

(1972) 11 DEL CK 0028
In the Delhi High Court
Case No : Civil Writ No. 429-D of 1964

Holomal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-11-1972

Acts Referred:

Citation : AIR 1973 Delhi 238

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : P.N. Talwar, Ad, for the Appellant; R.L. Tandon and M.L. Bhargava, for the Respondent

Judgement

1. This is a petition under Article 226 of the Constitution of India by one Holomal, resident of Quarter No. 54, Dwarka Nagar Colony, Jabalpur, State of Madhya Pradesh. This petition is concerned with the allotment and transfer of the said quarter No. 54 under the provision of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The petitioner was a claimant whereas the other occupant of the quarter, Shri Hirdho Mal, respondent No. 4 was a non-claimant. The relevant rules for transfer of this property were contained in the Displaced Persons (Compensation & Rehabilitation) Rules, 1955, in Rules 30 and 31. As the rules originally existed, the petitioner was entitled to get the transfer of the property between cause the property was allottable property. and the petitioner was the only claimant in the said property. It may be recalled that the provisions of Rule 30 were changed from time to time but as long as that rule existed every amendment of the rule would favor the petitioner.

2. The facts of the case are that initially the price of the property appears to have been adjusted by the Settlement Officer on or about 15th September, 1959. The fourth respondent who was the other occupant of the house was apparently dissatisfied with the manner in which the property had been dealt with by the authorities and moved the Assistant Settlement Commissioner, Indore, claiming that he was entitled to the transfer of the property. This application was

dismissed on the ground that the property had already been transferred. An appeal was taken by the fourth respondent to Shri Parshotam Sarup, Deputy Chief Settlement Commissioner who held on 8th August, 1962 that the order holding that the property had already been transferred was not sustainable. According to him the two persons i.e. Holomol and Hirdhe Mal were both occupants of the quarter and their eligibility had to be determined somehow before the quarter could be transferred. He accordingly accepted the appeal and set aside the order of the Officer as well as the order transferring the property to the petitioner and directed the eligibility of the parties to be determined under Rule 30 of the said Rules.

3. After remand, the Assistant Settlement Commissioner decided the case again in favor of Holomal, petitioner. He held that although respondent No.4 had got a claim arising out of agricultural property. the same could not be used for built-up properties. He also held that at the initial stage. the fourth respondent did not even have this claim. On a further appeal to the Deputy Chief Settlement Commissioner. It was held that the property had been rightly held to be transferable to the petitioner. One of the questions urged before the Deputy Chief Settlement Commissioner was that Rule 30 and Rule 31 had been repealed and there had been an amendment in Rule 22. by which an Explanation had been added to that rule stating that if two or more persons were in occupation of an allotable property, the same should be sold. It was held by the Deputy Chief Settlement Commissioner that the rule was not retrospective and did not affect a pending case. Certain passage from Maxwell's Interpretations of Statutes. 9th Edition as well as the judgment to Shamsher Bhahadur. J. in Civil Writ No. 444-D/59 (Punjab) were relied upon.

4. The fourth respondent was still unsatisfied and applied to the Central Government u/s 33 of the Displaced Persons (Compensation & Rehabilitation) Act. 1954. The Deputy Secretary to the Government of India exercising power under this section accepted the revision application and held that the rule. as applied by Sh. Parashotam Sarup had been wrongly applied and the Rules had to be applied as on the date of the decision and not as on the date of the institution of the proceedings. Certain authorities were relied upon for the institution of the proceedings. Certain authorities were relied upon for this decision the Deputy Secretary directed the property being in occupation of more than one person to be put to sale and was not allotable. In other words the Government applied the Explanation to Rule 22 of the Rules as introduced in August 1963, to the facts of the case.

5. The petitioner being aggrieved by this decision has moved this petition under Article 226 of the Constitution of India. In support of the petition, the learned counsel urges that the amendments to the Displaced Persons (Compensation & Rehabilitation) Rules. 1955, were that Rules 30 and 31 were deleted and an Explanation was added to Rule 22 which are all amendments not applicable to the facts of this case. It is urged that the law has to be applied as it stood not he

date on which the compensation application of the petitioner was first dealt with by the authorities acting under the Act. This matter has been dealt with the number of cases already and there is also a Division Bench judgment of this court reported as *Amar Singh v. The Union of India* 69 PLR 132 : AIR 1967 Del 110. In that case it was held by the bench that when Rule 31 was abrogated during the pendency of the proceedings it took away the discretion of the authority to allot the building. There is no vested right in a displaced person to get the property transferred in his favor. There is another decision which is even more authoritative namely in *Chanan Dass v. Union of India* 69 PLR 1 : AIR 1967 P&H 297. which is a full Bench decision. It was held in that decision that the amended provision of the law has to be applied and not the unamended provision. It was further held that an amendment made in the rules pending a decision u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, had to be decided in accordance with the rule which existed at the time of the final appellate decision.

