

(1965) 08 BOM CK 0013
In the Bombay High Court
Case No : Spl. C. Application No. 113 of 1965

Hashomal Mulohand

APPELLANT

Vs

J.S. Bajaj

RESPONDENT

Date of Decision : 10-08-1965

Acts Referred:

Displaced Persons (Claims) Act, 1950 — Section 10, 16, 2, 5, 6
Evidence Act, 1872 — Section 1, 114
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (1966) MhLj 713

Hon'ble Judges : D.V. Patel, J; B.D. Bal, J

Bench : Division Bench

Advocate : N.H. Gursahani, S.P. Kanoga and S.H. Gursahani, for the Appellant;
G.N. Vaidya, for the Respondent

Judgement

D.V. Patel, J.—This petition seeks to challenge the orders made in revision under the Displaced Persons Claims Act and the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The petitioner is a displaced person and he filed claims under the Displaced Persons Claims Act, 1960. The claims were in respect of different properties. The first order verifying his claims was made by Mr. R. K. Bhojraj on July 15, 1962. The application before him concerned the agricultural property of the claimant at several places inter alia at Patoro No. 2 and Patoro No. 3 in Johi Taluka. His claim in respect of Patoro No. 1 in the same Taluka was verified by Mr. M L Agarwal, Settlement Officer, on August 3, 1954. In respect of Patoro No. 2 the petitioner claimed ten acres of agricultural land and that was accepted by the Officer on the basis of the sale-deed of 1937, which was marked Exh. J. It was stated to be un-surveyed land but was irrigated by stream. He equated this claim to two standard acres and eight annas. In respect of Patoro No. 1 his claim related to two annas, eight pies share equivalent to twenty-two acres and twenty-six gunthas. He was supported in this claim by sale-deed and dhal receipts showing the survey number claimed by him. The Officer, therefore, accepted his ownership of these lands and calculated the equivalent standard

acres into 8 acres, 4.51/80 annas. At Masudero he claimed eight acres and twenty gunthas of un-surveyed lands in respect of which the petitioner had produced sale-deed to show his title. This claim was accepted by the Officer. In respect of Hiro Khan he claimed three acres of un-surveyed land. On the same ground the Officer also accepted his claim. In respect of Masudero claim he allowed two standard acres and two annas while in respect of Hiro Khan he allowed twelve annas of standard acre.

2. In pursuance to the acceptance of these claims necessary statements of account were issued to him and adjustments were made in his account. On August 20, 1962, the Settlement Officer reviewed the earlier verification re Patoro No. 2 suo motu and rejected the claim on the ground that the sale-deed of 1937 was an old document and could not be given any weight when the record from Pakistan does not support him. This order is at Exh. D-1. In respect of the second claim, regarding Patoro No. 1 Mr. L. K. Wason, Additional Settlement Commissioner, on the file having been forwarded to him reviewed the order suo motu proceeding ex parte and again relying on the official record from Pakistan rejected his claim, on July 23, 1962 This order is at Exh. D-2. Thereafter notice was issued to the petitioner intimating that further action would be taken for determining the excess amount paid to the petitioner and for its recovery. Again on April 4, 1964, Mr. K. L. Wason, Additional Settlement Officer, reviewed his two other claims in respect of Masudero and Hiro Khan which were accepted by Mr. Bhojraj and rejected these claims also on the ground that these lands were un-surveyed and because of the instructions that they are not to be verified. The petitioner challenges the orders made by the authorities rejecting his claims.

3. In this case it is not necessary to consider the technical objections raised on behalf of the petitioner. The first contention that has been pressed by Mr. Gursabani is that the Pakistan record cannot be relied upon by the Officers as evidence in the case because the record does not fulfill the conditions laid down by the Indian Evidence Act. He argues that the authority exercising the powers under sections 6 and 7 of the Displaced Persons Claims Act, 1950, is acting as a quasi-judicial authority and is, therefore, bound by all the rules of evidence and unless the evidence produced in a case satisfies the requirements of the Indian Evidence Act, it is not admissible. He relies in support upon the cases reported in S.J.S. Uppal, P.C.S., Colonisation Officer, Jullundur Vs. Chief Settlement Commr., Ministry of Rehabilitation, Govt. of India, Delhi and Others, and Gulab Singh v. Chief Settlement Commr. A. I. R. 1064 P&H 515.

