
(1974) 05 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 230 of 1973

Gobind Dev Mehta and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-05-1974

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 95(3)

Citation : AIR 1975 P&H 299

Hon'ble Judges : R.S. Narula, C.J.; M.R. Sharma, J

Bench : Division Bench

Advocate : L.S. Wasu and H.S. Wasu, for the Appellant; Kuldip Singh and R.S. Mongia, for the Respondent

Final Decision : Allowed

Judgement

M.B. Sharma, J.—The appellants are displaced persons from West Pakistan where they held urban and rural property. According to the Jamabandi for the year 1944-45, they had 42 kanals of urban agricultural land, residential house and three shops within the municipal limits of Multan City, There is no dispute regarding rural property left by them because in lieu of that property, they were allotted agricultural land in village Kharkhara, tehsil and district Hissar on 26th of August, 1949. In February, 1951, they filed a claim for Rs. 60,000/- in respect of the urban immovable property left by them. At that time, the Displaced Persons (Claims) Act, 1950 (hereinafter referred to as the 1950 Act) held the field. However, the authorities did not take any action for verification of the claim of the appellants in spite of various reminders. Vide his letter dated 29th of July, 1953 (Annexure C), the Officer in-charge Records, Ministry of Rehabilitation, Metcalph House, Delhi, informed them that their claim could not be verified as the 1950 Act was no longer in force, The appellants then filed an application through the District Relief and Rehabilitation Officer/District Magistrate, Bahraich, to the Chief Settlement Commissioner (Claims Wing) Metcalph House, New Delhi, praying therein that their claim for urban property should be verified. It is

alleged that the appellants remained under the impression that this application filed by them would receive sympathetic consideration of the authorities and their claim would be verified. No such action was, however, taken by the authorities concerned. The 1950 Act expired on May 17, 1953. For the claims which could not be verified under the 1950 Act, the Displaced Persons (Claims) Supplementary Act, 1954. (hereinafter referred to as the "Supplementary Act")¹ was passed on March 18, 1954. Section 4 of this Act provided that a Settlement Officer shall have jurisdiction to decide such claims or such classes of claims as may by general or special order, be transferred to him by the Chief Settlement Commissioner. Section 5 conferred revisional powers on the Chief Settlement Commissioner.

2. The appellants approached the Punjab Lands Claims Department praying that their claim application should be decided, but their prayer was not acceded to. The Settlement Officer/Managing Officer, Urban Section, Land Claims Office, Jullundur, merely reported that at the time of allotment of rural land to the appellants no area was allotted to them in lieu of the property by by them in village Taraf Ravi, Hadbast No. 101. Tehsil and District Multan, and as such, no area was deductible from their allotment. With these observations, the application submitted by them was filed. This fact bears repetition that there was no question of any deduction to be made from the allotment of rural land to the appellants. They were merely crying for getting compensation in respect of urban property left by them.

3. In November, 1963, the Government of India had issued a Press Note in which it was stated that the claims which had been filed in time containing the required Particulars but which could not be verified on account of reasons other than the default of the claimants would be verified provided a request in writing to that effect had been made prior to the expiry of the 1950 Act. This Press Note shows that there was no intention on the part of the Central Government to deny the displaced persons their legal rights to get their claims verified for Purposes of receiving compensation, provided they had made applications in time. On December 26, 1963, the appellants filed yet another application for setting their claim verified. It was returned by the Settlement Officer (Urban) with the endorsement dated 14th January, 1964, with the cryptic remark that no allotment could be made at that time. The appellants then sent several reminders to the Rehabilitation authorities repeating their prayer for the verification of their claim. They also approached the Chief Settlement Commissioner through a Member of Parliament. Shri Rama Reddy, who received a reply from the Chief Settlement Commissioner in which it was admitted that a Press Note had been issued in November, 1963 prescribing the last date for submitting applications for condonation of delay in filing compensation application and applications for rehabilitation grants. It was also admitted that in response to this Press Note, over 7000 applications were received by this office for condonation of delay in filing rehabilitation grant applications and after a careful consideration, a decision was taken that the delay should not be

condoned and the applications were consequently filed. The appellants filed Civil Writ No. 3343 of 1971 (Punj & Har) in this Court challenging the action of the authorities concerned in refusing to verify their claim. This petition was dismissed by a learned Judge of this Court on 27-11-1972. They have come UP in appeal under Clause 10 of the Letters Patent

4. Before the learned Single Judge, no written statement was filed on behalf of the respondents, nor did they appear to oppose the petition. The learned Judge observed that the executive instructions conferred no right on the appellants and their application was not addressed to the Settlement Commissioner who alone was competent to decide whether the delay in filing the application should be condoned or not. With these observations, he dismissed the petition filed by the appellants.

