

(1992) 08 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Appeal No. 89 of 1979

Karam Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 48 DLT 313 : (1992) 24 DRJ 550 : (1993) 1 ILR Delhi 343

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : P.N.Talwar and Meera Bhatia, for the Appellant;

Judgement

P.N. Nag, J.

(1) In this writ petition the petitioner seeks the quashing of the impugned order of Shri Kaushal Kumar, IA.S. Joint Secretary & Chief Settlement Commissioner, Department of Rehabilitation, Jaisalmer House, New Delhi with the delegated power of Central Government u/s 33 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 dated 7th November, 1978 (P-12) and for direction that the property in dispute should be allotted to the petitioner.

(2) The relevant facts stated in the writ petition are that property NO.XVI/256-257 (New), Joshi Road, Karol Bagh, New Delhi was an acquired evacuee property and was scheduled for auction on 24th January, 1956. The petitioner is in occupation of property No.257 (New) and one Smt.Parkash Wanti is in occupation of 256 aforementioned. On having received representation from Smt. Parkash Wanti and also from the petitioner Shri Karam Singh that the valuation of the property is not above the allottable limit of Rs.10,000.00 and these properties are separate properties and cannot be clubbed together for the purposes of valuation and, Therefore, these two properties should not be auctioned and as such the property should be allotted to them, the matter was examined by the Competent Authority and it was found that the property of the

petitioner undoubtedly is not above the allottable limit of Rs.10,000.00 as prescribed then and, Therefore, should not be auctioned. It reveals that steps were taken to allot the property to the petitioner but unfortunately the file was misplaced somewhere and the department could not finalise the case.

(3) Smt. Sheela Devi, the sister of the petitioner was also staying in the premises in which the petitioner was staying and which is the subject matter of the dispute. However, according to the petitioner, she was neither an allottee nor an occupant in her own right whereas according to Smt. Sheela Devi her name figured in the evacuee property register. On the representation of Smt. Sheela Devi that she should also be allotted this property along with her brother Karam Singh, petitioner, the matter was inquired by the department and it was found that as a matter of fact that Smt. Sheela Devi had no interest in the property as she was an unauthorised occupant. However, in spite of this finding that the petitioner was occupier and tenant of the property in dispute and the property was allottable and was evacuee property and that Smt. Sheela Devi was an unauthorised occupant, the property was not allotted to the petitioner as according to authorities concerned this property could not and cannot be allotted to him as at the relevant time when the matter was decided in 1978, Rules 30 and 31 stood abrogated, and as such right to allotment ceased to exist to the petitioner. Further it is a discretion of the authorities concerned to allot the land and no right has been conferred on him for allotment of such a property under the Act and Rules framed there under. After this matter was decided against the petitioner by the Managing Officer, Settlement Commissioner, Chief Settlement Commissioner and ultimately came before the Central Government u/s 33 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, (hereinafter referred as "the Act") and the Central Government vide Annexure P-12 dismissed the claim of the petitioner for the allotment of the property in dispute.

(4) Aggrieved against this order (Annexure P-12) in which all the orders of the lower authorities have merged, the petitioner has come to challenge the same in this writ petition.

(5) In reply the stand taken by the respondents in substance is almost the same as taken by them in the impugned order. According to them Rule 26 does not confer any right to the petitioner for allotment of the property in dispute and Rules 30 and 31 stand abrogated.

(6) MR. TALWAR, learned counsel for the petitioner has vehemently contended that the finding of the Competent Authority is very dear that the property is admittedly an evacuee property and allottable property and valuation thereof does not exceed the allottable limit of Rs.10,000.00, prescribed at the relevant time in 1956 when the case should have been considered and which unfortunately could not be considered because of the missing of the file by the department. Further it has been found by authorities that as a matter of fact that Smt. Sheela Devi, the sister of the petitioner was an unauthorised occupant and the petitioner was and is the sole occupier of the property in dispute. There is,

however, no dispute that the petitioner does not hold a verified claim and in these circumstances the petitioner under Rule 22 read with Rule 26 is entitled to be allotted the property in dispute.

(7) There is good deal of force in the submissions of Mr.Talwar. I have seen. the orders of the authorities concerned and the following admitted facts emerge out of the findings given by those authorities:- 1. The property is an acquired evacuee property. 2. The valuation of the property in dispute in 1956 when it was to be allotted does not exceed the allottable limit fixed by Rule 22. 3.. The petitioner is the sole occupier of the property in dispute and has been recognised as such by the department and his sister Smt.Sheela Devi has been declared to be unauthorised occupant. 4. There is no verified claim in respect of this property.

(8) According to Rule 22(a) any residential property in the occupation of a displaced person, the value of which does not exceed Rs.10,000.00 be allotted" to. the displaced parson in occupation of those property.

