
(1961) 11 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 444-D of 1959

Dr. Khushi Ram

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 02-11-1961

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 2(d)(ii)

Citation : (1961) 11 P&H CK 0010

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : Bhawani Lal, for the Appellant; Jindra Lal for Respondent Nos. 1 and 2 and Mr. R.S. Narula, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—The petitioner, Dr. Khushi Ram, and the third respondent Shrimati Raj Rani are in joint occupation of an evacuee property in Roshan Ara Road. The petitioner in these proceedings has challenged the order passed by the Deputy Chief Settlement Commissioner on the 29th of October, 1958, (Annexure "A"), confirming the order of the Managing Officer transferring the entire property to the third respondent.

2. The petitioner has while the third respondent has not verified claim for a sum of Rs. 7,800/-. The petitioner and the third respondent occupied two different portions of the house and in view of the fact that the petitioner had already obtained a loan of Rs. 5,000/- both the occupants were treated as non-claimants and the property was allotted to the third respondent under rule 31 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, she being in possession of the largest portion of it. The Managing Officer estimated the value of the property at Rs. 4,355/- and came to the conclusion that the amount of loan recoverable from the petitioner was in excess of the compensation which was payable on the verified claim. In appeal, which was preferred by the petitioner from the order of the Managing Officer, it was held by the Assistant

Settlement Commissioner that the gross and not the net compensation should have been taken into reckoning and if that is done the petitioner would still remain a claimant. Shri Gajendra Singh, in the revision filed by the third respondent, however, took the view that the amendment made in rule 30, whereby gross and not net compensation was to be taken into account, did not have any retrospective effect and the order of the Managing Officer was correct. In this view of the matter he allowed the petition and restored the order of the Managing Officer.

3. It is to be seen whether the order passed by the Deputy Chief Settlement Commissioner on the 29th of October, 1958, is without jurisdiction and, if so, whether it has resulted in any injustice for the petitioner. Any advance made under the Rehabilitation Finance Administration Act is a public due under sub-clause (ii) of clause (d) of section 2 of the Displaced persons (Compensation and Rehabilitation) Act, 1954. Section 7 of the Act prescribes the mode of computing the compensation paid on verified claims and sub-section (3) states that "After deducting the dues referred to in sub-section (2) the Settlement Commissioner shall make an order determining the net amount of compensation, if any, payable to the applicant." Under the provisions of the Act the Managing Officer came to a right conclusion that after deducting the sum of Rs. 5,000/- taken by the petitioner as a loan, nothing became payable to the petitioner. Reliance has been placed, both before the Deputy Chief Settlement Commissioner and this Court, on rule 30 of the Displaced Persons (Compensation & Rehabilitation) Rules. Under this provision "If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property, the property shall be offered to the person whose net compensation is nearest to the value of the property * * * *".

Explanation I.-The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allotable property hold verified claims and some do not hold such claims.

4. It appears to me that the application of this rule is confined to cases where more than one person is holding a verified claim. In the present instance, the petitioner alone is a holder of a verified claim if it is assumed that he still has a subsisting verified claim. Mr. Bhawani Lal, learned counsel for the petitioner, has invited me to hold that Explanation I makes the provisions of the rule applicable even where some of the persons in occupation of the property do not hold verified claims. I do not think that this submission has any force. Rule 30 deals only with cases where there is plurality of verified claimants and Explanation I would be attracted only where some of the persons in occupation of a. property do not hold such claims. In other words, if there is more than one verified claimant and one or more non-claimants in occupation of the house, the provisions of the rule would apply, but I do not see how the Explanation could apply in a case where the verified claimant is only one. It is not disputed that at the time when the Managing Officer made his order the rule did not help the

petitioner as the public dues exceeded the net compensation due to him. Sometime later there was an amendment which had the effect of substituting the word "gross" for "net". The counsel contends that verified claim of Rs. 7,800/- carried a compensation from which the amount of public dues could not be deducted. I do not think that the amended rule could negative the provisions of the Act in which it is provided that the public dues would have to be deducted before the compensation payable to a claimant is computed. The effect of the order of the Managing Officer was that the petitioner was declared to be a non-claimant and the house was allotted under rule 31 of the Displaced Persons (Compensation and Rehabilitation) Rules, according to which an acquired evacuee property, which is in occupation of more than one displaced persons, none of whom holds a verified claim, has to be allotted in favour of the person who occupies the largest portion of the property. The third respondent holding the largest portion of the property has been allotted the entire unit, the Managing Officer having held that the petitioner had no subsisting verified claim. The amending rule, if it is given the construction which is sought to be placed on it, would deprive third respondent of the right to be allotted the property, a right which had vested in her before the amendment came into force. By no stretch of reasoning could it be said that the amendment was merely procedural, which could be given retrospective operation. Even if retrospective operation could be given to statutory rules, it would not be possible to do so in the present case as such intention is not manifested. It cannot, however, be said to be a mere procedural matter which could be given retrospective operation by implication. In my view the third respondent came to be vested with a right by operation of law and she cannot be deprived of it by a strained interpretation of the rule which seeks to give it retrospective operation. The proposition that a vested right can arise from operation of law finds support from a Full Bench authority of this Court in *Messrs Gordhan Das Baldev Das v. The Governor-General in Council* (1952) 54 P.L.R. 1.

5. Moreover, the order of the Deputy Chief Settlement Commissioner has not worked into any injustice for the petitioner. On the other hand if the contention of the petitioner is accepted, he would be enjoying the benefit not only of the loan but also of an allotment of a house in preference to the other displaced persons and the aggregate value of these reliefs would far exceed the amount of the verified claim. It has been ruled by their Lordships of the Supreme Court in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, that writs are intended to enable the High Court to issue them in grave cases "where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission or error or excess has resulted in manifest injustice". Even assuming that the Deputy Chief Settlement Commissioner has acted in violation of the rules or has exceeded his jurisdiction, it cannot be said that any injustice has resulted thereby. In the result, I would hold that there is no force in this

petition which fails and is dismissed. I would, however, leave the parties to bear their own costs.