5. It is a matter of regret that some important statutory provisions on the subject were not brought to the notice of the learned Judge in Chambers. On October 9, 1954, the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) was brought on the statute book. Section 7 of this Act entitles the Settlement Commissioner to make an enquiry in the prescribed manner to ascertain the amount of compensation which an applicant is entitled to. Section 8 is couched in peremptory language. It lays down that a displaced person shall be paid out of the compensation pool the amount of net compensation determined under Sub-section (3) of Section 7 as being payable to him in the manner prescribed. Section 40(1) of the Act reads as under :--

"40. Power to make rules:

(1) The Central Government may by notification in the official Gazette, make rules to carry out the purposes of this Act."

In Sub-section (2) of this Section, some of the purposes are mentioned by way of illustration. In exercise of the powers conferred by Section 40 of the Act, the prescribed authority framed the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called the Rules). Chapter XVI of the Rules relates to payment of rehabilitation grants. Rule 95 of the Rules reads as under:--

"95. Rehabilitation grant to non-claimants :

(1) The Central Government may from time to time-

(a) specify the classes of displaced persons having no verified claim to whom rehabilitation grant may be paid and the extent and manner of payment of such grants.

(b) issue a notification inviting applications in the form specified in Appendix XXVI for the payment of rehabilitation grants from the class of persons referred to in Clause (a).

(2) Every application under Sub-rule (1) by displaced person who has left

immovable property in West Pakistan and who came to India before 31st July, 1952, shall be accompanied by-

(a) title deeds of the property or documentary evidence in respect of the title to the property left in West Pakistan in respect of which a claim could have been filed under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950):

(b) an affidavit giving particulars of such property;

(c) an affidavit containing reasons for the claim not having been filed in respect of such property under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950):

(3) No application under this rule for the payment of rehabilitation grant shall be entertained unless it is made within ninety days from the date of publication of the notification inviting such applications :

Provided that any such application may be entertained after the said date if the Settlement Commissioner is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

(4) Every application which is not made within time or which does not comply with the provisions of Sub-rule (2) shall be rejected summarily.

(5) Where the application is not rejected summarily under Sub-rule (4), the Settlement Commissioner after holding such inquiry as may be necessary shall make such order thereon as he may deem fit:

Provided that the Settlement Commissioner shall reject such application unless he is satisfied that the applicant was prevented by sufficient cause from filing a claim in respect of property left in West Pakistan under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950):

Provided further that no rehabilitation grant shall be payable in respect of any property other than agricultural land in any urban area which the applicant had failed to include in a claim filed in respect of other properties under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950)."

6. The aforementioned rule clearly provides that even those displaced persons who were not in possession of a verified claim were also entitled to receive rehabilitation grants, provided, of course, they could produce documentary evidence in respect of the title of the property left by them in West Pakistan and they file an affidavit containing reasons for the claim not having been filed in respect of such property. Sub-rule (3) of this rule provides that an application for payment of grant should be made within 90 days from the date of the publication of the notification inviting such applications, but the Settlement Commissioner was entitled to entertain even the time-barred applications if he was satisfied that the applicant was prevented by sufficient cause from filing the application in time.

7. It cannot be disputed that the appellants did apply for the verification of their

claim before the expiry of the Act. They reiterated their demand for grant of compensation when the Supplementary Act was in force. All the reminders sent by them in this behalf went unheeded. The order dated August 7, 1961, passed by the Settlement Officer shows that he did not even apply his mind to the matter in issue. Whereas the appellants claimed compensation for the urban property left by them, he observed that allotment of rural property in their favour was in order and no deductions from the allotment need be made. It was not a case in which the appellants had not made any application within time. Their numerous applications were already present with the authorities. As and when the authorities were invested with the jurisdiction to decide these applications on merits, it was their bounden duty to do so. If the claim could not be verified, the applications sent by the appellants could have been treated for payment of rehabilitation grant under Chapter XVI of the Rules. If a petitioner is entitled to set some relief, the same cannot be denied to him merely because he approaches the authorities concerned under one or other provision of the law. The rules of Procedure are meant to advance the interests of justice. They cannot be interpreted in a manner which whittles down the undisputed right vested in a claimant. I am of the considered view that the authorities should have at least considered the request of the appellants on merits instead of dismissing the same on grounds of executive propriety.

8. In reply to the application submitted by the appellants through Shri Rama Reddy, M.P., the Chief Settlement Commissioner wrote as under: --

"It is true that a Press Note was issued in November, 1963, prescribing the last date for submitting applications for condonation of delay in filing compensation applications (with regard to verified claim) and also rehabilitation grant applications. In response to this Press Note, over seven thousand applications were received for condonation of delay in filing rehabilitation grant applications. After careful consideration, a decision was taken that the delay should not be condoned and these applications were filed. As we are not at this late stage condoning the delay in filing rehabilitation grant applications. I regret to say that no assistance can be rendered to Sarvshri Gobind Dev and Bhagwan Dass."

