

(1959) 03 MP CK 0039

In the Madhya Pradesh High Court

Case No : C. Miscellaneous Petition No. 17 of 1956

Malla Ram

APPELLANT

Vs

Regional Settlement Commissioner

RESPONDENT

Date of Decision : 26-03-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 14,
14(1), 4, 40

Citation : (1959) JLI 751

Hon'ble Judges : T.P. Naik, J

Bench : Single Bench

Advocate : M.S. Gupta, for the Appellant; D.L. Khaskalam, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Naik, J.—The petitioner, Shri Malla Ram, in this petition under Article 226 of the Constitution prays for an order in the nature of prohibition to be issued against the respondent the Regional Settlement Commissioner, Madhya Pradesh, restraining him from the execution of his order for auction of house No. 717, East Ghamapur, Jabalpur, under the occupation of the petitioner. He also prays for a direction in the nature of mandamus to be issued against the respondent for allotting the said house to him.

2. The matter arises under the following circumstances. The petitioner is a displaced person from West Pakistan. His claim for the immovable property left by him in Pakistan has been verified and assessed at Rs. 23,000-. His claim for determination of compensation for the aforesaid claim under the Displaced Persons (Compensation and Rehabilitation) Act 1954 (hereinafter referred to as the Act) has been registered and is being investigated. The petitioner is in possession of a part of a building (house No. 717) in East Ghamapur, Jabalpur, as a tenant on a monthly rent of Rs. 35/- , the tenancy in his favour having been

created by the Custodian Evacuee Property, Jabalpur. The other part of the building is No. 718 in possession of Shri Lachhman Das, Shri Shaman Das and Shri Geman Das (petitioners in Miscellaneous petition No. 27 of 1956, decided today). The building had been acquired by the Government of India as evacuee property.

3. By notification published in the "Hitavada" dated 28th December 1955, the then Regional Settlement Commissioner, Madhya Pradesh and Vindhya Pradesh, Shri S.M. Seth, advertised the whole building comprising house Nos. 717 and 718, East Ghamapur, Jabalpur, to be sold by public auction.

4. The petitioner claims that the said property should not be auctioned and that it be allotted to him as he is in occupation thereof. He bases his claim under rule 22 (1) (a) of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The respondent denies the claim. According to him, the property is not allottable and that the petitioner has no legal right in his favour to claim that a particular property in his possession should be allotted to him.

5. A perusal of the Act shows that the scheme is as follows. u/s 4, every displaced person having a verified claim is required to make an application for payment of compensation. u/s 7, the Settlement Commissioner has to make an inquiry and ascertain the not amount of compensation payable to him. The net amount of compensation having been determined, section 8 provides the form and manner of payment thereof from out of the compensation pool. It can be in the shape of cash, or in the shape of Government bonds, or by sale to the displaced person of any property from the compensation pool, or by any other mode of transfer of any property from the compensation pool and setting off the valuation thereof against the compensation payable to him, or by transfer of shares of debentures in any company or corporation, or in such other form as may be prescribed. With the provisions of other sections of the Act we are not at present concerned. It may, however, be mentioned that section 12 gives power to the Central Government to acquire evacuee property for rehabilitation of displaced persons and section 14 (1) provides for the constitution of a "compensation pool" consisting of:--

(a) all evacuee property acquired u/s 12, including the sale proceeds of any such property and all profits and income accruing from such property,

(b) Such cash balances lying with the Custodian as may, by order of the Central Government, be transferred to the compensation pool,

(c) Such contributions, in any form whatsoever, as may be made to the compensation pool by the Central Government or any State Government, and

(d) Such other assets as may be prescribed,

for the purpose of payment of compensation and re-habilitation grants to displaced persons. Under sub-section (2) of section 14, the compensation pool vests in the Central Government free from all encumbrances and has to be

utilised in accordance with the provisions of the Act and the rules framed thereunder. The power to make rules is given in section 40. In pursuance of that power, the Central Government has framed the rules called the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules.)

