

(1959) 04 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 914 of 1958

Labh Singh

APPELLANT

Vs

Chief Settlement Commissioner (Rural) Punjab, Jullundur and
Others

RESPONDENT

Date of Decision : 21-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 22, 24

Citation : AIR 1959 P&H 575

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Advocate : Harnam Singh Wassu, for the Appellant; L.D. Kaushal, D.A.G. and
Y.P. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

I.D. Dua, J.—This writ petition has been filed on the following allegations: The petitioner alleges to be a displaced person from West Punjab which is now in Pakistan. Before the partition of the country, the petitioner purchased land measuring 11 3/4 kallas for a sum of Rs. 17,460/- from a Muslim named Allah Yar Khan son of Jamal Din in Chak No 32 (J. B.) Tehsil and District Lyallpur by means of a registered sale deed dated 23rd of May 1946 and the relevant mutation No. 134 had also been duly sanctioned by the Tehsildar in the petitioner's name.

The said mutation was, however, later cancelled by the Collector on 9th of June 1947; the petitioner alleges that this cancellation was illegal. A second appeal preferred by the petitioner against the order of the Collector was still pending before the Commissioner, Multan Division, when the country was partitioned in August 1947 and the petitioner was compelled to migrate to India. The Custodian Department in India after fully satisfying itself about the petitioner's title over the aforesaid land allotted to the petitioner 10 standard acres and 10 1/2 units of land in village Bhoewal in lieu of the above area.

Allotment sanad No. AMI/201/69 dated 8th of July 1956 is relied upon by the petitioner in sup-port of his allotment and he submits that in due course of time when evacuee property was acquired by the Centra! Government u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, proprietary rights, in respect of the said land, along with other area allotted to the petitioner, were conferred on him by the Managing Officer on behalf of the President of India, vide sanad dated 16th of April 1957.

Long after the conferment of proprietary rights, the Assistant Settlement Commissioner (Rural), Punjab, respondent No. 2, without legal authority and competence, cancelled the proprietary sanad of the petitioner by his order dated 17th of May 1958 on the ground that mutation in respect of the sale of land had been rejected by the Collector and the petitioner's appeal against the said rejection had also been dismissed by the Commissioner on 9th of December 1947 i.e. after partition.

The petitioner assails this order on the ground that it is based on an erroneous and misleading report recorded by the Managing Officer on 1st or May 1958. The petitioner preferred an appeal against the order of respondent No. 2 to the Chief Settlement Commissioner, Punjab, respondent No. 1, who rejected the same on 28th of May 1958 holding that respondent No. 2 was competent to cancel the proprietary sanad issued by the Managing Officer, in exercise of his appellate powers u/s 22 of the Displaced Persons (Compensation and Rehabilitation) Act. The orders of respondents Nos. 1 and 2 are being attacked in this petition on the following grounds:--

(a) The proprietary rights having once been conferred on the petitioner by the authority of the President, the same could not be cancelled or interfered with by the respondents especially when no fraud or misrepresentation was ever alleged or -proved against the petitioner. This could only bo done by the President as held in Civil Writ No 661 of 1957 (Punj) and in Civil Writ No. 216 of 1957 (Punj).

(b) The finding of respondent No. 1 that respondent No. 2 could cancel the proprietary rights in exercise of his appellate powers u/s 22 of the Act is not legally justified because no appeal against the conferment of proprietary rights has been provided under the said section and no such appeal had ever been filed by any one.

(c) Even, on merits it was wrong on the part of the Managing Officer and respondent Nos. 1 and 2 to have been influenced by the rejection of mutation No. 134 by the Collector and dismissal of the petitioner's appeal by the Commissioner on 9th of December 1947, The petitioner having migrated to India after partition had no opportunity to pursue his appeal before the Commissioner in. Pakistan and the rejection of mutation was only a ministerial act which could not legally deprive the petitioner of his title over the land created by a registered deed.

(d) The petitioner had amply established by documentary evidence that in spite

of the mutation orders passed by the Collector and the Commissioner the land in question in Pakistan had been treated as evacuee property, and thus as belonging to the petitioner, by the Deputy Custodian, Lyallpur, vide his order dated 17th of January 1957. In the circumstances the petitioner was entitled to get the land in dispute in India allotted and transferred to him, and

(e) The sale of the land in favour of the petitioner in Chak No. 32 (J.B.) was perfectly legal and the respondents were not competent to ignore it for the purposes of making allotment to, or con-ferring proprietary rights on, the petitioner.

2. On these grounds it is submitted that the petitioner has suffered manifest injustice and an appropriate writ order or direction be issued quashing the impugned orders and restoring the area in question to the petitioner. It may be mentioned that the area cancelled from the name of the petitioner has since been allotted to respondents Nos. 3 and 4 who have also been made parties to the present petition. An ad interim order staying the petitioner's dispossession was secured by him from the Motion Bench on 10th of September 1958.

