

(1970) 09 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2733 of 1969

Inde Kaur

APPELLANT

Vs

Chief Settlement Commissioner, Punjab, Rehabilitation
Department Jullundur and Others

RESPONDENT

Date of Decision : 18-09-1970

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 10
East Punjab Evacuees (Administration of Property) Act, 1947 — Section 41, 5A

Citation : AIR 1971 P&H 256

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : H.S. Toor, for the Appellant; B.S. Jawanda, for the Respondent

Judgement

1. The facts leading to the filing of this writ petition are that one Mal Singh son of Rattan Singh, whom the petitioner Ind Kaur claims to be her father, was an allottee of 9-61/4 Standard Acres of land. Later on, this allotment was reduced to 4-143/4 units and the rest was declared to be excess with him, but that excess land was purchased by him. Mal Singh executed a general power of attorney on 11-2-1965 in favour of Kartar Singh, father-in-law of Mehman Singh, respondent No. 4. On 18-6-1965. Kartar Singh as attorney of Mal Singh made a gift of some property including 4-143/4 S. As. Of land standing in the name of Mal Singh as a quasi-permanent allottee. On 2-7-1966, Mal Singh died. On 30-8-1966, the petitioner Inde Kaur applied for a permanent Sanad in the capacity of successor-in-interest of Mal Singh claiming herself to be his daughter. On 22-10-1966, Sanad regarding the permanent proprietary rights of the estate of Mal Singh was granted by respondent No. 3 to the petitioner, Respondent No. 4, Mehman Singh, went up in appeal against the order of the Naib Tehsildar-cum-Managing Officer (respondent NO. 3) dated 22-10-1966, whereby the Sanad was granted to the petitioner and the Assistant Settlement Commissioner with power of Settlement Commr. Punjab, Jullundur, vide his order, dated 1-7-67 (copy Annexure "B" to the writ petition) dismissed his appeal with the observation that the gifting of the

disputed land did not seem to be correct and on that score the permanent proprietary rights obtained by the petitioner could not be quashed. However, respondent NO. 4, Mehman Singh, succeeded in his revision petition u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954), hereinafter called the Rehabilitation Act, and the Chief Settlement Commissioner, Punjab, Jullundur, vide his order, dated 11-8-1969, set aside the order of the Naib Tehsildar-cum-Managing Officer, dated 22-10-1966, and that of the Assistant Settlement Commissioner, dated 1-7-1967, and ordered that permanent rights with respect to 4-143/4 S. As, of land be conferred upon Mehman Singh. It is this order of the Chief Settlement Commissioner, dated 11-8-1969 (copy Annexure "D" to the writ petitioner), which has been challenged through this writ petition at the instance of Inde Kaur petitioner.

2. Respondent No. 4 Mehman Singh, conceded that he did not dispute the status of the petitioner as the daughter of Mal Singh. So on facts there is no dispute. Therefore, this Court is called upon to decide only the legal contentions raised by the parties.

3. Mr. H. S. Toor, learned counsel for the petitioner, has urged that alienation by gift, sale or will of a property, allotted to a person on a quasi-permanent basis, by an allottee was strictly prohibited by Section 5-A of the East Punjab Evacuees' (Administration of Property) Act 1947 (East Punjab Act No. XIV of 1947), hereinafter called the 1947 Evacuees' Act: para 4 (c) of Notification No. 4892-S, dated 8-7-1949 issued under the 1947 Evacuees' Act Rehabilitation Department; and Section 41 of the East Punjab Evacuees' (Administration of Property) Act, 1950, hereinafter called the 1950 Evacuees' Act. He has further urged that the conditions imposing such restrictions regarding alienation by the above mentioned Acts were specifically preserved by Section 10 of the Rehabilitation Act. Before proceeding further, it will be pertinent to reproduce below, for facility of reference, the relevant provisions of the above mentioned Acts -

4. Section 5-A of the 1947 Evacuees' Act reads as follows:

"5-A(1) No, sale, mortgage, pledge, lease, exchange or other transfer of any interest or right in or over nay property made by an evacuee or by any person in anticipation of his becoming an evacuee, or by the agent, assign or attorney of the evacuee or such person, on or after the fifteenth day of August, 1947, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorised by him.

* * * * *"

Para 4(c) of Notification No. 4892-S, dated 8-7-1949, provides as follows:

(a) * * * * *

(b) * * * * *

(c) not, except as provided in Clause 5 below, transfer or charge the land by any sale, gift, will, mortgage or other private contract, but may lease the land for a period not exceeding three years and, with the consent in writing of the Custodian or Rehabilitation Authority first had and obtained, lease the land for more than 3 years. Any lease made by the allottee will not exonerate the allottee from his liability to pay rent or to observe the covenants and conditions of this allotment. The lease will, however, automatically terminate when for any reason the allotment terminates."

Section 41 of the 1950 Evacuees' Act provides as under:

"41. Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian."

"10. Where any immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published.

(a) by the notification of the Government of Punjab in the Department of Rehabilitation NO. 4895-S or 4892-S, dated 8th July, 1949, or

(b) * * * * *

and such property is acquired under the provisions of this Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition, and the Central Government may, for the purpose of payment of compensation to such displaced person, transfer to him such property on such terms and conditions as may be prescribed.

* * * * *."

