
(1965) 07 BOM CK 0018

In the Bombay High Court

Case No : Special Civil Application No. 575 of 1961

Gagandas Hotchand

APPELLANT

Vs

J.S. Bajaj

RESPONDENT

Date of Decision : 20-07-1965

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 10, 12

Constitution of India, 1950 — Article 226, 227, 32

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 14, 16, 17, 19

Citation : (1965) 67 BOMLR 911

Hon'ble Judges : Patel, J; Bal, J

Bench : Division Bench

Judgement

Patel, J.—This petition under Articles 226 and 227 of the Constitution raises a question of construction of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which hereafter will be called "the 1934 Act" and the rules framed under it. The facts leading to the petition are few and are as follows :

2. The two petitioners are father and son who are joint with five other sons of petitioner No. 1. When they came to India in the wake of the partition, they left agricultural land and some houses in West Pakistan. They made claims under the Displaced Persons Claims Act, 1950. The claims were assessed and verified at Rs. 20,000 for houses etc. and two and a half standard acres and five and a half gunthas of agricultural land. The claim for houses became reduced to Rs. 17,111, It may be stated that all the properties were situated in rural area.

3. After migration here the petitioners carried on business in Bhir in the name of Awatrai Radhakishan. In January 1953 they applied in the name of Awatrai Radhakishan that they be allotted on lease two survey numbers being 75 and 77 being the land of an evacuee one Sardarkhan. In one of the survey numbers in a distinct portion there was a bungalow which was given to the State Government

for the Civil Hospital. The application related to the rest of the agricultural land. It seems there were fruit trees in the land. The Deputy Custodian sent a memo to the Tehsildar with his recommendation that the request should be favourably considered. Accordingly the lands were granted to them on lease by the Tehsildar and this "allotment" was confirmed by the Assistant Custodian, Bhir, on April 28, 1953, as can be seen from the file produced.

4. On May 13, 1957, the Additional Settlement Commissioner, Delhi, Bombay Camp, on the basis of Rule 65 under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, rejected their claim for rural houses on the ground that they had been allotted agricultural lands S. Nos. 75 and 77 at Bhir. In the meantime the petitioners were asking that the land be permanently allotted to them and had also challenged the above order before the Chief Settlement Commissioner. In the meantime the State Government had started negotiating for the purchase of these pieces of land for the purpose of the Hospital which it was running in the bungalow. The Settlement Commissioner made an order agreeing to do so, and sought the approval of the Chief Settlement Commissioner who approved of the same. The price fixed was Rs. 1,13,000. It appears that on September 21, 1959, the petitioners came to know of the same. Petitioner No. 1, therefore, made representations against the proposal and when he did not get a satisfactory reply he filed Special Civil Application No. 591 of 1960 challenging the orders dated May 13, 1957, made by the Additional Settlement Officer rejecting the claim regarding rural houses and dated May 14, 1960, by the Chief Settlement Commissioner confirming the same and their decision to sell the land to the State Government, This petition was later withdrawn on April 20, 1961. They however continued in possession of the land. Respondent No. 3 then ordered the Tehsildar to evict the petitioners.

5. The petitioners filed the present petition under Article 227 of the Constitution on the ground that respondents Nos. 1, 3, 4 and 5 could not validly sell the land to respondent No. 2 under the rules and the Act and that they had learnt that the land was no longer required for the hospital. They pray that the said orders be quashed. During the pendency of this petition the State Government by its letter dated April 1, 1963, informed the petitioners that it had decided to release the land and acquire another land for constructing the hospital and this was again confirmed by another letter dated August 14, 1963. The matter had come up for hearing often but was adjourned from time to time for settlement. It seems the State Government was willing to transfer the land to the petitioners but as the Central Government and the Settlement Commissioner insisted on the full price settled for the bungalow and the land being paid by the State Government, the negotiations failed.

6. The question is whether under the Act and the rules the Settlement Commissioner had the power to sell the property. It is admitted by Mr. Advani that the petitioners' claims were with respect to rural properties-"both agricultural land and house and shops. The property now involved is urban and

consists of two Survey numbers 75 and 77 in one of which there seems to be a large bungalow. But it is admitted that the bungalow and its compound was let to the Government as separate entity and the agricultural land was leased to petitioners at Rs. 81 per year.

7. On behalf of the respondents the sale is sought to be justified under Rule 23 of the Rules framed under the 1954 Act. On behalf of the petitioners it is contended that that rule has no application. Rule 23 reads thus :

All acquired evacuee properties which are not allottable under Rule 22 shall ordinarily be sold.

