
(1999) 09 DEL CK 0065
In the Delhi High Court
Case No : C.W.P. No. 973 of 1976

Harbhagwan Dass

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

Citation : (1999) 6 AD 211 : (1999) 82 DLT 242

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. P.N. Talwar, for the Appellant;

Judgement

C.M. Nayar, J.—This petition is directed against the Order dated December 10, 1975 passed by Smt. Kusum Prasad, Officer with delegated powers of Central Government, Department of Rehabilitation, New Delhi by which the application of the petitioner u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was dismissed. Application for setting aside of the Order was also dismissed on March 3, 1976.

2. The facts stated in the Order of Shri B.B.Agarwal, Assistant Settlement Officer with delegated powers of Settlement Commissioner, Jamnagar House, New Delhi read as follows:-

"Briefly stated, the facts of the case are that the property No.B-VIII-595, Lakar Bazar, Ludhiana was an acquired evacuee property and is comprised of two shops and a residential portion. One of the shops was allotted to Shri Har Bhagwan das. The other shop and residential portion was allotted to Shri Arjan Dev Khanna. Both of them are displaced persons and claimants. In the first instance, the entire property was transferred to Shri Arjan Dev Khanna and conveyance deed issued to him. When a statement of account was issued to Shri Har Bhagwandas, he found that the value of the property was not adjusted from his compensation. He, Therefore, filed an appeal. Shri Parshotam Swaroop, the then Dy. CSC, accepted the appeal vide his order dated 26.3.62, set aside the statement of

account issued to Shri Har Bhagwan das and transfer of property in favor of Shri Arjan Dev Khanna and sent back the case for determining the eligibility of the parties on the property for the processing of the compensation case of Shri Har Bhagwan das. After the said order, the property was transferred to Shri Har Bhagwan das and the value of the property was adjusted from his compensation. Shri Arjan Dev Khanna having come to know this fact, preferred an appeal against the said adjustment and the transfer of the property in favor of Shri Har Bhagwan das. Learned Chief Settlement Commissioner accepted the appeal and remanded the case for decision afresh according to law.

The case of Shri Arjan Dev Khanna is that the transfer of the entire property in his favor and subsequent issue of conveyance deed in his favor is irrevocable and cannot be interfered with or cancelled. He is a claimant of a verified claim under DP(C&R) Rules, 1955. Besides, he never suppressed any facts or obtained the property by fraud or mis-representation in any way, there fore, the question of cancellation of conveyance deed u/s 24 of the DP(C&R) Act, does not arise. On the other hand, the case of Shri Harbhagwan Dass is that the property is one unit and also valued as such, should be transferred to the rightful claimant under the rules. His compensation is higher and nearer to the value of the property and as such he is the rightful claimant for the transfer of the property under Rule 30 of the D P (C & R) Rules."

3. The Assistant Settlement Commissioner accepted the plea of the petitioner that the property in dispute is one single unit and also valued as such and rejected the contention of Shri Arjan Dev Khanna regarding division of the property. However, no relief was granted to the petitioner in view of the findings as recorded below:-

"Rule 30 under which this case is to be dealt with has since been abrogated vide amendment No.L.XXIII dated 3.8.63. Now I don't find any provision under which the property could be transferred to either of the claimants. Learned counsel for Shri Har Bhagwan das Bhagwan das has drawn my attention to the ruling of Auth. CSC(Shri S.N.Behl) dated 13.4.72 in revision No.Auth.CSC/APP/Pb./14/72. In this case I find that the dispute was between claimants and nonclaimants. In the present case both of the parties are claimants. Obviously, facts of the case are different and as such the said ruling is not applicable to the proceedings pending before me. I am afraid it would not be lawful for me to determine the eligibility for transfer of the property under Rule 30 which no more exists. Taking into consideration of this technical difficulty, I am of the view that the property in dispute cannot be transferred to either of these claimants. Request of both the parties in this regard Therefore, stands rejected."

4. The petitioner as well as Shri Arjun Dev Khanna felt aggrieved and filed two revision petitions before Assistant Settlement Commissioner with delegated powers of Chief Settlement Commissioner, New Delhi which were rejected vide order dated December 10, 1975. The application was filed for setting aside the order which was also dismissed on March 3, 1976. The same reads as under:

"Before Smt. Kusum Prasad, Officer with delegated powers of Central Govt., Department of Rehabilitation, New Delhi.

Application for restoration of case u/s 33 of the D.P.(C&R) Act, 54.

No.38(10)/73-IMP.(A)

Sh. Harbhagwan Dass

ORDER:

3.3.76

This is an application for setting aside of dismissal order dated 10.12.1975 on account of non-pursuance by the applicant in case No.38(10)/73-IMP.(A). It has been stated that the case was not pursued on 10.12.1975 on account of the fact that counsel for the petitioner omitted to enter this case in his diary. This is the point taken by the petitioner in his affidavit also. No other reason has been given. I find that the petitioner is competent only to sign an affidavit on points that are within his own knowledge. An affidavit from the petitioner to the effect that his counsel did not enter the case in his diary has no meaning. Furthermore the petition was dismissed on 10.12.1975 and the restoration application is being made on 3.3.1976, i.e. almost after 3 months. No reason for delay has also been given. No good cause has been made out to justify the restoration of this petition and the application is Therefore dismissed.

sd/-

(Kusum Prasad)

Director"

5. The petitioner is aggrieved that the Chief Settlement Commissioner did not adjudicate the matter on merits and only dismissed the same for default.

6. I have heard learned counsel for the petitioner. There is no appearance on behalf of any other party. The impugned order deserves to be set aside as it is contended that the matter was dismissed in default at 11.34 A.M. and the petitioner has furnished sufficient Explanation which was also not accepted and the application for setting aside of the dismissal order was also rejected. The reasons as stated in the subsequent order cannot be sustained in law as the petitioner has been able to substantiate the cause of delay in filing the application. There is no one to oppose the prayer of the learned counsel for petitioner that the matter deserves to be remanded back to the Central Government for disposal in accordance with law. It is ordered accordingly. The Central Government shall now decide the appeal of the petitioner on merits after due notice to all the parties concerned. The present petition is allowed in the above terms. Rule is made absolute. There will be no order as to costs.