

(1979) 04 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1121 of 1967

Milkha Singh and Another

APPELLANT

Vs

Central Government and Others

RESPONDENT

Date of Decision : 19-04-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 24(1), 33, 40, 40(1)

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 104

Citation : (1980) 1 ILR (P&H) 52

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : L.S. Wasu and H.S. Wasu, for the Appellant; A.S. Cheema, for A.G., for the Respondent

Judgement

Surrinder Singh, J.—The point in controversy in this Writ Petition under Articles 226 and 227 of the Constitution of India filed by Milkha Singh and another, is quite simple and limited. Before taking up the same, some facts may be, briefly, noticed. The Petitioners were allotted certain evacuee land within the municipal limits of Ferozepore and the same was transferred to them. The Petitioners, however, applied for the transfer of the land up to the allottable limit of Rs. 10,000 which was later on raised to Rs. 15,000. The matter was considered by the Rehabilitation Authorities at various levels. Ultimately, an order was passed by the Managing Officer (Respondent No. 4) as per which some land was ordered to be transferred to the Petitioners at the rate of Rs. 500 per kanal. The Petitioners filed an appeal against the aforesaid order before Respondent No. 3, but the same was dismissed. Thereafter, the Petitioners filed a Revision Petition u/s 24(1) of the Displaced Persons (Compensation and Rehabilitation) Act (hereinafter referred to as the Act), which was dismissed by Respondent No. 2, on the sole ground that the petition was barred by limitation, the same having been filed after thirty days. The Petitioners filed a review Application before the

said Officer, which met the same fate. Ultimately, the Petitioners moved the Central Government u/s 33 of the Act, but again without success. The Petitioners then approached this Court with the prayer for quashing of the order passed by Respondent No. 2, which had been upheld by Respondent No. 1.

2. A perusal of the main impugned order Annexure "E" indicates that the Revision Petition of the Petitioners was dismissed solely on the ground that it was barred by limitation. For this purpose, the learned Settlement Commissioner (with delegated powers of Chief Settlement Commissioner) obviously relied upon the statutory provisions contained in the Rules framed under the Act, according to which the Revision Petition could be entertained only within thirty days of the passing of the impugned order. The relevant Rule in this behalf is Rule 104 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The learned Counsel for the Petitioners has contended that the said Rule was ultra vires, as it was framed beyond the rule-making power conferred upon the Central Government in this behalf. Section 40 of the Act has listed various items in regard to which the Central Government may frame rules. Indeed, it is provided that these powers would be without prejudice to the generality of the foregoing power referred to in Sub-section (1), but it is well-settled that any powers which the Central Government may exercise in this behalf would be ejusdem generis to those which are incorporated in Sub-section (2). Clause (1) of Sub-section (2) is to the effect that the rules may be framed in regard to the form and manner in which appeals and applications for review or revision may be preferred or made under this Act and the procedure for hearing such appeals or application for review or revision. The clause makes no reference whatsoever to the period of limitation, within which the Revision is to be filed. The words "the form and manner" can by no stretch of imagination include the period of limitation also. The objection of the learned Counsel for the Petitioners is, therefore, quite tenable. The learned Counsel has also brought to my notice a Single Bench decision of the Delhi High Court as reported in M.C. Rahbar and Anr. v. Union of India and Ors. 1968 DLT 78 wherein this matter was directly under consideration by Hon"ble the Chief Justice of that Court. It is noteworthy that the said case is on all fours not only in regard to the question of law but also regarding facts which are quite pari materia with those in the present case. The case was one under the Displaced Persons (Compensation and Rehabilitation), Act and the only point which was considered, was whether any limitation could be prescribed under Rule 104 for a Revision Petition u/s 24 of the Act. After a detailed consideration of the matters, the learned Chief Justice concluded that the provision of limitation for filing a Revision Petition as contained in Rule 104 is beyond the competence of the Central Government and in the wake of this finding, the orders passed by the Revising Authority u/s 24 of the Act, as also by the Government u/s 33 of the Act, were quashed. Mr Cheema, learned Counsel appearing for the Respondents has referred to Shrimati Balwant Kaur wife of Sardar Charanjit Singh Mann v. Chief Settlement Commissioner (Lands), Jullundur AIR 1964 Cal 141 , but it is noteworthy and this fact is even conceded

by Mr Cheema, that in the said authority, the Bench was not seized of the point as to whether it was within the competence of the Central Government to frame Rule 104, by virtue of the powers conferred u/s 40 of the Act, nor was this point even discussed in the judgment. In this view of the matter, the Full Bench authority is of no avail in so far as the point in controversy in the present Writ Petition, is concerned. As regards the vires of Rule 104, I am in respectful agreement with the view expressed by the Chief Justice in the Delhi case. This being the only point which has been mooted in the present Writ Petition, the same succeeds and the impugned orders, i.e., Annexures "E" and "F", passed by the Settlement Commissioner (with the delegated powers of Chief Settlement Commissioner) as also Annexure "G" passed by the Joint Secretary to the Government of India, are quashed.

3. The matter shall go back to the Chief Settlement Commissioner or his Delegate, if any, who shall consider the Revision Petition of the Petitioners on merits. There will be no order as to costs of this Writ Petition.