4. Section 2, sub-clause (a) defines the claim to be the assertion of a right of ownership or interest in immovable property. .. Section 6 enjoins a duty upon Claims Officer to decide such cases or classes of cases as may be transferred to him by the Central Government or by an officer employed in this behalf by the Central Government, By sub-section (2) he is required to hold a summary enquiry into the cases transferred to him and after taking such evidence and examining such documents, as may be necessary to pass such orders as he

deems fit in relation to the verification of the claim and the valuation of such claim and the decision of the Claims Officer, subject to revisional powers of the Chief Claims Commissioner, is declared to be final. Section 7 vests in him certain powers which he may exercise while deciding such claims. It enables the Officer to summon, enforce and examine him on oath, require him to produce documents or discover the same, requisition any public record from any Court or office; issue commissions for the examination, appoint guardians of any person who is a minor or of unsound mind. Section 10 bars the jurisdiction of civil Court in respect of any matter which is committed to the care of the Claims Officer under the Displaced Persons Act. The subsequent Act of 1954 (Displaced Persons (Claims) Supplementary Act, 1954) practically reproduces the same provisions and provides for the decision of the claims, which were left undecided in the earlier Act.

5. Having regard to the provisions of the Act and the matter that is determined by these Officers there cannot be any doubt that the Officers are deciding matter which relate to important right of property of an individual and they have to determine the matters required to be decided in a judicial manner. It is true that they are not Courts but, even so, it cannot be gainsaid that they are exercising quasi-judicial functions and are required to act judicially in discharging their functions. So much was decided and, with respect, rightly in *Colonisation Officer v. G. S. Commissioner* AIR 1967 P&H. 186. The question, however, is, whether merely because the Officer performs quasi-judicial function, must it necessarily follow that he is bound by the rules of the Evidence Act? Section 1 of the Evidence Act extends it to all judicial proceedings in or before any Court but not to affidavits presented to any Court or Officer nor to proceedings before an Arbitrator. Having regard to the provisions of section 1 of the Indian Evidence Act it is impossible to hold that the Evidence Act strictly applies to enquiries before a Claims Officer or a Settlement Officer under these two Acts. No doubt, Mr. Gurshahani is right in saying that important rights of property are determined by these Officers and that by section 7, sub-section (3) such an Officer is deemed to be a Court for the purpose of sections 480 and 482 of the Criminal Procedure Code and his proceedings are deemed to be judicial proceedings under sections 193 and 228 of the Indian Penal Code. Even so, he is not yet a Court and this is emphasised by the fact that he is merely deemed to be a Court. The deeming section is limited to specific purpose for which the Claims Officer is deemed to be a Court. It is impossible, therefore, to hold that he is a Court for all purposes connected with the Act. He has to make enquiries in accordance with the rules framed under the Act in pursuance of powers vested in the Central Government u/s 16 of the Act. Rules do not lay down that he shall be bound to follow the strict rules of Indian Evidence Act in any particular respect. The copies of Revenue Records were exchanged under an agreement arrived at between the two Governments as duly authenticated. The copies of the Pakistan Record, therefore, even if not authenticated as required by the Indian Evidence Act, cannot be held not such evidence as he would not be entitled to consider. Indeed

what weight should be given in a given case to the copy is a different matter.

6. It appears that from time to time instructions were issued by the Head Office for the determination of claims under the 1950 and 1954 Acts. Instruction No. 3 provides that the burden of proof which lies on a claimant to show his ownership could be discharged by producing the following kinds of evidence:

1. A copy of an extract from Record of Rights by a Mukhtiarkar.
2. Authenticated Bills of Land Revenue which should show the claimant as the owner of the land.
3. Receipts of payment of Land Revenue in the name of the claimant.
4. Sale deeds (Registered).
5. Civil Court Decrees.
6. Private Agreements of exchange or partition, if they are duly stamped and registered in Pakistan.
7. Oral evidence.