3. In the written statement filed on behalf of respondents Nos. 1 and 2, it is contended that at the time of general allotment the land account of the petitioner was wrongly prepared and mutation No. 134 appended with the special jamabandi of Chak No. 32 (J. B.), Tehsil and District Lyallpur, received from Pakistan showing execution of the sale deed was mistakenly taken into account. It is submitted that the petitioner did manage to secure proprietary rights in respect of the allotment in dispute by concealing the fact, that mutation No. 134 was later rejected by the Collector by which rejection the land purchased by the petitioner from Allah Yar Khan had been reverted to the latter. It is further slated that on a complaint lodged by respondents Nos. 3 and 4 with the Department against the petitioner's allotment his account was checked and the discrepancy discovered. The Managing Officer's report referred to by the petitioner was based on the official record and was fully justified. It is also pleaded that no injustice has been done to the petitioner by withdrawal of the excess allotment from him which remained in his possession for more than 8 years. With respect to Civil Writ No. 661 of 1957 (Punj), it is pleaded that this decision has since been reversed in *Bara Singh v. Joginder Singh*, L.P.A. No. 160 of 1958: (AIR 1959 Punj 370). Considering the order of respondent No. 2 to be legal and just, respondent No. 1, it is pleaded, rightly rejected the petitioner's revision.

4. The counsel for the petitioner has submitted that no appeal having been filed against his original allotment, the order passed by the Assistant Settlement Commissioner is wholly without jurisdiction. The Chief Settlement Commissioner, Punjab, has, while disposing of the present petitioner's appeal against the order of the Assistant Settlement Commissioner, respondent No. 2, dated 17th of May 1958, observed, in his order, dated 28th of May 1958 that the Managing Officer, Complaints Branch, in requesting for setting aside the order of the Managing Officer dated 16th of April 1957 conferring proprietary rights. could be treated as

having gone up in appeal against the order of another Managing Officer whose mistake was discovered during scrutiny.

I am wholly unable to appreciate this approach, and this view does not seem to have any support from any principle of law or precedent. Indeed, the learned counsel for the State expressed his inability to support this view. Appeal, as is well-settled, is a creation of statute. It is not a natural or inherent right and it is only an aggrieved party who can have a locus standi to prefer an appeal. Being a substantive right, it is not a mere matter of procedure. The successor Managing Officer can hardly be considered to be an aggrieved party with respect to the order of his predecessor Managing Officer.

The successor Managing Officer is deemed to step into the shoes of his predecessor. If, therefore, the Managing Officer, who passed the impugned order, could not be considered to be an aggrieved party by his own order and thus could not prefer an appeal against it, it is not understood how his successor Managing Officer could be considered to be in a better position and clothe himself with the rights of an aggrieved party entitled to prefer an appeal against his predecessor's order. The learned Deputy Advocate-General has, however, sought to support the order of the Chief Settlement Commissioner on the ground that he was himself empowered to cancel the order conferring the proprietary rights and in the circumstances of this case he should be deemed to have exercised that power.

Here again, I find it difficult to agree. The Chief Settlement Commissioner's order gives the reasons for his decision and is in the nature of a "speaking order". It clearly says that the Asstt. Settlement Commissioner had properly exercised his appellate jurisdiction and after going through the record no defect was found with that order. The Chief Settlement Commissioner does not even purport to exercise his own original power of cancelling the conferment of proprietary rights; he does not seem to have even applied his mind to that aspect and he has not exercised his own individual discretion. I may here quote the observations of Varadachariar J. in *Suraj Narain Anand v. N.W.F. Province* AIR 1942 FC 3 -

""It was next contended on behalf of the respondent that as the plaintiff in the present case had appealed to the Inspector-General of Police against the Deputy Inspector-General's order dismissing him, the rejection of that appeal was equivalent to a dismissal from office by the Inspector-General himself and as such sufficient to satisfy Sub-section (2) of Section 240 of the Act. We cannot accede to this contention. In theory as well as in practice, there is a well-marked difference between a decision given by an officer who acts in the consciousness that he is primarily responsible for the investigation and decision of the case and the act of one who is expected only to satisfy himself that another officer who had the primary responsibility has properly dealt with the case. The distinction seems to us one of substance and is not merely formal or technical."

This decision was approvingly referred to by the Supreme Court in *Raja Ram Chandra Reddy and Another Vs. Rani Shankaramma and Others*,

5. The counsel for the petitioner has also drawn my attention to Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act and has contended that the Settlement Commissioner cannot set aside the allotment, which power is vested only in the Chief Settlement Commissioner. As noticed above, Mr. Kaushal has contended that the order of the Chief Settlement Commissioner may be treated as if passed on revision u/s 24 but with this contention I have already *dis*agreed.

