment by a Division Bench of this Court delivered by Patel J. on 2nd August 1965, and it has been therein held that the

authorities appointed under the Supplementary Act had no such power to review. The effect of this decision is that this petition will have to be allowed and the order made by the third respondent on 30th October 1962 will have to be quashed and a further order will have to be made restoring the foresaid order of the Chief Claims Commissioner of date 28th April 1953. It is, however, the argument of Mr. Vaidya that at the time the aforesaid decision was given by Mr. Justice Patel, the relevant provisions empowering the officers to exercise power of review were not brought to the notice of the bench deciding the case, and therefore we should not consider ourselves bound by the said decision. The contention has little merit. It may be pointed out that even in the return filed on behalf of the respondents, the provisions to which Mr. Vaidya has drawn our attention were not relied upon in justification of the order of 31st October 1962. In para 10 of the return the respondents have averred:

"I say that the order dated 31st October 1962 has been passed by the third respondent u/s 5(1) (b) of the Displaced Persons (Claims) Supplementary Act, 1954 and it is a final order and no further revision or review is maintainable."

Now Section 5(1) relates to the special power of revision in respect of the cases decided under Act XLIV of 1950. The special power has been conferred on the Chief Settlement Commissioner. Clause (a) relates to the exercise of the power on an application having been made to the Chief Settlement Commissioner. Clause (b) relates to the exercise of the power by the Chief Settlement Commissioner suo motu and it provides:

"Notwithstanding anything contained in the principal Act, the Chief Settlement Commissioner may, on his own motion, but subject to any rules that may be made in this behalf, revise any verified claim and make such order in relation thereto as he thinks fit"

"Verified claim" has been defined in clause (f) of Section 2 as any claim registered under the principal Act in respect of which a final order has been passed under that Act. Now it can hardly be disputed that the power of revision is a power vested in an authority higher in rank to revise and correct orders made by an authority which is subordinate or lower in rank to it. The Chief Claims Commissioner who had made the order of 28th April 1953 was certainly not an officer lower in rank or status to the Chief Settlement Commissioner. Much less he could be said to be subordinate or lower in rank to the third respondent who himself was an authority subordinate to the Chief Settlement Commissioner. It is true that the powers of the Chief Settlement Commissioner were delegated to him, but that does not mean that by reason of the said delegation he could in exercise of that power have revised the order made by the Chief Settlement commissioner himself. Having regard to the object of the Supplementary Act, i.e., making provisions for the disposal of certain proceedings pending under the Displaced Persons (Claims) Act, it is obvious that S. 5 has no application and could have no application whatsoever to the cases which have finally been decided by the highest authority appointed under the principal Act.

(9) The provisions on which Mr. Vaidya is relying are Clause (d) of R. 3 of the rules framed by the Central Government under Section 12 of the Displaced Persons (Claims) Supplementary Ordinance (Ordinance III of 1954). Rule 3 deals with additional powers of the Chief Settlement Commissioner and other officers appointed u/s 3. The material part of it is in following terms:

"The Chief Settlement Commissioner, the Joint or Deputy Chief Settlement Commissioner and every Settlement Commissioner. Additional Settlement Commissioner and Settlement Officer, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:

(a).

(b)

(c).

(d) reviewing an order on any of the following grounds namely-

(i) the discovery of any new or important matter or evidence which after the exercise of due diligence was not within the knowledge of, or could not be produced by, the claimant at the time when the claim was verified, or

(ii) on account of some mistake or error apparent on the face of the record; or

(iii) for any other sufficient reason"

It has not been disputed before us that these rules have continued to remain in force even under the Supplementary Act by reason of Section 24 read together with Section 30 of the General Clauses Act. It is argued by Mr. Vaidya that these provisions were not brought to the notice of the learned Judges at the time the aforesaid judgment was delivered by Mr. Justice Patel. The record from Pakistan was received in the year 1961. From the record it was discovered that the property of the petitioner had not been regarded to be one within the urban area, and it is for this reason that the third respondent had reviewed the order of the Chief Claims commissioner in exercise of powers conferred on him under the rules. It is not possible for us to accept the arguments of Mr. Vaidya. The power to review a prior order is principally the power vested in an officer to review an order previously made by himself and not by anybody else. It is to be noticed that the powers to review an order conferred on these officers under the said rule are only co-extensive with the powers vested in the Civil Court under the CPC when trying a suit. The rule was made in the year 1954. Sec 114 of the CPC confers a power on a person considering himself aggrieved to apply for a review of the judgment to the Court which passed the decree or made the order, and the said Court on receiving such an application is empowered to make such order thereon as it thinks fit. It is abundantly clear that the power to review, whatever be its limits, arises only when an application by a person aggrieved in that respect has been made. The CPC does not confer on Courts any general power of

reviewing its decision suo motu. It is not in dispute that the proceedings which ultimately culminated in the said order of 31st October 1962 were initiated suo motu by the third respondent himself. The exercise of such a power cannot be justified even under the rule on which Mr. Vaidya has placed reliance. Looking at the case from any angle, it is not possible to sustain the order made by the third respondent on 31st October 1962.

(10) In the result the rule is made absolute. The aforesaid order of 31st October 1962 of the third respondent is hereby quashed . The aforesaid order made on 13th January 1953 by the Claims Officer, Delhi, and which has been confirmed by the Chief Claims Commissioner on 28th April 1953 are hereby restored.

(11) The respondents shall pay the costs of the petition.

(12) Petition allowed.