7. It is well settled that mere entries in the Record of Rights do not make or unmake title to property. The entries in them afford merely evidence of title and are presumed to be true. [See *Datto Shivram Gosavi Vs. BaBa Saheb Malhar Deshpande*, and AIR 1941 55 (Privy Council)]. An entry in the Record of Rights is presumptive evidence because of section 135-J of the Bombay Land Revenue Code and this presumption can be displaced by better evidence. Experience also shows that very often for a long time after a transaction is reported, entries are not made in the Record of Rights because of the attitude of petty Revenue Officers. In most cases, therefore, where more important evidence which establishes title of a claimant is produced by him, mere absence of the name of the party in the Record of Rights would not furnish material evidence to doubt the correctness of the proof furnished by the claimant in support of his title. If there is no provision similar to our Land Revenue Code in respect of the record produced from West Pakistan then even the presumption is not available though it may arise u/s 114 of the Evidence Act depending upon circumstances. This fact has also been emphasised by a Division Bench of the Punjab High Court, and again we say with respect rightly, in *Gulab Singh v. C. S. Commissioner* AIR 1964 P&H 615, where effect of entries in jamabandi record were considered. This view is in accord with that of the Privy Council who had often to consider the effect of such record. The entries, therefore, in the Pakistan records are relevant and very often important evidence of facts stated therein but they cannot be treated as conclusive. Though, therefore, strict rules of Evidence Act do not apply to enquiries before these Officers, they are bound to decide cases on the basis of well settled legal principles of appreciating evidence. Any departure from these principles cannot be justified by the contention that the matter is within their jurisdiction and their decision is final.

8. Coming then to the first claim which was accepted by Mr. Bhojraj in respect of Patoro No. 2 the only ground on which the petitioner's claim is rejected in review is that the sale-deed which he produced in the enquiry before him was an old document and could not be given weight, as the revenue record did not support the claim. What has happened in the present case is that the record from Pakistan which has been furnished to the Settlement Officer does not contain entries in respect of all the survey numbers of the village. The record contains the names of only evacuees and survey numbers standing in their names. These records also do not show when the original entries were finalised and when last, the entries were corrected to show changes in ownership. It is also possible that some persons in collusion with petty revenue officers may not show the property as evacuee properties and appropriate it as belonging to them. Put shortly, the records are most incomplete and do not furnish material assistance in supporting or negating the ownership of a person. The only ground given for setting aside the earlier order, as is seen from Exh. D-I is that the sale-deed produced by the claimant is an old document, and his name does not appear in the copy of the Record from Pakistan. It is difficult to appreciate how a title obtained ten years prior to the date of leaving Pakistan could be regarded as an old title. There is no presumption that titles of persons must disappear within a given number of years. The fact that a person who has become owner of a certain property has lost his rights to that property must be established by proper evidence and not by mere absence of the name of the person in such copies of revenue records. The order, therefore, dated August 20, 1962, at Exh. D-I, in respect of Patoro No. 2 is wholly unjustified and cannot stand.

9. Coming to the order in respect of Patoro No. 1 dated July 23, 1963, at Exh. D-2, the same contentions are advanced by Mr. Gurshahani. The order of Mr. Agarwal shows that the petitioner had produced two sale-deeds dated October 13, 1960, and April 20, 1963, in support of his claim. This would show that he had purchased this property in the year 1936. As we have observed above, in order to show that the said title has been lost positive evidence must appear. Apart from the fact that there is no positive evidence, the petitioner had also produced Dhal receipts showing the payment of dues made by the claimant for the years 1945 and 1947. There could, therefore, possibly be no justification for rejecting this claim also.

10. Mr. Vaidya raised the only contention available to him that the Claims Officer's decision is made final u/s 6 of the Displaced Persons (Claims) Act and it cannot be questioned before any Court. In the present case it is not the order of the Claims Officer that is being questioned but it is the order in review that has been questioned. Apart from it, powers exercised under the Acts being quasi-judicial powers, if any irregularity or illegality comes to the notice of the High Court under its supervisory jurisdiction, it is entitled to quash these orders.