(9) Under Rule 26 where an acquired evacuee property which is an allottable property is in the sole occupation of a displaced person who does not hold a verified claim, the property may be transferred to him.

(10) Since as already stated above, as a matter of fact the property in dispute is an acquired evacuee property and allottable property within the prescribed valuation limit and is in sole occupation of the petitioner and such occupier has been recognised by the department and the petitioner does not hold a verified claim, there cannot be any valid objection to the transfer of this property to the petitioner in such facts and circumstances. It appears that the Central Government by the impugned order has dismissed the revision petition on the following grounds:- 1. That the petitioner had no vested right for transfer of property under Rule 26 and more particularly after the abrogation of Rules 30 and 31, as the expression used in Rule 26 is only "may". In other words, this power is discretionary. 2. Rules 30 and 31 no doubt gives the description to the Competent Authority to allot the evacuee property in occupation of more than one persons but those roles stand now deleted and that the discretion has been taken away after the deletion of these rules.

(11) The revisional authority has relied upon Sant Ram Vs. Union of India and Others, , wherein it has been held that the word "May" shows that a person has no right to ask for the transfer of the property under Rule 26. The expression in the Rule is only "May".

(12) In order to appreciate the reasoning of the revisional authority, it may briefly be noticed that Rule 26 covers the cases of transfer of an evacuee property which is an allottable property and is in the sole occupation of the person who holds a verified claim.

(13) Rule 30 regulates those cases of acquired evacuee property which is an allottable property, is in occupation of more than one person and who hold

verified claims.

(14) Rule 31 governs those cases where an acquired evacuee property is in occupation of more than one displaced persons one of whom holds a verified claim.

(15) In Sant Ram's case (Supra), it has been noticed that Rule 30 has been deleted with effect from 20.12.1960 and Rule 31 with effect from 10.8.1963. It appears that when Rule 31 was deleted there was an amendment in Rule 22 also. Before the amendment Rule 22 did not contain the provision,, which has now been added that the property referred to in sub-clauses (a) and (b) would not be allottable if it was in occupation of two or more persons, whether any or all of them were displaced- persons or not. It is in this setting that Rule 22 (as it has been amended) has to be read along with Rule 26.

(16) The scheme of the rules also has been explained in Sant Ram's case (Supra) as under:-

"IT would appear from the scheme of the Rules that they have been framed broadly with a view to rehabilitate displaced persons who were uprooted from their original . homes because of the partition of the country and also to make provision for transfer of evacuee allottable property. The petitioners in these connected petitions as well as respondents No.4 and 5 are displaced persons. The further idea also seems to be that as far as possible the persons in occupation became the owners thereof so that there is the least dislocation of persons in occupation on account of transfer. The rent control law can reasonably be expected to take care of it when such complaints arise between a tenant and his sub-tenant in areas like Delhi where such legislation exists".

(17) The facts in substance in that case were that the evacuee property was allotted to respondents No.4 and 5 in that case and they had .inducted the petitioners Sant Ram and others in that case as sub tenants in five shops separately bearing Municipal No.1/1147-51 situated on G.T.Road, Shahdara, which was originally belonged to a Muslim owner Fazil Jamil, who had leased the said property to respondents 4 and 5 by means of a lease deed. On a dispute having been raised by the sub tenants, who were occupants in the five shops separately, the Central Government as a revisional authority decided that occupation under Rule 26 did not mean actual occupation and hence the transfer of the shops had to be made to respondents 4 and 5, which order was challenged by way of writ petitions filed by the sub tenants. In that context, the learned Judge observed:-

"IN this context it may also be noticed that there was no justification for importing into Rule 26 an obligation on the part of the authorities to transfer property to non-claimants in whose occupation such property may happen to be: Rule 26 merely vested power in the" authority concerned to make the transfer or not according to circumstances. Persons who are not the sole occupants of the unit of property, but have no verified claim cannot, Therefore, claim a transfer of

such property as a matter of right despite there being displaced persons in occupation of it. In other words, even in the view roost favorable to the petitioners in the connected writ petitions, namely, that they are "occupants" of the property within the meaning of Rule 26, still they could not ask for the property to be transferred in this writ petition because the expression employed therein is only "may". Besides between two sets of rival claimants, both of them displaced evacuees without any verified claim recognition of occupation by the departme4nt would be determinative."

(18) These observations, which are relied upon by the revisional authority on close scrutiny would reveal help the petitioner in the in resent case and not the respondent. It has been made dear that Rule 26 merely vested power in the authority concerned to make the transfer according to the circumstances and for which recognition of occupant by the department would be determinative. In this case even the revisional authority has determined that Smt. Sheela Devi, sister of the petitioner is occupying a portion as unauthorised occupant and that the petitioner Karam Singh is the sole occupant. In these circumstances, at though the word "may" has been used, the petitioner only has a right to be allotted the evacuee property in dispute.

