

(1971) 08 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No. 149D of 1963

Hari Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-1971

Acts Referred:

Citation : AIR 1972 Delhi 76 : (1971) 7 DLT 305 : (1972) 1 ILR Delhi 386

Hon'ble Judges : Rajinder Sachar, J

Bench : Single Bench

Advocate : H.R. Dhawan and P.S. Mahendra, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) In this writ petition the main question that arises for determination is the implementation to be placed on Explanation I to Rule 30 of the Displaced Persons Compensation and Rehabilitation Rules, 1955 (hereinafter to be called the Rules) and whether a non-claimant is entitled to the allotment of a portion of the Government built property under the Rules.

(2) The facts are that Quarter No, 6/82, Rajinder Nagar which is a Government built property was occupied by the petitioner, Hari Singh and Respondent No. 5, Mohar Singh. The cost of the entire quarter was adjusted against claim payable to Shri Gulab Singh, father of Respondent No. 5. This order was, however, set aside by Shri Jagil dra Singh, Deputy Chief Settlement Commissioner vide his order dated 8-11-1958, who remanded the case with a direction that further enquiry relating to the divisibility of the property may be made in presence of both the parties.

(3) By his order dated 18th March, 1960 the Managing Officer held that the transfers of portions in occupation of each allottee i.e. petitioner and respondent No. 5 should be allowed to them respectively. Both petitioner and respondent No. 5 appealed against the said order but the Assistant Settlement Commissioner by his order dated 25th May, 1960 held that the house in dispute was divisible and

that the same should be transferred to both the petitioner and respondent No. 5. Both the petitioner and respondent No. 5 filed the revision petition which was, however, rejected by Mr. Sapra, exercising the powers of Chief Settlement Commissioner by his order dated 6th October, 1960 who confirmed the orders that the property in dispute was divisible and as same principles of divisibility had been applied to the other similar quarters made in Rajinder Nagar, there was no reason to interfere with the orders of the authorities below. Thereafter the Managing Officer took up the question of the division by metes and bounds between the petitioner and respondent No. 5. The Managing Officer by his order dated 1-6-1962 (Annexure F to the petition) divided portion as A.B.C.D. which was to be transferred to the petitioner and the other portion C.D.E.F. which was to be transferred to Respondent No. 5. The petitioner was dissatisfied with the order of division made by the Managing Officer and filed an appeal which was disposed off by the Assistant Settlement Commissioner by his order dated 7th September, 1961, who held that the property was divisible and that there was no irregularity in the action of the Managing officer. Further revision by the petitioner was also dismissed by the order of Shri Purshotam Saroop, exercising the powers of Chief Settlement Commissioner dated 2nd January, 1963 who held that the mode of partition determined by the authorities below was correct. The revision before the Central Government by the petitioner was rejected by the order dated 9th January, 1963 and it was thereafter that the present petition has been filed in this court. It may be mentioned that the petition raised more or less similar points as in the other writ petition C.W. 148-D/63 relating to the Government property in Rajinder Nagar. It may also be mentioned that the other writ petition was decided by me vide order dated 2nd February, 1971, wherein dismissed the writ petition as I found no merits in it.

(4) In the present petition Mr. Dhawan again sought to urge the same points which were urged and rejected by me in Civil Writ No. 148-D of 1963.

(5) The first point that Mr. Dhawan contended was that admittedly the petitioner was a claimant while respondent No. 5 was a non-claimant and Therefore he alone had a right to the transfer of the property in dispute in view of Rule 30 of the Displaced Persons Compensation and Rehabilitation Rules (hereinafter to be called the Rules). The argument was that Rule 30 contemplates that only a person who holds a verified claim is entitled to have the allotment made to him and as respondent No. 5 is admittedly not holding any verified claim, allotment made to him is without any authority or law. In my view there is no validity in this contention. Rule 30 reads as follows :-

"If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allot able property, the property shall be offered to the person whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired evacuee property which is allot able as may be available : Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition

the property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him. 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 allot able property hold verified claims and some do not hold such claims."