9. No return has been filed on behalf of the respondents nor has the record been produced. The language of the above quoted reply given by the Chief Settlement Commissioner makes it abundantly clear that the 7000 applications were considered jointly and merely on administrative grounds it was decided not to condone the delay. Perhaps the authority concerned lost heart because of the large number of applications. The authorities under the Act who are charged with the duty of determining the amount, of compensation payable to the displaced, persona exercise quasi judicial functions. The question whether they should condone the delay or not has to be decided in each individual case in the light of its attendant circumstances. Furthermore, the decision has to be given on judicial considerations and not on the basis of executive expediency or inconvenience. The decision has to be given by the authority concerned without any outside,

interference or suggestions on the basis of administrative policy. While interpreting Section 40 of the Administration of Evacuee Property Act a Division Bench of this Court presided over by A.N. Bhandari, C. J. in Punjab State and Others Vs. Mehr Chand, laid down as under :--

""The power vested in the Custodian to grant or reject an application for confirmation is derived from the Legislature and the extent of any discretion in the exercise of such power must depend upon the language which the Legislature has chosen to employ. The language, as we have seen, confers a wide discretion on the Custodian to reject an application for confirmation if he is of the opinion that the transaction ought not to be confirmed. The discretion must, however, be exercised in accordance with established principles of justice and not arbitrarily or capriciously, fraudulently or without factual basis. It must be exercised in good faith and in the best interest of the persons affected. It must be exercised in consonance with principle of justice equity and good conscience. It must not cause unnecessary hardship. If discretion is exercised in accordance with these principles the Courts will be powerless to interfere. If, on the other hand, the Custodian bases his action upon an erroneous theory of law or if the action is so arbitrary, capricious, fraudulent, or grossly unjust as to constitute abuse of discretion justifying judicial interference, this Court will not hesitate to interfere by the exercise of its superintending power."

The aforementioned observations aptly apply to the instant case. Even if the appellants had filed an application before the Chief Settlement Commissioner, that officer instead of throwing it in the waste paper basket should have returned it to the appellants with the observation that the same should be presented to the Settlement Commissioner who alone was competent to consider whether the delay should be condoned or not. As already noticed, the appellants had approached almost every authority under the various Acts and their applications had not been disposed of because the various Acts under which they had been made had subsequently expired.

10. Article 14 of the Constitution is in the nature of a command to the States to afford equality before laws to every citizen. Every displaced person who had left property in Pakistan had the right to receive compensation from the evacuee pool. The laws regarding the grant of compensation are to be administered in such a manner that no discrimination results in the case of any displaced person. I have asked myself the questions -- What is the fault of the appellants in this case ? Did they not make applications in time ? Were they not entitled to compensation ? The obvious answer to these questions is that they were not at fault inasmuch as they had filed their applications for verifications of claims within time. The authorities could not press into service their own neglect or default in deciding these applications for urging that they formed a different class. In such a situation, the relevant statutory provisions, even if they are capable of more than one interpretation, should be applied in such a manner that a citizen should get equal protection of laws. If the appellants did have a right to

get rehabilitation grant under the Rules, then they cannot be non-suited merely because the Government of India issued a Press Note which is not contrary to the statutory provisions. In *Chief Commr. v. Madan Engineering Tool Products*. (1966) 68 PLR 253, the Court did not go into the question whether the Press Note was binding or not. What was held was that the Press Note did not apply to the facts and circumstances of that case. The Court observed-

"And when this Press note on its very face is inapplicable to the plot in dispute, whether the press note has a binding force of law as held in *Anand Singh v. Union of India*. 1965 DLT 293, may not be strictly necessary for the Court on the present occasion to consider and decide."

The other observations made in that case really help the appellants. They are-

"I must, however, point out that it is not in view of law in this Republic that whatever the Government says is the law a position which may prevail in some despotic systems of Government. In our democratic set-up even the Government itself is ruled by law and all its actions have to be justified by reference to law made in accordance with our Constitution. Law of our conception is a link between man and freedom and, broadly speaking, should be the will of the people expressed in accordance with our Constitution rather than mere will of the State as different from the people: for in the latter case it may well be an instrument of tyranny."

11. I am of the considered view that the authorities concerned did not exercise the jurisdiction vested in them under the law by dismissing the applications of the appellants.

12. For the reasons mentioned above. I allow this appeal and direct respondents to decide the question whether the appellants are entitled to set rehabilitation grant or not, and if they come to the conclusion that the appellants are in fact entitled to receive this grant to order its payment to them in accordance with law. The appellants will have costs of this appeal which are assessed at Rs. 300/-.

R.S. Narula, C.J.

13. I agree.