8. In interpreting a statute the Court tries to find out the intention of the Legislature. Normal rule of interpretation is that the intention of the Legislature is to be gathered from the words used which must normally be given their natural grammatical meaning. But it may be that the words may take colour from the context in which they are used and acquire a larger or a smaller meaning than they ordinarily convey. It is for this reason that the rules of construction require that the Court should interpret the statute as a whole and also have regard to the objects of enacting the statute. See *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, where it was said p. (40)

It is one of the settled rules of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself.

The same principles apply to the interpretation of statutory rules.

9. Under the Administration of Evacuee Property Act, 1950, properties of persons who were declared evacuees were taken over. The Act gave powers of management to Custodians of such properties. u/s 10(1) all powers were vested in the Custodian as were necessary or expedient for the purpose of "securing, administering, preserving and managing" any evacuee property. By Sub-section (2) he was given specific powers including one under Clause (o) of transferring property but not by sale except with the permission of the Government which would include power to either allot or lease the property. By Section 12 he was given power to cancel leases or allotments. It is not claimed that the power of sale is exercised under this Act. It would also appear that the property ceased to be such property once it became part of the compensation pool and the later Act of 1954 would govern its management.

10. The 1954 Act provided for the payment of compensation to displaced persons and rehabilitate them. The net amount of compensation was to be determined u/s 7. Section 8 is mandatory in language in that it provides that compensation shall be paid out of the compensation pool. The modes for the payment of the same are :

(a) in cash;

- (b) in Government bonds;
- (c) by sale to the displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him;
- (d) by any other mode of transfer to the displaced person of any property from the compensation pool and setting off the valuation of the property against the compensation payable to him;
- (e) by transfer of shares or debentures in any company or corporation;
- (f) in such other form as may be prescribed.

By Sub-section (2) power is given to the Central Government to frame rules for this purpose. By Section 14 a compensation pool is created. By Section 16 the Central Government is enabled to take measures for the management and disposal of the compensation pool in order that the same may be effectively utilized in accordance with the provisions of the Act. Section 17 relates to the functions of the managers of the properties in the compensation pool. Section 19 gives power to the manager to cancel or vary any allotment or lease granted either before or after the Act in respect of any evacuee property but subject to the rules framed under the Act and after giving a reasonable opportunity of being heard. Section 20 gives the managing officer or managing corporation a power to deal with the property subject to rules. Rules are framed u/s 40.

11. We now turn to the scheme of the rules. They are divided into several chapters. Chapter I defines various terms used therein. Chapter II deals with applications for compensation and their processing and Chapter III deals with enquires and verification of claims. Chapter IV deals with the question of determination of compensation, its scale and mode of payment. Rule 18 deals with computation of compensation. As it originally stood, it provided that it shall be determined by adding assessed value of all claims in respect of all kinds of the property of the claimant other than agricultural land. On February 20, 1960, it was amended so as to exclude agricultural land in rural areas only retrospectively. How far Government can retrospectively in this manner apply a rule is a question which may arise. Chapter V relates to payment of compensation by transfer of property, the modes of valuation, its transfer to a displaced person who is in occupation of the same and its consequences. Chapter V-A is new and is added on November 26, 1960, and relates to allotment of agricultural land in urban areas. Chapter VI deals with transfer of Government built property. Chapter VII deals with payment of compensation for rural houses and shops left in Pakistan. Chapter VIII deals with payment of compensation for agricultural lands in rural area and provides that it shall as far as possible be by allotting agricultural land. Chapter IX deals with allotment of groves and gardens and so on.

12. This analysis clearly indicates that the Central Government framed the rules subject-wise, devoting a Chapter to each kind of property. It dealt with the

subject of rural houses left in Pakistan in Chap. VII and provided for allotment of similar houses in rural areas to displaced persons in the manner specified in the Chapter and in Chap. VIII it made provision for agricultural lands left in West Pakistan and provided that as far as possible payment for the same should be made by allotment of agricultural land. The heading of the Chapter was, until its amendment "Compensation in respect of verified claim for agricultural land". Rule 49 as it was originally framed applied to all agricultural land whether rural or urban. The other rules lay down the principles of allotment. If this is so, clearly Rule 23 could not apply to agricultural land. Similarly the rule could not also apply to groves and gardens specially provided for in Chap. IX. Having regard to the scheme of the rules we have no hesitation in holding that Rule 23 though widely worded applies only to such classes of properties as were dealt with by Rule 22 but which could not be allotted under that rule, namely, urban houses, shops etc.

