

(1956) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 62-D of 1955

Meghraj Nanda

APPELLANT

Vs

The Chief Settlement Commissioner and Another

RESPONDENT

Date of Decision : 29-10-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons (Claims) Supplementary Act, 1954 — Section 10, 5, 5(1)

Citation : AIR 1957 P&H 24

Hon'ble Judges : Khosla, J

Bench : Single Bench

Advocate : R.L. Anand and D.P. Bhandari, for the Appellant; Bishambar Dayal, for the Respondent

Judgement

Khosla, J.—This is a petition under Article 226 of the Constitution by Megh Raj Nanda who challenges an order made by the Additional Settlement Commissioner on 26-2-1955. By this order the Additional Settlement Commissioner disallowed a claim made by the petitioner and verified by the Claims Officers in respect of leasehold rights in six soap-stone mines situated in area which is now part of Pakistan.

2. The facts briefly are that the petitioner submitted a claim under seven different items on 28-9-1950. In this claim two items related to factories owned by the petitioner. The remaining five items comprising six soap-stone mines related to leasehold rights held by the petitioner for a period of ten years. The total claim made by him was a little more than 74 lacs of rupees. The usual receipt for the claim form was given to him and the original receipt which was shown to me mentions the amount of the claim.

The Claims Officer examined this claim and found it proved to the extent of Rs. 30,65,900/-. The order admitting the claim was made by him on 7-8-1952. The Additional Settlement Commissioner examined the case later upon a suo motu revision and he disallowed the entire claim relating to the leasehold rights. The

claim in respect of the two factories owned by the- petitioner was not touched by him.

3. The Additional Settlement Commissioner has given two reasons for disallowing the claim in respect of leasehold rights. This claim may be divided into two parts (1) claim in respect of machinery, buildings and roads for which the petitioner incurred expenses and (2) the profits which he would have made by working the mines.

4. The Claims Officer had assessed the first part of the claim at Rs. 4,65,900/- and the Value of the leasehold rights at Rs. 26,00,000/-. The Additional Settlement Commissioner rejected the first part of the claim on the ground that the petitioner had not claimed this amount in his original application.

The second part of the claim was rejected by him on the ground that this was not present asset but represented prospective profits which the petitioner would have made by working the mines and prospective profits could not be allowed because the petitioner might well have suffered loss in working the mines.

5. It may be mentioned at this stage that the original claim application was in several sheets. There was in the first place the usual printed application. To this were attached six more sheets upon which details of the leased factories and the buildings etc., upon them were given. The reason for attaching the extra sheets was that there was not enough room on the printed application form to give complete details of the property in respect of which the claim was being filed.

The six extra sheets disappeared from the file, but there is ample evidence on record to show that the petitioner did make a substantial claim in respect of the leasehold rights. The claim in respect of the two factories owned by him amounts only to Rs. 1,15,000/-. The total claim as shown in the receipt issued to him was 74 lacs of rupees. The Claims Officer in his order makes mention of the machinery, buildings and roads upon these leased mines and assesses their value. There are maps on the record to show various roads and buildings existing upon these mines.

The Department has admitted that a claim in respect of these mines was in fact made. There fore it is clear that the petitioner did make a claim but the papers upon which the details of all these claims were given are missing. It has not been found that these papers were removed by the petitioner and indeed I do not think that it was to his interest to remove them because if his claim is an exaggerated one it was so in the first instance and there was no question of a spurious claim having been brought into existence and advanced at a later stage.

Therefore it is clear that the reason given by the Additional Settlement commissioner is not legally correct. His rejection of the claim on the ground that the claim was not made is an error apparent on the record, and for this reason his order is liable to be quashed.

6. The reason given by the Additional Settlement Commissioner for rejecting the

second part of the claim namely Rs. 26,00,000/- allowed by the Claims Officer in respect of the leasehold rights in the soap-stone mines was that it amounted to prospective profits. This is a matter which has not been dealt with adequately.

