
(1968) 04 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 614 of 1963

Kalyan Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 30-04-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 04 P&H CK 0028

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Advocate : H.L. Sarin with Mr. Bhal Singh, A.L. Behal and H.S. Awasthy, for the Appellant; R.N. Mittal, for Respondents No. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—The dispute in these proceedings under Articles 226 and 227 of the Constitution of India relates to an acquired evacuee property, house No. 9109-9110. ward No V., Ambala Cantt, which admittedly constitutes a single indivisible unit and was originally allotted to Kalyan Singh petitioner and Ram Rakha Mal, father of the respondents 4 to 6 both being displaced persons holding verified claims. The Rehabilitation Department had originally valued this property at Rs. 5,180/ and in accordance with rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules 1955 (hereinafter referred to as "the Rules"; transferred it to the said Ram Rakha Mai on 27th September, 195b, as the net value of his verified claim (Rs. 5,014/-) was nearer to the reserve pike of the property than the net value of the claim held by Kalyan Singh, Rs 4,502/-). In the meantime Kalyan singh bad appealed against the fixation of value of the house at Rs. 5,190/-. His appeal was accepted and the valuation was reduced to Rs. 4, 552/-. As a result of that reduction in the valuation, the Assistant Settlement Commissioner, by his order dated 23rd February, 1959 (Annexure "B" to the petition), transferred the property to Kalyan Singh as the value of his verified claim was nearer to the value of the house as compared to the verified

claim held by Ram Rakha Mal. This order was, however, passed in absence of Ram Rakha Mal, who was not a party to the appeal that was preferred by Kalyan Singh against the valuation of the house. This transfer in favour of Kalyan Singh was confirmed by the department by subsequently issuing the conveyance deed in his favour which was duly registered by the Sub Registrar, Ambala on the 7th March, 1960. On coming to know that the property had been transferred to Kalyan Singh by the order of the Assistant Settlement Commissioner dated 23rd February, 1959 referred to above, Ram Rakha Mal went up in revision to the Chief Settlement Commissioner, who set aside the impugned order dated 23rd February, 1959, and remanded the case for hearing the appeal of Kalyan Singh after giving due notice to Shri Ram Rakha Mal," being of the opinion that the impugned order which affected the lights of Ram Rakha Mal could not have been made in his absence and without hearing him. After the remand, both the parties were heard by Shri Inder Singh Bedi, Settlement Officer exercising the delegated powers of Settlement Commissioner. As in the meantime the relevant rule 30 had been amended and the amended rule provide that, the displaced person, who was entitled to higher compensation, would be entitled to the transfer of the property, Shri Inder Singh Bedi, by his order (Annexure E") dated 9th November, 1962, held that Ram Rakha Mal was entitled to the transfer of the property in dispute. Ram Rakha Mal having unfortunately died, the property was ordered to be transferred to his successors in interest. It may be mentioned here that Ram Rakha Mal had left behind two sons (Roshan Lal respondent No. 4 and Tilak Raj, respondent No. 5), besides a daughter Shriimati Sita Rani respondent No. 6. It is in the affidavit of these respondents that in obedience to this order of Shri Inder Singh Bedi the property was transferred to respondents 4 and 5 alone as their sister Samiti Sita Rani, respondent No. 6, had given up her claim. His petition for revision having been dismissed by the Chief Settlement Commissioner and the Central Government, Kalyan Singh has now approached this Court assailing the validity of the transfer of the disputed house in favour of the successors-in-interest of Ram Rakha Mal deceased.

2. In this petition which was instituted as far back as 8th of April, 1963, the transfer in favour of successors in-interest of Ram Rakha Mal was challenged mainly on the following grounds:

- (1) That the transfer made in favour of the petitioner Kalyan Singh having been confirmed by issue of the conveyance deed, which was duly registered, could not be cancelled;
- (2) That rule 30 as amended had no applicability to the facts of the present case and could not be applied retrospectively;
- (3) That Ram Rakha Mal having died, his children, respondents 4 to 6, were not entitled to the transfer of the property as they were not the holders of a verified claim; and
- (4) That, in any case, respondents 4 to 6 were not entitled to the benefit of the

amended rule 30, as none of them was in occupation of the property.

3. Most of the points in controversy stand concluded by various Full Bench decisions of this Court. In *Shrimati Balwant Kaur v. The Chief Settlement Commissioner* 1963 (65) P.L.R. 1141, it was ruled by a Full Bench of this Court that an order of transfer could be reversed by the Chief Settlement Commissioner, even where a Sanad had been granted or a sale deed had been executed, affirming the rule laid down in *Bara Singh's case* 1959 (61) P.L.R. 127. This rule was affirmed by their Lordships of the Supreme Court in *Mithoo Shahni and others v. The Union of India and others* 1964 (66) P.L.R. 695, where it was observed; "if an order of allotment which is the basis upon which a grant is made, is set aside it would follow that the grant, cannot survive, because in order that that grant should be valid it should have been effected by a competent officer under a valid order. If the validity of that order is effectively put an end to it would be impossible to maintain that the grant still stands.