13. Mr. Vaidya has drawn our attention to the fact that the heading of Chap. VIII has been subsequently amended to read "Compensation in respect of verified claims for agricultural lands situated in a rural area." He, therefore, contends that urban agricultural land could not be said to be covered by this Chapter and, therefore, there was a power to sell such land under Rule 22. This amendment has been made by notification dated February 11, 1960, Gazette of India Part II S on February 20, 1960. But then this can be of prospective operation and cannot change the meaning of Rules 22 and 23. It may be noticed that in Rule 18 by the same notification addition of the words "in rural areas" was made retrospectively. Apart from the question whether Government can by rules retrospectively reopen claims already verified, the amendment to Chap. VIII in our view is not retrospective, as there is no clear indication that it was to be retrospective.

14. Mr. Vaidya then referred us to Rules 67 and 87 in support of his contention. Rule 67 gives power of sale to the Settlement Commissioner only if the agricultural land is "not required for allotment". The contention cannot apply in the present case since it was never alleged so far that it was not required for allotment. Rule 87 also does not help as it merely prescribes how sale of property was to be effected. The property must be saleable in order that Rule 87 must apply.

15. Similar view was taken by a Bench of the Punjab High Court in Bishan Singh S. Ladha Singh Vs. Central Government and Others, where the scope of Rules 22 and 23 was confined as above. We agree with respect with the decision and hold that that is the true scope and effect of the two rules.

16. Mr. Vaidya then referred to Section 20 of the Act and argued that apart from the rules, this section gives power of sale to the manager. The section is made "subject to any rules that may be framed by the Central Government." It was not intended to give uncontrolled power to the officer to sell any property that he liked. Rules have to be framed u/s 8 which relates to payment of compensation

and u/s 40 regarding the powers of respective officers and other matters. It is possible that if no rules at all were framed it would have been a different matter. But elaborate rules have been framed and yet no such power of sale has been given. The power of sale cannot, therefore, be exercised. In any event such an exercise of power would be conflicting with the rules framed under Sections 8 and 40 and therefore it could not be exercised. We, therefore, hold that the Settlement Officer had no power to sell the property under the rules and the Act.

17. Mr. Advani's second contention is that by notification dated November 17, 1960, Chap. VA has been added to the rules and makes provision for allotment of urban agricultural lands acquired u/s 12 of the Act. He says that even if the agreement to sell were valid, as no document has been executed and the property has not passed and since he is entitled to be allotted the land under the provisions of this chapter the proposed sale must fall through. Mr. Vaidya and Mr. Rane resist this contention on the ground that the State Government had deposited the price of the land and the bungalow before the rules came into force and the State Government is, therefore, entitled to performance of the agreement. In our view, mere agreement creates no title and it cannot be enforced against a third party who acquires independent right. Rule 34-D may in this connection be referred to. It is as follows :

(1) Where any land to which this Chapter applies has been leased to a displaced person and such land consists of more than one Khasra, the aggregate value of which exceeds Rs. 10,000 such portion of the land, the value of which does not exceed Rs. 10,000, as the Regional Settlement Commissioner may select, shall be allotted to such person :

Provided that where any such land or any part thereof has been sub-leased to a displaced person and the sub-lessee has been in occupation of that land or part thereof continuously from the 1st January, 1956, such land or part thereof, as the case may be, the value of which does not exceed Rs. 10,000, as the Regional Settlement Commissioner may select, shall be allotted to such sub-lessee.

(2) In selecting the area for allotment under Sub-rule (I), the Regional Settlement Commissioner shall have regard to the compactness of the area and other relevant matters.

(3) For the purpose of allotment of land under this rule, no Khasra shall be sub-divided.

18. It is admitted and borne out by the lease which is read to us, that petitioner No. 1 is a lessee. But it is said the value of the land is much more than Rs. 10,000 and therefore the petitioner is not entitled to be allotted the land. The answer to that is that the valuation is not made as required by the Act but is merely stated for the purposes of the petition. The bungalow which consists of about forty-four rooms and has a compound together with the agricultural land is purported to be sold to the State Government for Rs. 1,13,800. What is to be ascertained is the value of the agricultural land and that too honest and fair

value. The petitioner would be entitled to that portion of the land the value of which does not exceed Rs. 10,000. It is wrong, therefore, to say that they are not entitled to any of the leased land.