The learned counsel for the respondent No. 4, in reply, has urged that in the Rehabilitation Act no such restriction is incorporated regarding the alienation of the allotted property and after the promulgation of the Rehabilitation Act, provisions of all other acts, rules and notifications stood repealed. In support of the contention, the learned counsel has referred me to a Division Bench decision of this Court reported in *Sewaji v. Sardarni Gurdial Kaur* (1967) 69 PLR 517, and he has pointedly relied upon paras 14, 15 and 16 of the judgment, which read-

"14. Nor does the finding of the learned Senior Subordinate Judge to the effect that the agreement for sale was void as being in contravention of the bar against transfer of the land created by the Punjab Government notification dated July 8, 1949, which still applied to the property, appear to be correct. Learned counsel for the respondent sought to justify the said finding of the Court below on three grounds. It was firstly contended by him that the Punjab Act prohibited the sale.

No such provision in the Punjab Act has been show to us. Moreover there does not appear to be any force in this argument as the Punjab Act had been repealed long before the agreement in dispute was executed between the parties. It is secondly argued by counsel that a similar provision exists in Section 41 of the 1950 Act, which is in the following terms

(This section has already been reproduced in the earlier part of this judgment).

15. Reliance was lastly placed on para. 4 (c) of the Punjab Government notification dated July 8, 1949, which had already been quoted in an earlier part of the judgment. It does stand to reason that if there is an absolute statutory bar to the transfer of certain property, an agreement in contravention of such a statutory prohibition would be void u/s 23 of the Contract Act as being opposed to public policy and its specific performance may be refused by Courts on that ground. The question still remains whether there was in fact any statutory bar or prohibition of the kind pleaded by the respondent at the time of the execution of the agreement? All arguments of such prohibition have been based either on the provisions of 1950 Act or on notifications made under rules framed by the Punjab Government in exercise of its powers under sub-section (2) of Section 22 of the Punjab Act, which are alleged to have remained in force on account of various subsequent repealing and saving provisions. IN view of the law that has been authoritatively laid down by their Lordships of the Supreme Court in *Basant Ram Vs. Union of India (UOI)*, as follows:

"It is not in dispute that the evacuee property in these two villages was notified u/s 12 (1) of the Act on March 24, 1955. The consequence of that notification is that all rights, title and interest of the evacuees in the property ceased with the result that the property no longer remained evacuee property. Once therefore the property ceased to be evacuee property it cannot be dealt with under the Central Act No. 31 of 1950 or the Rules framed thereunder. The property in these two villages became part of the compensation poll after the notification of March 24, 1955 an could be dealt with under the provisions of the Act and any variation or cancellation of any lease or allotment thereafter could only be made u/s 19 of the Act. This is the position which emerges on a consideration of Sections 12, 14, 16 and 19 of the act after the notification u/s 12 (1) was made with respect to the evacuee property in these two villages on March 24, 1955."

16. It is, therefore, apparent that neither any provision in the 1950 Act nor of any rule made thereunder or deemed to have been made thereunder, can furnish any good defence to the claim o the appellants to enforce the agreement of sale which was admittedly executed long after the publication of the abovesaid notification of acquisition of the property by the Central Government u/s 12(1) of the Rehabilitation Act. It is also significant that in para 3 of 1949 notification of the Custodian (Punjab) for the administration of evacuee property, it was specifically stated that the allotment under the law was to remain in force so long as the property vested in the Custodian and remained subject to the provisions

of the Evacuee Act. That situation admittedly came to an end of March 24, 1955. Thereafter, the rights of the quasi-permanent allottees became subject to the Rehabilitation Act. IT has been conceded by the counsel for the respondent that there is no provision in the Rehabilitation Act imposing any absolute statutory bar to the transfer of the property which might be acquired by a quasi-permanent allottee in lieu of compensation payable to such an allottee. The finding of the trial Court to the effect that the transfer sought strictly forbidden by law at the time of the execution of the agreement is, therefore, wholly incorrect and is set aside."

5. A perusal of the above-quoted observations of Narula, J., who spoke for the Court, makes it clear that the learned Judge decided the matter on the assumption that all the restrictions imposed by the previous acts, Rules and Notifications came to an end after the promulgation of the Rehabilitation Act and since there was no provision of alike nature imposing restrictions on alienation Act, there was no bar on the right of an allottee to alienate the land allotted to him on quasi-permanent basis. It seems that the provisions of S. 10 of the Rehabilitation Act were not brought to the notice of the Bench or at least have not been considered b it in detail. The wording of S. 10 of the Rehabilitation Act (which has already been reproduced above) makes it clear that till such time the said property is transferred to him in lieu of the payment of compensation, he shall continue to hold and possess such property on the same conditions which were applicable before the property in question was acquired under the Rehabilitation Act by the Central Government, and the conditions under which the land, subject-matter of the present writ petition, was allotted to Mal Singh deceased are incorporate in Notification No. 4892-S, dated 8-7-1949. It has not been contended by the learned counsel for the respondent No. 4, that such conditions were varied by any other notification or Act. If anything the 1959 Evacuees" Act clearly preserved such conditions by enacting Section 41. The only argument that is raised is that the whole of this Act with its various provisions stood repealed at the time of the enforcement of the Rehabilitation Act, but there is no dispute with this proposition. What has to be kept in mind is that Section 10 of the Rehabilitation Act expressly preserved the conditions, which were binding on an allottee in possession of the evacuee property before the same was acquired under the Rehabilitation Act and to that extent, provisions of Section 41 of the 1950 Evacuees" Act, as also para 4(c) of Notification No. 4892-S, dated 8-7-1949, stand impliedly incorporated in Section 10 of the Rehabilitation Act. Thus I hold that on the date on which gift was effected to Mal Singh in favour of respondent No. 4 there existed a bar regarding alienation of the property held by him for effecting fit, sale etc. and the gift in question is void and inoperative.

6. For the reasons recorded above. I allow this writ petition and quash the impugned order, dated 11-8-1969 (annexure "D" to the writ petition) of the Chief Settlement Commissioner, but in the circumstances of this case make no order as to costs.

7. Petition allowed.