
(1964) 12 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 149 of 1964

Gurbux Singh

APPELLANT

Vs

Union of India and Other

RESPONDENT

Date of Decision : 02-12-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 12 P&H CK 0009

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : R. Sachar and S.S. Sandhawalia, for the Appellant; J.N. Kaushal and M.R. Agnihotri and Messrs H.S. Wasu and B.S. Wasu, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—The dispute which has been raised in this petition under Article 226 of the Constitution of India is concerned with the rival claims of the petitioner Gurbux Singh and the third respondent Dewan Singh with regard to urban property consisting of house No. E.Q. 35 in Pacca Bagh, Jullundur City, which has been described throughout by the petitioner as house No. E.Q. 35/2.

2. In order to appreciate the point which calls for determination, it would be necessary to set out the background of this controversy. The petitioner has been in occupation of House No. E.Q. 35 since 1947 as a displaced person. The petitioner also had a verified claim which on his own showing was finalised in 1950 and nothing remained due to him on account of his claim thereafter. This is the basis on which the Settlement authorities have proceeded and although it is challenged by the petitioner it has to be assumed for purposes of this petition that he is a non-claimant.

3. House No. E. Q./35 was offered to the petitioner presumably as an occupant for a sum of Rs. 6, 185/-, by a letter of the District Rent and Managing Officer, Jullundur, written to him on 30th of January, 1961 (Annexure B). Realising that

this valuation related to the adjoining house numbered as E.O. 35/2, the Managing Officer cancelled this provisional offer by his letter of 13th of March, 1961 (Annexure C). The petitioner challenged the revised valuation which had been put by the authorities but it was held by the Assistant Settlement Commissioner in his order of 24th of April, 1961 (Annexure D) that being a non-claimant the petitioner could not challenge it and the property had become saleable. The house had been put to auction on 20th of April, 1961, and was purchased by the third respondent Dewan Singh for Rs. 9,050/-. This price has been paid and a sale certificate has been issued to the third respondent in respect of this property.

4. The petitioner having failed in his revision petition before the Settlement Commissioner to challenge the valuation and also before the Central Government came to this Court in writ proceedings and his petition (Civil Writ No. 261 of 1962) was disposed of by Grover J. on 18th of September, 1962. As a good deal of argument is centred round the concession which was made by the then Advocate General Mr. Sikri, it would be well to reproduce the operative part of this order:

The learned Advocate-General has stated on behalf of the Union of India that the Department concerned is willing to transfer the property in question to the petitioner on payment of Rs. 10,443/- or to the respondent on payment of Rs. 9,050/-. On this assurance the learned counsel for the petitioner states that he does not wish to press the petition and it may be dismissed. The petitioner, is accordingly dismissed but in the circumstances the parties are left to bear their own costs.

5. It may be mentioned in parenthesis that the correct valuation of the suit property was found to be Rs. 10,443/- and not Rs. 6,185/- which figure in the first instance had been communicated to the petitioner. From this narration of events it would be obvious that what the petitioner challenged in Civil Writ No. 261 of 1962 was his right to be allotted the property for the value of Rs. 6,185/-. I understand Mr. Sikri's concession to mean that the Department was prepared to consider the transference of the property either for Rs. 10,443/- or Rs. 9,050/-, and certainly not for Rs. 6,185/-. The petitioner in view of the assurance that the Department would consider the respective claims of the petitioner and the third respondent withdrew his petition and thereby abandoned his right to assert that the valuation of the property was Rs. 6,185/.

6. Viewed in this perspective, there can be no doubt that the first contention of Mr. Sachar, the learned counsel for the petitioner, must fail. According to the learned counsel, the order of Grover J. must be construed to mean that Mr. Sikri had accepted the petitioner's claim for allotment of the disputed property for a sum of Rs. 10,443/- which sum he says that he has always been prepared to pay for the property since then. The Advocate General, for the Department, only said that the claims of the petitioner and the third respondent would be considered for transference of the property either for Rs. 10,443/- or Rs. 9,050/-

respectively. This matter was considered by the Regional Settlement Commissioner thereafter on 28th of May, 1963. It may be mentioned at this stage that the definition of "allotable property; in rule 22 of the Displaced Persons (Comp. & Rehab.) Rules had come to be amended in the meantime. Under the unamended rule, any evacuee property shall be "allotable property" if it was in the occupation of a displaced person and its value did not exceed Rs. 10,000/-. By the amendment introduced on 2nd of June, 1962, the value was raised to Rs. 15,000/-. The Regional Settlement Commissioner considered that as the auction had taken place before the amendment was introduced the petitioner could not claim its benefit by allotment of the property for Rs. 10,443/-. The view taken by the Regional Settlement Commissioner cannot be supported as it has recently been held by a Letters Patent Bench of this Court of Dua and Khanna, JJ. in *Mela Ram v. Union of India* L.P.A. 92 of 1963, deci. on 19th of February, 1964, that the amended rule will apply right up to the stage of proceedings u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act. This order of the Regional Settlement Commissioner was affirmed in appeal by the Chief Settlement Commissioner on 15th of July, 1963, and the petition preferred u/s 33 of the Act was dismissed by the Central Government on 4th of October, 1963. Thus, the amended rule would be applicable up to 4th of October, 1963.

7. The matter, however, does not rest here. There is a clear line of distinction between rules 25 and 26 of the Displaced Persons (Compensation and Rehabilitation) Rules, Rule 25 deals with the transfer of acquired property which is allotable property to person in occupation thereof holding a verified claim while rule 26 deals with a situation where the transfer is claimed by a person who is not a verified claimant. Whereas the authorities are under a statutory duty to transfer the property to a verified claimant under rule 25, in lies within the discretion of the authorities to do so in favour of a person who is not holding a verified claim under rule 26. The petitioner had exhausted his claim which had been satisfied by payment in cash. It has been ruled by a Division Bench of this Court of Dulat and Pandit, JJ. in *Harbakhsh Singh v. The Central Government* (1922), 64 P.L.R. 629, that the expression "may" which may be taken to read as "must" in rule 25 cannot be so construed in rule 26 where the discretion remains with the allotting authority. Though the Regional Settlement Commissioner in his order of 28th of May, 1963 has observed that the petitioner could not claim the benefit of the amended rule, which view I think is untenable under the Division Bench authority of this court to which I have adverted, the Chief Settlement Commissioner in appeal, however took into consideration the circumstances that a binding contract having come into existence between the third respondent and the Department the petitioner could not as a matter of right claim the allotment of the house for Rs. 10,443/-. This order, in my view, is indicative of the reason which impelled the Chief Settlement Commissioner to withhold the exercise of discretion in favour of the petitioner. The petitioner could not as a matter of right ask for allotment of the property being a non-claimant and could only move for

its transference as a displaced person in sole occupation of the evacuee property. For reasons which it is not open for this Court to re-examine the Chief Settlement Commissioner has reached the conclusion that the claim of the third respondent is preferable to that of the petitioner. In such a situation, I do not feel justified in interfering under Article 226 of the Constitution.

8. This petition therefore, fails and is dismissed. In the circumstances, there would be no order as to costs.