Leasehold rights amount to assets. They can be transferred, mortgaged and sold. The Additional Settlement Commissioner should have examined this matter. He could have found that the claim was exaggerated or that the amount allowed by the Claims Officer was excessive, but to reject the claim outright on the ground that the claim represented future profits was not in accordance with law.

7. Before concluding this matter I must deal with a law point raised by Mr. Ram Lat Anand on behalf of the petitioner. I reserved this point to the last because I did not see much force in it. Mr. Anand contended that the Additional Settlement Commissioner had no authority whatsoever and no jurisdiction to entertain the petition.

He drew my attention to the fact that the Displaced Persons (Claims) Act, Central Act XLIV of 1950, expired automatically on 17-5-1953 and therefore all proceedings which had been taken under this Act became final, or in a manner of speaking, died a natural death. The Displaced Persons (Claims) Supplementary Ordinance, 1954, was promulgated on 18-1-1954.

The object of this Ordinance was to "provide for the disposal of certain proceedings pending under the Displaced Persons (Claims) Act, 1950, and for matters connected therewith." Mr. Anand contends that no proceedings under Act XLIV of 1950 could be said to have been pending because the Act died a natural death and everything connected with it died likewise. Therefore the Ordinance dealt only with those claims which had not yet been verified and which therefore could be said to be proceedings pending under the Act.

In the present case the petitioner's claim had been verified by the Claims Officer and the matter was not pending. The Settlement Commissioner or the Additional Settlement Commissioner was not competent to revive the matter and deal with it. A reading of Section 5 of the Ordinance however, makes the matter quite clear. The heading of S. 5 is "Special power of revision in respect of cases decided under Act XLIV of 1950". Section 1(b) reads as follows (omitting the portion which is not relevant):

(1) Notwithstanding anything contained In the principal Act, the Chief Settlement Commissioner-

* * * * (b) may, on his own motion, but subject to any rules that may be made in this behalf, revise any verified claim and make such order in relation thereto as he thinks fit.

* * * *

The wording of Clause (b) makes it quite clear that that Chief Settlement Commissioner is competent to deal with claims which were verified under the

previous Act and therefore a claim which belongs to the class to which the petitioner's claim belongs can be revised by the Chief Settlement Commissioner.

8. Another argument raised by Mr. Anand was that it was only the Chief Settlement Commissioner who could deal with this matter and that if in his opinion (and in nobody else's opinion) there had been a wrong assessment of claim, the claim could be revised. Section 10 of the Ordinance, however, provides for delegation of powers.

Such delegation may be made consistently in accordance with the rules framed under the Ordinance, but in my view no rule may take away the power of delegation because rules made under the Act cannot operate in contravention of the statute itself. In any event, there is nothing in the rules which debars the Chief settlement Commissioner from delegating his powers to Additional Settlement Commissioner.

My attention has been drawn to Rule 18 which speaks of the manner in which a claim is to be revised under Clause (b), Sub-section (1) of Section 5 (the clause quoted above). Rule 18 however, does not deal with the question of delegation which is a wholly separate matter. If the powers of the Chief Settlement Commissioner are delegated to the Additional Settlement commissioner, the delegated authority becomes competent to deal with the matter in accordance with Rule 18 and Section 5(1)(b) .

In the present case I am informed that powers were in fact delegated. This is not seriously challenged by Mr. Anand although Mr. Bishambar Dayal who appeared on behalf of the Department was not able to place before me the notification by which the powers were delegated to the Additional Settlement Commissioner.

I have not thought it necessary to probe further into the matter because I well remember that on a previous occasion while dealing with a similar matter such a notification was brought to my notice and the authority for the delegation was placed on the record.

9. The result therefore is that the order of the Additional Settlement Commissioner is bad because it proceeds on an error apparent on the record. The Settlement Commissioner should have examined the matter of the claim in respect of the lease of the six soap-stone mines and dealt with it according to law. His present order is liable to be quashed and I quash it. This will naturally not debar him from examining the matter afresh although upon a petition made to this Court for a writ of certiorari no specific direction to re-examine the matter can be issued by this Court. The petitioner will recover his costs of this petition.