19. It is next contended that as petitioner No. 1 had filed a similar application under Article 227 of the Constitution challenging these very orders, second petition is barred by the doctrine of *res judicata*. In, any case it is urged that, as the said application was withdrawn as the claim in respect of rural houses was revived, they ought not to be allowed to urge the present claim. We are not impressed by either of the arguments. In *Daryao and Others Vs. The State of U.P. and Others*, the question was whether a petition under Article 32 to the Supreme Court is barred if a petition under Article 226 is dismissed by the High Court. It was held that a second petition would be barred if there is a prior decision on merits because that decision would continue to be binding on the party unless it is modified by a subsequent appropriate proceeding. If it is dismissed for want of prosecution or on the ground of laches or on the ground that the party has another remedy then the petition to the Supreme Court would not be barred. Where it is dismissed in limine, whether or not it is barred would depend upon the circumstances of each case; these principles apply to a second petition under Article 226 of the Constitution to the High Court. In para. 18 of the affidavit in reply it is not suggested that the application was heard on merits. In para. 11 of the petition the petitioners state that petitioner No.1 withdrew the said petition in view of the fact that the original verified claim in respect of rural buildings was revived and on account of the main consideration that the lands were required for the Civil Hospital and that

the petitioners were advised that in the event of the said lands were not required for a Civil Hospital the same will be permanently allotted to them at a reasonable price and that in any event they would be given suitable compensation for costly improvements effected by them.

In the counter affidavit it is denied that any such promise was made. Be that as it may, the said petition was not heard on merits nor had the Court expressed any opinion as a result of which the same was withdrawn. Apart from this as para. 13 of the petition shows, circumstances have changed as the State Government probably decided by the time the petition came to be filed to take another land for the hospital. Principles of *res judicata* will not, therefore, apply.

20. As to estoppel, the doctrine can only apply if some particular advantage had been obtained by the petitioners by the revival of their claim for rural buildings. The order is at exh. C in these proceedings. The claim for compensation regarding buildings was disallowed on the ground that the claimants had been allotted more than four acres of agricultural land. This was done under Rule 65 of the rules. Exhibit E shows that on September 21, 1959, the Regional Settlement Commissioner recommended to the Chief Settlement Commissioner that the said claim be revived as the petitioner would lose the land as it was proposed to be sold to the State Government. Then came letter from Regional Settlement

Commissioner to him on May 14, 1960 (exh. E-2) that the claim could not be revived as he would get the benefit of Rule 54(2) which we may state has no application. Finally on January 18, 1961, the Settlement Commissioner with delegated powers revived his claim in respect of rural buildings (exh. III). Therefore solicitor to the Government wrote (Exh. F) to the petitioner to let him know if under the circumstances he would withdraw his petition. This shows that revival of his claim was not conditional upon his withdrawal of the petition. Nor is it alleged in the counter affidavit that the understanding was that, if the claim was revived he would withdraw the petition. There can be no question, therefore, of estoppel. Apart from this, the order was inherently bad. Rule 65 has been interpreted by this Court to mean that the right to compensation is not lost under that rule merely because agricultural land is allotted. See *Totaram v. Regional Settlement Commr* (1959) 62 Bom. L.R. 439. It also prima facie appears that the said Rule 65 may even be ultra vires in that, it is in contravention of Section 8 of the Act, which provides that compensation shall be paid to the claimant in respect of his verified claims. Even before withdrawal of the previous petition in his reply to the Government Solicitor the claimant wrote to him that he should be granted the very land by way of compensation (see exh. F). The revival, therefore, of the rural claim does not come in his way.

21. Mr. Rane contended that under Rule 22 allotment of land is not compulsory the words being "shall ordinarily be allotted". We are not concerned with Rule 22. The petitioner claims the land under other rules which are applicable. Even if a discretion is vested in the Settlement Commissioner, the discretion has to be reasonably exercised. His claim, therefore, cannot be rejected. We are also not impressed by his argument that the petitioner has been shifting his ground. His contention is that the proposed sale is contrary to the rules and the scheme of the Act and, therefore, cannot be sustained.

22. Lastly, it is urged that the transaction is bona fide and we should not interfere. The circumstances have now changed. The State Government has clearly indicated that it has taken the decision of releasing the land and to acquire another land for the proposed hospital. It also appears that the petitioner would not have insisted on the land if it were wanted for the hospital. It would also appear that at least since 1953 he has been on the land and tended the fruit trees and in every probability has further improved the land. Under the circumstances we cannot refuse to interfere.

23. We, accordingly, set aside the orders dated April 12, 1960, and May 14, 1960, and direct the respondents not to dispossess the petitioners in pursuance of the said sale. We further direct that respondent No. 1 process his claim, in accordance with the rules.

24. Having regard to the circumstances there will be no order as to costs.