6. Before dealing with rule 22 of the Rules on which reliance is placed, it may be mentioned that section 8 of the Act which provides the form and manner of payment of compensation to a displaced person from out of the compensation pool, nowhere gives any right to a displaced person to claim his net amount of compensation in any particular form or manner. On the other hand, the section lays down that "subject to any rules that may be made under the Act, the Settlement Commissioner or any other officer or authority by the Chief Settlement Commissioner in that behalf may make such payment in any one of the prescribed forms or partly in one and partly in any other form."

7. Rule 22 of the Rules is in the following terms:

22. Classes of acquired evacuee properties which may be allotted.--(1) The following classes of acquired evacuee properties shall ordinarily be allotted namely:-

(a) any residential property in the occupation of a displaced person, the value of which does not exceed ten thousand rupees;

(b) any shop in the occupation of a displaced person, the value of which does not exceed ten thousand rupees;

(c) any industrial concern in the occupation of a displaced person, the value of which does not exceed fifty thousand rupees.

(2) The following classes of acquired evacuee properties shall not, unless the Central Government otherwise directs, be allot-table, namely:-

(a) a portion of a building which has no independent access:

(b) any residential property wherein a shop is located.

8. The points to be noted with regard to this rule are:

(a) It gives power; to the prescribed authority to allot the classes of acquired evacuee properties mentioned therein to displaced person in the occupation of the same, but it gives no corresponding right to the displaced person in occupation of any particular property to claim the same for allotment to himself as a matter of right.

(b) It separates certain kinds and classes of properties from being allottable. These are in addition to the two classes mentioned in sub-rule (2), viz.,

(i) residential property or a shop in the occupation of a displaced person, the value of which exceeds Rs. 10,000- and

(ii) an industrial concern in the occupation of a displaced person, the value of which exceeds Rs. 50,000.

9. Rule 24 provides for the valuation of acquired evacuee property which is an allottable property and says--

(1) Where any acquired evacuee property which is an allottable property is to be transferred to any person in occupation thereof in satisfaction of the whole or a part of the compensation, payable to such person, the Regional Settlement Commissioner shall first determine the value of the property having regard inter alia to all or any of the following matters :--

(a) the amount for which the property was assessed for the purpose of municipal taxes during the year in which the date of acquisition falls ;

(b) the annual rental income of the property:

(c) sales of similar or contiguous properties during the last three years :

(d) the present market value of the site and the present value of the evacuee building and, in the case of an industrial concern, the value of the machinery.

(2) For the purpose of determination of the value of any acquired evacuee property under sub-rule (1), depreciation may be allowed according to the age of the building, the quality of construction and the standard of maintenance of the property.

10. In the instant case, the respondent denies that house No. 717 is an allottable property, In the first place, according to him, the building is valued at Rs. 20,600, and on that basis, even if the contention of the petitioner be accepted that house No. 717 and house No. 718 are equal parts of the same house, the value of the half portion in the occupation of the petitioner (house No. 717) would be Rs. 10,30. It would thus cease to be an allottable property. Secondly, the parties are at issue on the question of its unallotability on the basis of the provisions contained in sub-rule (2) of rule 22, because, whereas, on the one hand, the petitioner claims that the two houses, though part of the same building, are constant and separate with separate access, the respondent claims that they are not so and that the building in question is a residential property wherein a shop is also located, I, however, need not discuss the question any further because, in my opinion, the question of valuation of the house being above Rs. 10,000 cannot be controverted.

11. The Learned Counsel for the petitioner then contended that by writing a letter (Annexure I) to the petitioner wherein it was mentioned that allotment of house No. 717 was under consideration, the respondent was committed to the position that the property was an allottable property. I do not agree. The respondent is correct in saying that the said letter was a routine letter for eliciting information and did not, in any way, commit him to the position that the house in question was admitted by him to be allottable property.

12. I am clearly of opinion that the petitioner has no legal right to get the house allotted to himself or to prevent the auction-sale of it by the respondent. Consequently, the petition must fail.

13. It is accordingly dismissed with costs. Counsel's fees Rs. 25.