4. In *Chanan Dass v. The Union of India and others* 1067 (69) P.L.R. 1; another Full Bench of this Court held that rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, as amended applies to pending proceedings upto the appellate stage and though not in revisional proceedings. Admittedly, the impugned order of Mr. Inder Singh Bedi holding that the successors in interest of Ram Rakha Mal were entitled to the transfer of the property on the basis of the revised rule was made in the appellate proceedings of which he was validly seized. In view of this decision, Mr. Sarin had to concede that the rights of the parties to the transfer of the property in dispute had to be determined on the basis of the amended rule. He also could not dispute the fact that in view of the recent Full Bench decision of this Court in *Gurbachan Singh v. Union of India and others* 1967 (69) P.L.R. 708, his contention that the respondents 4 to 6, being the heirs and successors-in-interest of their father Ram Rakha Mal, could not get advantage of his verified claim under rule 30 referred to above, is no longer valid. According to the majority decision in *Gurbachan Singh's case* supra an heir who succeeds to the estate of a deceased person in whose name the claim had been verified being fully entitled to all the lights and benefits which would accrue under those claims would be the holder of the verified claim and thus entitled to the benefit to rule 30. Their Lordships further held that even where the original holder of the verified claim leaves more than one heir his verified claim for the purposes of rule 30 has to be treated as a single unit.

5. Mr. H.L. Sarin, however, argues that none of the respondents 4 to 6 would be entitled to claim the property under the amended rule 30 as none of them was in occupation. In this connection he refers to the concluding paragraph of the order dated 22nd December, 1962 (Annexure "F" to the petition) of Shri Parshotam Sarup, Deputy Chief Settlement Commissioner exercising the delegated powers of Chief Settlement Commissioner, which runs thus:

As regards the second contention, Shri Ram Rakha Mal was in occupation of the house. After him, his heirs are deemed to be in his occupation. It is not proved

that one of them is living there. As such the entire claim was to be taken into account, and all the heirs were entitled to the transfer of the house on the basis of the verified claim in favour of their father. Laying stress on the sentence.

It is not proved that one of them is living there ", which occurs in the above quoted paragraph from the order dated 22nd December, 1932, Mr., Sarin submits that the finding of fact recorded by the Chief Settlement Commissioner was that only one of the heirs was in occupation of the property and not the other two. This argument is obviously fallacious. Mr. Sarin has torn out a single sentence from the order of the Chief Settlement Commissioner to suit his own purpose. A fair reading of the entire extract from that order leaves no doubt that what the Chief Settlement Commissioner wanted to convey was that Kalyan Singh had failed to prove that only one of the three heirs of Ram Rakha Mal was in occupation of the property and not all of them. This is abundantly clear from the above quotation from the order. This conclusion is further strengthened on reference to the earlier part of his order where the contentions raised by Kalyan Singh, the petitioner now before me, were summarized and it was stated:

It is further urged that the subsequent law could not have retrospective effect and cannot deprive the parties of their vested rights. It is further urged that only one of the three respondents is in occupation of the house and as such the house cannot be transferred to him on the basis of the entire compensation due to Ram Rakha Mal deceased.

6. From this resume of the arguments raised before the Chief Settlement Commissioner it is abundantly clear that in the concluding paragraph of his order dated 22nd December, 1952, which has been set out above, he had pointed out that this plea of Kalyan Singh that only one of the three respondents was in occupation had not been made out, the clear implication being that Kalyan Singh had failed to prove that all the three respondents, who were admittedly the heirs of Ram Rakha Mai, were not in occupation of the house. This is a finding of fact, the validity of which cannot be assailed in these proceedings. Even otherwise nothing has been pointed out on the record to indicate that the respondents in whose favour the property in dispute had been transferred were not in its occupation.

7. Even if it be conceded for the sake of arguments, as urged by Mr. Sarin, that only one of three respondents was in actual possession of the property, the decision of the Full Bench in gurbachan Singhs case 5 seems to suggest that the transfer of the property in favour of that occupant would still be valid, as in paragraph 12 of the majority judgment, which was delivered by Grover J. (as he then was), it is stated:

For the reasons given above, I have no hesitation in holding that Banshi Ram, who succeeded partly to the verified claim of his deceased father, would be entitled to the benefit of rule 30 of the Rules as a person holding a verified claim.

8. Even if we ignore this rule, the argument raised by Mr. Sarin must fail as there

is nothing on the record to indicate that the Respondents in whose favour the property stands transferred were not in its occupation. They are the issues of the original holder of the verified claim and must be deemed to be in occupation of the property on the death of their father. For all these reasons, I find nothing wrong with the impugned order. The petition is, accordingly, dismissed. Since the fate of the case, has turned on the rule laid down by the various Full benches of this Court during the pendency of these proceedings, it is proper that the parties should be left to bear their own costs and I order accordingly.