(19) The learned Judge relied upon a decision of the Full Bench in Smt. Jamna Bai and another v. Union of India and others (1965) 67 Plr 394 to hold that the word "occupation" used in Rule 30 refers to the case of a person to whom part of the property has been allotted or who has otherwise been recognised by the rehabilitation department as occupant of that property.

(20) Applying these tests, the learned Judge held that the respondents 4 and 5 were the alone recognised occupants of the building in question and not the petitioners, who are only sub tenants and have no right to occupy the property. In this case, as already held that the property being evacuee property, whose valuation does not exceed Rs.10,000.00 and was in sole occupation . of the petitioner and there is no verified claim in respect of the said property. The petitioner has every right to be allotted this property under Rule 26 read with Rule 22.

(21) Rule 22 refers to classes of acquired evacuee property which shall ordinarily be allotted, which includes any residential property in the occupation of a displaced person, the value of which does "not exceed the prescribed limit.

(22) No doubt Explanation has been added that such property cannot be allotted if in occupation of two or more persons. But, however, since it has been found by the department that the property in question is in the occupation of the petitioner alone and his sister Smt. Sheela Devi was found to be unauthorised occupant, as such this Explanation is wholly inapplicable. Even otherwise, as discussed hereinabove, when this property should have been allotted in 1956, this Explanation was not in existence which came into existence only with effect from 10.8.1963. Since the present case" in view of what is discussed above, is

governed under Rule 26 read with Rule 22, the petitioner is entitled to be allotted the property in dispute.

(23) It may further be observed that having regard to the object and scheme of the rules referred to above and the circumstances of the case, in my opinion, when all the conditions for allotment of the evacuee property to the petitioner are fulfilled, it becomes the duty of the competent authority to exercise its powers and discretion in favor of the petitioner. It is a settled principle of law that when permissive words are employed by the Legislature to confer a power on a Court to be exercised in the circumstances pointed out by the statute, it becomes the duty of the Court to exercise that power on proof of those circumstances. As pointed out by Jervies, C.J., "when a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised to exercise the authority, when the case arises and its exercise is duly applied for by a party interested and having a right to make that application"

(24) In the light of what is discussed above, in my opinion, the revisional authority has gravely erred in relying Upon the judgment in-the case of Sant Ram's case (supra) to the detriment to the petitioner although on close scrutiny this case helps the petitioner and not the respondent.

(25) The revisional authority has also fallen in error in rejecting the claim of the petitioner on the second ground as well. No doubt, as discussed above, Rules 30 and 31 gave discretion to the Competent Authority to allot the property in certain situation and circumstances in case the property was not in sole occupation of one person but was in occupation of more than one persons. But in this case as already discussed, the property under Rule 26 read with Rule 22 can be allotted to the petitioner and Rules 30 and 31 do not apply. Even if it is assumed that Smt. Sheela Devi, sister of the petitioner is also considered to be in occupation of the property, even then it will not advance the case of the respondent as both rules 30 & 31 existed in 1956 when the allotment ought to have been considered and made to the petitioner but which was not made as the file was missed by the department then." On account of the lapse of the department, certainly the petitioner cannot be penalised and the case of the petitioner ought to have been considered with reference to the rules which existed in 1956 and not when the matter was decided by the Central Government in 1978. The deletion of Rules in 1963 cannot affect the pending actions.

(26) In Joint Secretary to the Government of India and Others Vs. Khillu Ram and Another, , it has been held:-

"RULE prescribes that where the property is in the occupation of more persons than one, it shall be offered to the person whose gross compensation is the highest. Clearly Rule 30 deals not with the form of procedure, but with a substantive right conferred by the Act on displaced persons. The rule may be described as a mode or manner of payment of compensation, but the form and manner in which compensation is payable is also part of the right to get

compensation. Rule 0 is not an instrument or machinery for asserting the right conferred by the Act, it does not regulate the procedure for settlement of disputes concerning that right. Therefore, the deletion of the rule in 1963 cannot affect pending actions".

(27) Therefore, deletion of Rules 30 and 31 cannot stand in the way of the petitioner in the allotment of the property. In any case,, it is a hypothetical question. As already discussed above, the petitioner is in sole occupation of the property in dispute and fulfills all the conditions of Rule 26 read with Rule 22 and- is entitled to be allotted the property.

(28) In view of the above discussion, the impugned order is set aside and the respondents are directed to allot and transfer the property in dispute to the petitioner on payment of assessed value of the property, i.e. at Rs.10,000.00. The petitioner shall also be entitled to costs of Rs.2,000.00.