

(1962) 12 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 148 of 1962

Kewal Krishan

APPELLANT

Vs

Government of India and Another

RESPONDENT

Date of Decision : 17-12-1962

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 30

Citation : AIR 1963 P&H 246 : (1963) 1 ILR (P&H) 836

Hon'ble Judges : D. Falshaw, C.J.; Harbans Singh, J

Bench : Division Bench

Advocate : H.L. Sarin and K.K. Cuccaria, for the Appellant; Y.P. Gandhi and V.P. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

D. Falshaw, C.J.—This is an appeal filed under Clause 10 of the Letters Patent by Kewal Krishan against the order of a Single Judge dismissing his petition filed under Article 226 of the Constitution.

2. The order which was impugned in the writ petition was passed u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act by Deputy Secretary in the Ministry of Rehabilitation accepting a petition filed by the contesting respondent Mela Ram and ordering the transfer of the house in dispute to Mela Ram.

3. The house in dispute is situated at Ludhizna and parts of it were occupied by four different persons as allottees. When the question of final disposal of the house arose it became a contest between Kewal Krishan and Mela Ram and it was decided by the Chief Settlement Commissioner in Kewal Krishan's favour on the basis that both parties were non-claimants and that the portion of the house occupied by Kewal Krishan was larger than that occupied by Mela Ram under Rule 31 of the Rules framed under the Act.

4. Mela Ram's petition u/s 33 of the Act was accepted by the Deputy Secretary

on the ground that it ought to have been decided under Rule 30 on the basis that he was a claimant, since by the time the case was first decided by the department on the 31st of July 1959 Rule 30 had been amended so as to substitute the words "gross compensation" for "net compensation".

5. The facts regarding compensation appear to be that Mela Ram had verified claims on three accounts, one regarding a house, one regarding an industrial establishment and the third regarding the premises in which his previous Industrial establishment had been carried on, but at the time when the case regarding the present house was being considered he was treated as being a non-claimant because the whole of the amount payable to him in respect of all his claims had been taken in adjustment of a loan obtained by him from the Rehabilitation Finance Administration for the purpose of setting up a new industrial establishment. It was in these circumstances that Mela Ram had filed an affidavit to the effect that he was a non-claimant because his net compensation at that time was nil. However, if the matter had to be decided on the basis of gross compensation he was obviously a claimant, and this is how the Deputy Secretary looked at the matter when he dealt with the case.

6. Before the learned Single Judge Mela Ram also produced evidence in the form of an annexure to his reply to the petition to show that actually he still had a claim. Rule 6 is a copy of a letter dated the 22nd of June 1960 from the Rehabilitation Finance Administration informing him that in view of a certain decision of Government of India regarding interest he now had a sum of Rs. 130.81 nP. standing to his credit on account of compensation.

7. In the present appeal it was objected that this point was never raised even before the Deputy Secretary but in my opinion Mela Ram was entitled to support the decision of that officer in his favour when it was challenged in the writ petition in this Court by any means, and this document certainly showed that he was still a claimant, if only for a small sum. It was also argued that Rule 30 has not been correctly interpreted. The rule reads -

"If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property, the property shall be offered to the person whose gross compensation is the highest and other persons may be allotted such other acquired evacuee property which is allotable as may be available:

Provided that in calculating the gross compensation the compensation due for agricultural lands shall not be taken into consideration.

Explanation: The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allotable property hold verified claims and some do not hold such claims." It was argued that since the plural is used in the Explanation the rule would not apply in the case of a contest between a single claimant and a single non-claimant. This argument appears to have found favour with Shamsur Bana-dur, J. in Dr. Khushi

Ram v. Union of India (1932) 64 PL R 755, but I do not consider that this view is correct. The learned counsel for the appellant has not been able to suggest any rule other than Rules 30 and 31 which could apply, and Rule 31 deals only with cases where allotable property is in the occupation of more than one displaced person none of whom holds a verified claim. I have already set out the provisions of Rule 30 and it would appear that if the argument of the learned counsel for the appellant is correct, there is no rule to govern a contest between a claimant and a non-claimant occupying different parts of the same property. There can be no doubt in my opinion that in such a case the property must be allotted to the claimant under Rule 30 and the Explanation must be held applicable to such a case. I would accordingly dismiss the appeal, but leave the parties to bear their own costs.

Harbans Singh, J.

8. I agree.