6. On the merits, however, I find that in spite of these technical defects in the impugned order, there is no sufficient ground for interference under Article 226 of the Constitution which is after all discretionary: See *Azizun Nisa and Others Vs. Asst. Custodian and Others*, . The petitioner at the time of securing allotment from the Rehabilitation Department did not disclose the existence of the order of the Collector in Pakistan of which he was undoubtedly aware (it having been passed in June 1947) by which the mutation in his favour was cancelled.

Had he disclosed this cancellation the allotment of the land in dispute, in all probability, would not have been made. From the report of the Managing Officer dated 1st of May 1958 I find that the original cancellation of the petitioner's allotment had been effected on 7th of April 1953 and the matter had gone up to the Deputy Custodian General who remanded the case to the Assistant Custodian for full and proper enquiry. It appears that because of the amendment or change in law, the Managing Officer then took up the matter.

On the record, as it stands, no manifest, grave or substantial injustice seems to have been suffered by the petitioner. The case on the merits has been considered and disposed of by the Department strictly in accordance with its practice. The jama-bandi papers are considered to be *prima facie* the guiding material. The mutation of alienation in favour of the petitioner was cancelled by the Collector in Pakistan on account of its having violated the provisions of the Punjab Alienation of Land Act.

The counsel for the petitioner tried to rely on certain authorities which lay down that mutation proceedings are really meant for fiscal purposes and do not affect questions of title. It may be so, but the question still remains if the present petitioner has established on this record a valid and proper transfer of title in his favour, in accordance with the law, in force in Lyallpur District, at the time of the transfer.

The general rule in European countries with a few exceptions, and in the United States of America is that the *lex situs* is the governing law for all questions that arise with respect to immovable property, and no disposition can create interest in immovable property which is in breach of the *lex situs* which must determine whether an effective and lawful transfer of title has taken place. Acquisition of legal title must, generally speaking, conform to the *lex situs*. This proposition has

not been controverted at the Bar.

In order to determine this question one has to take notice of the provisions of Punjab Alienation of Land Act. The counsel has not addressed any arguments to show that the sale in his favour does not offend the provisions of the Punjab Alienation of Land Act. It is not open to me in the present proceedings to hold a detailed enquiry into this somewhat complex and complicated question which is a mixed question of fact and law. The transferor is in Pakistan and it is impossible for me to hold a proper and satisfactory judicial enquiry into the validity of the transfer in the petitioner's favour.

The order of the Collector, Lyallpur cancelling the mutation in favour of the petitioner passed before the partition, in proper proceedings appears to me prima facie to be correct and strictly "according to law; presumption of correctness might well therefore be held to attach to it. It would also seem to be binding on the petitioner. There hardly appears to be any grave miscarriage of justice or flagrant violation of law which is an essential pre-requisite to justify intervention by the High Court under Article 226 of the Constitution: See D.N. Banerji Vs. P.R. Mukherjee and Others, and Veerappa Pillai Vs. Raman and Raman Ltd. and Others,

While coming to this decision I have also to some extent been influenced by the fact that it would even now be open to the Chief Settlement Commissioner to exercise his power under section 24 of the Act; this course, if adopted would have the effect of rendering any writ issued by this Court to be wholly ineffective and futile. No time limit has been fixed for the exercise of this power and even propriety of the order passed by his subordinate officers can be gone into by him. On the facts of the present case, in my view, the impugned order is eminently just and no impelling reason has been shown justifying interference by the discretionary power of issuing high prerogative writs.

7. Before concluding it is necessary to notice the contention raised by Mr. Gandhi on behalf of respondents Nos. 3 and 4 that the land in dispute has since been allotted to his clients which allotment cannot now be cancelled. The land is stated to have been put in the compensation pool. In view of my decision not to exercise my discretionary power of interference under Article 226 of the Constitution, I do not consider it necessary to express any considered opinion on the point raised by Mr. Gandhi.

8. As a last resort, the counsel for the petitioner submitted that I might direct the Department to permit him to bring evidence from Pakistan in support of his plea that the transfer in his favour is valid. I am afraid, it is not within my competence to issue any such directions in the present proceedings. I can only either quash the impugned order or reject the present writ petition. On the present record it is not possible for me to hold that the order cancelling the allotment of excessive area in the petitioner's favour is not eminently just and fair. If under the law it is open to the petitioner to bring further material from

Pakistan and to approach the Rehabilitation Department for review of the impugned order or for some other redress, he may do so.

9. For the reasons given above, this petition fails and is dismissed but with no order as to costs.