

(1960) 02 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 267 of 1959

Mangal Sain

APPELLANT

Vs

The Chief Settlement Commissioner, New Delhi and Others

RESPONDENT

Date of Decision : 16-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : AIR 1960 P&H 626

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

(1) This is a petition under Art. 226 of the Constitution praying that the order of the Settlement Commissioner exercising the powers of the Chief Settlement Commissioner dated 10-12-1958, be quashed. In order to appreciate the matter it is necessary to set out in detail the facts giving rise to this petition.

(2) House NO. 10, Block No. 5, situate in Ludhiana City was allotted to Mangal Sain, Aishi Lal and Kundan Lal. Thereafter it seems that notice was issued by the Department to Mangal Sain alone as to whether he would like to purchase the house in lieu of his compensation. On his willingness the value of the house was fixed at Rs. 3400/- and his claim to compensation amounting to Rs. 2090/5/- was adjusted against this price and he was called upon to pay Rs. 1310/- in cash and also the house-tax. Thereafter on 4-10-1956 it was ordered that the house be transferred to him.

He paid the sum of Rs. 1310/- on 18-4-1957, and also the house-tax on 6-5-1957. After this order of transfer dated 4-10-1956 intimation was sent to Aishi Lal and Kundan Lal to pay rent of the premises in their possession to Mangal Sain with effect from 1-11-1954. This led to an application by both of these gentlemen to the District Rent and Managing Officer to the effect that the house was divisible and it should be divided into three portions and allotted to each one of the allottees. On an enquiry by the District Rent and Managing

Officer, it was found by him that the house was not divisible and he accordingly rejected the application of Aishi Lal and Kundan Lal on 20-2-1958.

Both these gentlemen went up in appeal to the Assistant Settlement Commissioner, Ludhiana, who himself inspected the spot and after hearing the parties on 11-9-1958, rejected the appeal holding that the house was not divisible. Against this decision, a revision was preferred to the Chief Settlement Commissioner and the same was heard by the Settlement Commissioner Mr. T. C. Gupta who on 10-12-1958, set aside the order of the Assistant Settlement Commissioner holding that the house was divisible inasmuch as it had three independent accesses. Mangal Sain moved the Central Government, but without success. This has led to the present petition under Art. 226 of the Constitution.

(3) The contentions of Mr. Gandhi are that the rules whereby one house can be allotted to a number of people came into being on 21-5-1955, and therefore the transfer made in pursuance of an application made long before the rules came into force cannot be decided with reference to these rules, that in any case, the order of transfer was passed by the Regional Settlement Commissioner and that order was only appealable and not revisable under S. 24 of the Displaced Persons (Compensation and Rehabilitation) Act, and no appeal having been preferred against that order, it had become final and it cannot now be set at naught in a revision directed against the order of Assistant Settlement Commissioner dated 11-9-1958, and that it was held by the District Rent and Managing Officer as well as by the Assistant Settlement Commissioner that the house was indivisible and that even the Settlement Commissioner had to recognize that constructional changes had to be made in the house to make it divisible and that in view of the press-note where such constructional changes have to be made, it cannot be held that the house is in fact divisible and therefore the Settlement Commissioner is in error in holding the house to be divisible.

(4) After hearing the learned counsel for the parties I am of the view that there is no merit in these contentions.

(5) So far the first contention is concerned, no doubt the application was made long before the rules came into force, but at the time when the transfer was ordered the rules were in force. Mere making of an application does not confer any right on the party. The rights would be conferred when any order is passed which is capable of being given effect to or in other words when an order is passed, which confers a vested right in the party. No vested right can be deemed to have been conferred by the mere making of an application. The vested right came into being when the authority concerned decided to allot the house to the petitioner; and at that time the rules were in force and would therefore govern the allotment.

(6) Coming to the second contention the argument loses sight of the fact that under S. 20 of the Act transfer could only be made by the Managing Officer or the Managing Corporation. If the transfer was by the Regional Settlement

Commissioner and there would be no transfer in the eye of law and it cannot confer any right whatever on the petitioner, but if, as is contended by the learned Advocate General, the transfer was by the Managing Officer then the order of the Managing Officer is subject to the revisional powers of the Chief Settlement Commissioner under S. 24 of the Act and it can be revised by the Chief Settlement Commissioner.

In this case, what has happened is that the transfer was made without notice to Aishi Lal and Kundan Lal. When they came to know of this they moved the authorities concerned and prayed that the house be divided. Their request was turned down by the Managing Officer as well as by the Assistant Settlement Commissioner and in revision the Settlement Commissioner set aside the order of both these authorities and held the house to be divisible. In this situation it cannot be said that the Settlement Commissioner exceeded his authority in setting aside the order of the Assistant Settlement Commissioner, when under the law he had the power to do so. (See S. 24 of the Act).

(7) Coming to the last contention, it will not be out of place to state the often repeated dictum that under Art. 226 of the Constitution this Court is not a Court of appeal and cannot examine the merits of the orders of the authorities when those orders have been passed by them within the scope of their authority. Even an erroneous decision on the merits if within the jurisdiction of the authority is final. This Court can only step in where the decision is given by an authority without jurisdiction or on the assumption of jurisdiction or in excess of jurisdiction or where there is an error apparent on the face of the record. In the present case, the question whether in fact the house is divisible or not was a matter, which was purely within the jurisdiction of the authorities concerned and their decision on the question whether right or wrong cannot be made the subject matter of a writ petition under Art. 226 of the Constitution.

(8) For the reasons given above, this petition fails and is dismissed, but there will be no order as to costs.

(9) Petition dismissed.