(6) A reading of proviso would show that if property can be suitably partitioned the authorities concerned shall partition the property and allot to each such person the property so partitioned having regard to the amount of net compensation payable to him. Explanation I further makes it clear that the provisions of this rule shall also apply Where some persons hold verified claims and some do not hold such claims. The plain meaning of Rule 30 read with Explanation is that if property can be suitably partitioned the Settlement Commissioner should partition the property and allot to each such persons. even when one of them may hold a verified claim and other does not hold a verified claim. A reference to various rules in chapter 5 (where Rule 30 is to be found) of the Rules will show that though the person . holding a verified claim is normally preferred at the time of allotment of the allot able property, the interest of persons who do not hold a verified claim but is a displaced person has also been kept in view. Thus whereas Rule 25 provides for the transfer of a property in the sole occupation of a person to whom compensation is to be paid, Rule 26 provides for the allotment of a property which is in sole occupation of a displaced person but who does not hold a verified claim. Rule 31 contemplates cases where acquired evacuee property which is an allot able property in occupation of more than one person, none of whom holds a verified claim. Now Rule 30 read without Explanation would only cover the cases of persons who hold verified claim because the main part of Rule 30 provides that the property shall be offered to the person whose net compensation is nearest to the value of the property. Proviso to Rule 30, however, makes an exception and provides where such property can suitably be partitioned, the Settlement Commissioner shall partition the property and allot to each such person the portion of the property so partitioned having regard to the amount of net compensation payable to him. Explanation I, however, makes the applicability of this rule even in a case where property is in occupation of a person holding a verified claim and another who does not hold such claim. The argument, Therefore, of Mr. Dhawan that in spite of the Explanation I read with proviso specifically providing that if property can be suitably partitioned, the same can be allotted both to a person who holds a verified claim and to the other occupant who does not hold a verified claim, non-claimant has no right to get it allotted even if the property can be suitably partitioned does not stand scrutiny either in principles or interpretation. If the argument of Mr. Dhawan was to be accepted there was hardly any need for adding Explanation I to the Rule 30, As it is, without Explanation I, Rule 30 only purports to give a right of claiming allotment of the portion of the property to the persons who hold verified claim. If even after the addition of Explanation I to the Rule. it is still to be held to be applicable only to persons holding verified claims,

the whole purpose of adding Explanation I will be defeated and the whole thing will be an exercise in futility .It is well settled that one cannot attribute superfluity to the rule making authority. One cannot assume that Explanation I to Rule 30 was being added by the rule making authority but the same was otiose and of no practical purpose. It seems clear to me that whole purpose of adding Explanation I to Rule 30 was to make it clear that in case an allot able property can be suitably partitioned the same shall be partitioned and allotment made to each such person even where a person in occupation of it holds a verified claim and another does not hold a verified claim. This is the view I took in Civil Writ 148-S of 1963 decided on February 2, 1971. Shamsheer Bahadur, J. has also observed in Amar Singh Girdhari Lal Vs. Union of India and Others, .

"The contest between a claimant and a non-claimant when they are both in occupation would be determined by the question of divisibility and divisibility alone. It is clearly provided in the Explanation to R. 30 that the principle is applicable to a property which is partly held by a verified claimant and partly by a person not holding such a claim."

(7) The counsel for the petitioner, however, in support of his arguments that non-claimant has no right under Rule 30, sought to lay stress on the words "having regard to the amount of net compensation payable to him" contained in the last line of the proviso to the Rule. The argument of the learned counsel was that the words mean that even if the property can be suitably partitioned, the same will be allotted to such persons but "having regard to the amount of net compensation payable to him", meaning thereby that as there is no net compensation payable to a non-claimant, no portion of the property will be allotted to him because of the words mentioned above. This argument would really make Explanation I superfluous and meaningless. Moreover Mr. Dhawan sought to suggest that if in spite of the words "having regard to the amount of net compensation payable to him" if a no claimant was entitled to allotment, these words will serve no purpose and will be useless. In my view there is no merit in this. The words "having regard to the amount of net compensation payable to him" in proviso only means that when property can be suitably partitioned, the portion of the property so partitioned will be allotted to a person having regard to the amount of net compensation payable to him. That is to say that at the time of allotting respective portions the authorities will have regard to the amount of net compensation payable to an applicant. But this does not mean that these words denote that if the portion is occupied by a non-claimant, he is not entitled to any allotment even if the property can be suitably partitioned. If this argument of Mr. Dhawan was to be accepted it will mean that these words, "having regard to amount of net compensation payable to him" would really control and subordinate the whole Rule 30 and Explanation. That decidedly is not the way of interpreting a provision. These words have to be read in a way harmoniously with the Explanation and in such a manner that they do not destroy the mandate and meaning of the Explanation to Rule 30, so as to denude it for all its practical purposes. Mr. Dhawan referred me to the meaning of words

"having regard to" given by the Privy Council in 1943 page 164. This authority was also referred by the Supreme Court in 1964 Supreme Court 1305, where their Lordships observed that the expression having regard to has no more definite or technical meaning than that of a practical usage and only requires that the provisions to which regard must be had should be taken into consideration. This ruling does not, Therefore, support Mr. Dhawan.