6. On the other hand, it was held earlier by Pandit. J. sitting alone in *Asa Nand Vs. The Central Government of India and Others*, that even the amended rule could be considered by the revising authority. The reasoning in this judgment is based on the consideration of the rules and on the assumption that there is no vested right created by the Rules. Thus till a matter has been finally decided the changed rule has to be applied as it exists at the conclusion of the case and not as it existed at the beginning. On the other hand, in applying a statute which creates a vested right the provision of Section 6 of the General Clauses Act would apply and an amendment or repeal taking away such a vested right would be ineffective. These decisions would have been enough to decide this case against the petitioner except that reference has been made to a recent decision of the Supreme Court which I now refer to.

7. In *Hukam Chand etc. Vs. Union of India (UOI) and Others*, . It was held by the Supreme Court that the Explanation added to Rule 49 to the Displaced Persons (Compensation and Rehabilitation) Rules by means of the amendment made in 1960 could not be made retrospective. This decision was based on the conclusion that a subordinate body which exercises subordinate legislative power under the rule-making power in a statute has no power to make a rule which is retrospective in operation. Such an authority is circumscribed by the authority is circumscribed by the authority contained in the rule-making powers and cannot create a fiction. On the view it takes to agricultural land could be retrospective and thus the cancellation of an allotment on the application of the rule was also bad.

8. The learned counsel for the petitioner urged that on the similar reasoning, the repeal of rules 30 and 31 and the adding of the Explanation to Rule 22 and also not be made retrospective so as to apply to his case. It is a matter of degree as to how far a law can in fact be said to be retrospective or retroactive. If it affects a settled right it can be said to be retroactive. If a certain right has to be

retroactive. If certain right have not so far been crystallised into conclusive or binding right but are in the course of adjudication or decision before the appropriate authority, it cannot be said that those right also are protected from being varied or destroyed by the changed law or rules.

9. As may be observed from the history to Rules 30 the said rule was amended form the time to time till it was finally abrogated altogether in 1963. At one time the rule related to net compensation and at another it related to gross compensation. Again at one time it fixed the rate of the highest compensation and later the person with the nearest compensation was to get the property. thus the applicability of this rule in any given circumstances would be very difficult to determine. because the rule is subject to so many changes in its history. the question to be decided is: How is the deletion of such a rule to be applied to a given situation? In this connection it is important to remember that the majority of the cases to which this rule was to apply were cases of displaced persons who had been settled in the properties in question long before the rules were actually brought into force. The Displaced Persons (Compensation & Rehabilitation) Act was passed in 1954 and the rules were made in 1955. but displaced persons were already occupants in evacuee property sometime between 1947 and 1955. It would be extremely odd if different cases were to result in different decisions merely because of the date on which the file happened to be picked up by the officer concerned. In my view the law must be applied in a uniform manner till the decision has been finally arrived at. Now if the petitioner's case had been finally adjudicated before rules 30 and 31 were abrogated and Rule 22 was amended. I would be satisfied that the petitioner would be governed by the rule even though it was later deleted altogether. However the mere facts that the petitioner's compensation application was dealt with u/s 7 or 8 of the Act before the rule was abrogated and the amount was also adjusted against the compensation amount would in my view not mean that the matter has been finally adjudicated. The other party i.e. respondent No.4 who was the other occupant in the property had a right to agitate the matter even though the rule did not support him at the time. It was a matter of the chance that the rule became very favorable to that respondent during the pendency of the proceedings. The learned counsel urges that in fact even the amendment of the rule did not favor respondent No.4 because he was a non-claimant and even as the rule stand respondent No.4 has a right to get the transfer of the property. this is correct; but one cannot overlook the fact that respondent No.4 will have a right of bidding for the property. which he could not have done if the property came to the petitioner by outright transfer. Thus. I must hold that the matter was sub judice before the authorities till it was finally adjudicated in appeal and thus had to be decided according to the rules which finally existed at the time of the appeal.

10. It may be recalled that Section 6 of the General Clauses Act provides for the situation that arise when enactment are repealed. Now Rule 30 and Rule 31 have been repealed. and the question is does this section have any bearing on the

right of the petitioner? It is necessary to note that the section only applies to Central Acts or Regulations and the rules made under the displaced Persons (Compensation and Rehabilitation) Act 1954. are neither a Central Act nor a regulation. Even if one assumes that the rule is to be saved even after repeal to the extent provided by Section 6 of the General Clause Act one would have to determine whether the petitioner had a right vested in him prior to the repeal itself. In view of the fact that the petitioner is only entitled to get his compensation under the Act. I would have that the petitioner right did not extend to anything more than getting his compensation in accordance with the Act. This means a that compensation could be paid to him u/s 8 of the displaced personal (Compensation and Rehabilitation) Act. in case or in bonds. Or by transfer of property of the in any other manner as might be prescribed. There is not vested right him view to get the compensation by transfer of the property in dispute because it is equally open for the compensation to be paid on any other form. I would thus hold that the petitioner did not have a vested right to get the particular property involved in this case transferred to him but he always or the other. In this view of the matter I hold that Section 6 would not apply even if the repealed rule is considered as a statute.

11. In view of this conclusions, this writ petition fails but I leave the parties to bear their own costs.

12. Petition dismissed.