11. It is equally true, as Mr. Vaidya says, that we are not exercising appellate jurisdiction and we, therefore, cannot reappreciate the evidence. Even so, in the

present case, the fundamental principles underlying the evidentiary value of documents have been disregarded and the orders, therefore, cannot stand. The third argument urged by Mr. Vaidya is that there has been inordinate delay in coming to this Court. He says that the orders Exhs. D-1 and D-2 were passed on August 20, 1962 and July 23, 1963, and the application was filed on December 15, 1964, and therefore we should not interfere. In pursuance of these orders attempts were being made to determine the excess amount paid to the petitioner and it is ordered to be recovered only now. Even apart from this, each case must depend on its own facts. If justice requires it and there is no other adequate relief available which fact cannot be denied in this case, the Court cannot refuse to interfere. We, therefore, hold that orders Exhs. D-1 and D-2 dated August 20, 1962, and July 23, 1963 cannot stand.

12. The third order dated April 4, 1964, at Exh. E-1 is again a review order against the verification of claims by Mr. Bhojraj dated July 15, 1952, in respect of Dehs Masudero and Hiro Khan. These relate admittedly to un-surveyed lands. The claims have been rejected "in accordance with instructions that claims for un-surveyed lands are not to be verified." Displaced Persons (Claims) Act, 1950, and the Displaced Persons (Compensation and Rehabilitation) Act, 1954, apply to all claims of ownership to property or rights in immovable property and no exception has been made to any kind of property falling within these classes. u/s 5, a displaced person is entitled to register his claim and it is the duty and jurisdiction of the Claims Officer to determine and verify the claim. No exception is also made by the Supplementary Act of 1954. The last Act is the Displaced Persons (Compensation and Rehabilitation) Act of 1954 and this Act defined a "verified claim" by section 2, clause (e) to mean any claim registered under the Displaced Persons (Claims) Act, 1950, in respect of which a final order has been passed under that Act or under the Displaced Persons (Claims) Supplementary Act, 1954, subject to certain exceptions. u/s 7 when an application for compensation is received, duty is cast upon the Settlement Commissioner to make an enquiry in the manner prescribed to ascertain the amount of compensation payable in respect of the verified claim. In doing so he is required to have regard to the prescribed scale of compensation, the nature of the verified claim and other circumstances of the case and once the compensation is determined the claimant is entitled to be paid compensation in one of the modes described thereunder. Even rules framed under the last Act of 1954 do not provide that claims to un-surveyed lands should not be regarded as property and in respect of such lands a displaced person would not be entitled to claim compensation.

13. Mr. Vaidya has referred us to clause 7 of the undated instructions issued which read as follows:

Rights in Khas Mokal Kaccha Lands, leasehold rights and mortgage rights are not to be valued.

This instruction was further amplified in 1958 by defining Khas Mokal Land as:

This was the land situated in the Katcha Un-surveyed tracts by the Bide of the River

"Indus". This was disposed of every year by Government on rights of cultivation only and the allottees had no right of ownership over such land. Claims for this land are not maintainable.

So far as the instruction relates to land falling within the definition of Khas Mokal Land there can be no objection inasmuch as the Legislature intended that a displaced person should be able to claim compensation in respect of immovable property or a right to such property. If there was no right in the property there could evidently be no claim to compensation. Whether or not the instruction so far as it relates to leasehold or mortgaged rights can be regarded as valid, is entirely a different matter and does not fall for decision. Without realising the underlying principles of clause 7 of the instructions only on the ground of the lands being un-surveyed, the claim has been rejected. It is not found as a fact by the authority that these lands fall within the ambit of definition of Khas Mokal Lands in that the claimant had no right of ownership in the land and that therefore, it did not fall within the definition of the word "claim" under the Displaced Persons (Claims) Act, 1950. This order, obviously, therefore, cannot also be sustained. In the case of this order it is not even possible for Mr. Vaidya to contend that there is undue delay in coming to this Court.

14. In the result we quash all the three orders Exhs. D-1, D-2 and E-1. There will be no orders as to costs.