(8) I was also referred to 1963 Punjab, 256, in support of Mr. Dhawan's contention. This authority, however, has no relevancy because all that was decided was that Rule 30 would apply even in cases where a property in occupation of one person holding a verified claim and another who is non-claimant and that it is not necessary for the applicability of Rule 30 that the property must be in occupation of more than one person holding a verified claim. In this authority no question arose whether the property could be suitably partitioned or not. The question of divisibility was not even suggested in that case. 1964 Punjab, 87 was referred to. This authority followed earlier authority of 1963 Punjab 246 and all that was held was that by virtue of Explanation to Rule 30 applies to a case in which one person holds verified claim and other person does not hold verified claim. In this case also the question of divisibility of the property arose and as a matter of fact Proviso was not even referred to in the judgment as it was said to be not material for the decision of that case. Thus the contention of Mr. Dhawan Therefore that the respondent No. 5 was not entitled to the allotment of the portion because he was a non-claimant cannot be up-held and is rejected.

(9) The next argument of the counsel for the petitioner was that property had not been partitioned by the authorities concerned as required by law. There is no merit in this contention as well. A reference to the orders will show that the Ministry of Rehabilitation which had built these similar quarters in Rajinder Nagar had laid down a basis for the division of these quarters. Mr. Dhawan contended that no independent decision has been made by the Assistant Settlement Commissioner and other authorities while deciding whether the property could be suitably partitioned. I am afraid that the record does not support his contention. Mr. Dhawan made a reference in the order of Assistant Settlement Commissioner wherein he has written that it has been decided by the Ministry in case of Rajinder Nagar quarters that each of the occupant should be transferred the portion in his occupation. He sought to make out that Assistant Settlement Commissioner has not himself held that the property could be suitably partitioned. This is not so, as Mr. Seth, Asst. Settlement Commissioner has himself also found that the quarters in question is divisible. Similarly Mr. Sapra, Chief Settlement Commissioner, referred to the fact that similar quarters in Rajinder Nagar have been divided on a certain basis and as the quarter in dispute was also identically the same, the same principle of divisibility should apply to it and he consequently rejected the petitioner's contention that the quarter was not divisible. A reference to Annexure F to the petition will further show that the Managing Officer at the time of actual division of the property

went to the spot and inspected it and after giving opportunity to both the petitioner and the respondent No. 5, divided the property in the respective portions. It, Therefore, cannot be argued by Mr. Dhawan with any degree of plausibility that the authorities concerned did not themselves decide the question of divisibility but were influenced by some extraneous factor. This argument of Mr. Dhawan, of course, proceeded on the assumption that the question of divisibility of this property had to be found independently by the authorities concerned and that the government and the Ministry had no say in the matter. This assumption, however, is based on misapprehension of the facts on record as well as the correct legal position. Admittedly the property in dispute is government built property within the meaning of Rule 36. Rule 38 provides that the Central Government may by a general or special order specify the manner in which any kind of property may be disposed off. It has been clearly mentioned in the order in Annexure C I that Ministry had issued instructions declaring that quarters identical like the quarters in dispute were to be divisible on a certain basis. The argument which was raised before Mr. Sapra and which was rejected was that the quarter in dispute was not specifically included in the list of quarters. In my view Rule 38 does not provide that there has to be a specific order regarding each particular government built property. Rule 38 contemplates either a general or a special order. A general order having been issued by the Ministry that the government built property in Rajinder Nagar was to be divided on a certain basis, the said instruction will cover all similar and identical quarters built in Rajinder Nagar like the present, even if the number of the present quarters in dispute was not included in any particular list. It was not disputed that all identical quarters of the same nature and in the same location and area as the quarter in dispute and built by the government have been ordered to be divided in a certain particular manner. If that be so, there is" no logic or equity why the same principle should not apply in dividing the quarter in dispute. It is not the counsel's case that the criteria or the principle laid down by the Ministry have not been followed or that the same have been discarded in this particular case. As a matter of fact it was the grievance of the counsel that though the principle laid down by the Ministry has been followed, it should not have been laid down as the authorities themselves should have decided whether the property could be suitably partitioned or not. I have already held that the authorities did come to a independent conclusion that the property could be suitably partitioned. Even in the alternative, if it was to be held that the property has been held to be divisible on the basis of principle laid down by the Ministry, there is nothing wrong with it because under Rule 38 such a power is with the Ministry and the property has been held to be divisible by applying the same principle as have been held to apply in innumerable other identical cases of the property situate in Rajinder Nagar.

(10) The next argument was that a small portion had been allotted to the petitioner who was a claimant and a big portion to respondent No. 5 who was not a claimant. In my view this is a question of divisibility and the mode and manner

of doing so and this matter is not open to challenge in the writ Proceedings as was held by me in Civil Writ 148-D of 1963 following the earlier decision L.P.A. 12-D of 1959 decided on 24th February, 1961.

(11) There is, thus, no merit in the petition and the same is dismissed with costs. Counsel's fee Rs. 100.00.