
(1963) 09 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 841 of 1962

Om Prakash and Others

APPELLANT

Vs

Chief Settlement Commissioner and Others

RESPONDENT

Date of Decision : 13-09-1963

Acts Referred:

Colonization of Government Lands Act, 1912 — Section 3
East Punjab Refugees (Registration of Land Claims) Act, 1948 — Section 10, 2, 4

Citation : AIR 1964 P&H 246 : (1964) 1 ILR (P&H) 592

Hon'ble Judges : I.D. Dua, J; Harbans Singh, J

Bench : Division Bench

Advocate : H.S. Wasu and B.S. Wasu, for the Appellant; C.D. Diwan, D.A.G. and D.S. Keer, for the Respondent

Judgement

I.D. Dua, J.—These two writ petitions (Civil Writ No. 841 of 1962 and Civil Writ No. 526 of 1963) have been heard together and indeed arguments have been addressed only in Civil Writ No. 841 of 1962, it being conceded that the other writ petition would stand or fall with this one. The facts out of which this writ petition has arisen have, so far as necessary for our purposes, been stated in the referring order of my learned brother and need only be briefly restated here.

2. Nanak Chand owned some agricultural land in Bahawalpur State now forming part of West Pakistan as a result of the partition of the country in 1947. He also owned some property at Kot Kapura, Tehsil Faridkot, which now forms part of District Bhatinda and is in India. Nanak Chand had in normal course of business come to Bhatinda where he died in June, 1947, leaving behind three sons by name, Om Prakash, Sat Narain and Ram Parshotam. After Nanak Chand's demise the country was partitioned and as a result thereof his three sons had to abandon the land owned by their father in Bahawalpur State. The three sons filed separate claims in accordance with law and obtained allotment of certain land in Kot Kapura village in lieu of the land abandoned by them in Pakistan.

It appears that there was some complaint made by one Rur Singh against these

three brothers which was inquired into by the Rehabilitation authorities and the Chief, Settlement Commissioner, Punjab, Shri J.M. Tandon, on 8th of June, 1962, came to a finding that Nanak Chand, although he had died long before the partition of the country must be treated as a "displaced landholder" for the purpose of allotment of land on the ground that his name continued to be shown in the jamabandi as owner of the abandoned land in Pakistan.

In consequence of this finding considerable area of land allotted to the three sons of Nanak Chand was cancelled. It is this order of cancellation which is "being assailed by the three Petitioners (sons of Nanak Chand deceased) in the present writ proceedings and the challenge is based on the argument that para 17 of the Land Resettlement Manual by Tarlok Singh (hereinafter called the Manual) appearing at page 180 on the basis of which the order of cancellation had been passed has no authority of law and therefore, could not legally form the basis of the order and that in any case para 17 has been misconstrued and misinterpreted.

3. Before my learned brother Harbans Singh, J., sitting singly the Respondents' counsel relied on a decision by Chopra, J., in *Jhanda Singh v. Chief Settlement Commissioner, Punjab* ILR 1958 P&H 1090, in which para 17 of the Manual was given effect to. This decision has also been relied upon before us on behalf of the Respondents. It may here be stated that my learned brother entertained "doubts about the correctness of the view expressed in this decision and it was for this reason that the matter has been placed before this Bench so that the correctness of the view expressed in *Jhanda Singh's* case ILR (1958) P&H 1090 may be reconsidered. But for this decision my learned brother was inclined to allow the writ petition. The short question therefore, that we have to determine is the scope and binding effect of para 17 of the Manual appearing at page 180 in Chapter VIII.

4. This Manual is apparently published by the Punjab Government, but for this reason alone its contents do not acquire the authority or sanctity of law. It is not the Indian view of law that whatever is officially done is law; on the contrary the Indian Law is that what is done officially must be done in accordance with law. And then as stated in Foreword of the Manual by Shri P.N. Thapar this book contains the instructions and explanations for working out policy decisions" arrived at in the course of the gigantic task of rehabilitating the persons displaced from what is now known as West Pakistan. It is true that in the appendices the relative legislative enactments and rules etc, are also reproduced but in the case before us it is not their binding effect but the binding effect only of para 17 at page 180 which has been canvassed. As observed by Jagannadhadas, J., in *Amar Singh Vs. Custodian, Evacuee Property, Punjab*, this Manual can be usefully referred to, not necessarily as an authority for every statement of fact or law contained therein but as a guide to appreciate the background of the problems which the administration had to face in the unprecedented situation, how those problems were attempted to be solved, what

were the rules and practice which the administration normally followed and considered binding on itself, and what ideas inspired the course of legislation in this behalf. This view was expressed while explaining the observations that this book has the stamp of authority as made in *Dunichand Hakim and Others Vs. Deputy Commissioner (Deputy Custodian Evacuee Property) Karnal, State of Punjab and Others*,

5. It need hardly be emphasised that in Republican India executive instructions without statutory basis are not law; and no statutory basis for para 17 at page 180 of the Manual has been brought to our notice. In the circumstances the Respondents' contention that para 17 embodies a rule of law calling for strict obedience on the part of the Courts is thus unacceptable. Equally unacceptable is the contention that the Petitioners' challenged to the impugned order involves reviewing a question of fact and, therefore, this Court should decline in its discretion to go into it. The basic facts are not disputed and the only question canvassed is: Are the departmental authorities right in declining proper relief to the Petitioners solely on the basis of para 17 of Chapter VIII at page 180 of the Manual? This brings me to the scope and effect of this para, for, if this para embodies a provision in conformity with the law and covers the present case, then this Court would not interfere.

6. Reference has been made at the bar to the provisions of the East Punjab Refugees (Registration of Land Claims) Act XII of 1948 in which the word "refugee" has been defined in Section 2(d) to mean a landholder in the territories now comprised in the Province of West Punjab, or who or whose ancestor migrated as a colonist from the Punjab since 1901 to the Province of North-West Frontier Province, Sind or Baluchistan or to any State adjacent to any of the aforesaid Provinces and acceding to the Dominion of Pakistan, and who has since the 1st day of March, 1947, abandoned or been made to abandon his land in the said territories on account of civil disturbances or the fear of such disturbances or the partition of the country, and the term "landholder" has been defined in Section 2(c) to mean an owner of land or a tenant having a right of occupancy under the Punjab Tenancy Act, 1887 or a tenant as defined in Section 3 of the Colonization of Government Lands Act, 1912, and such other holder or grantee of land as may be specified by the Provincial Government.

7. It has been contended for the Petitioners that Nanak Chand deceased cannot be described to be a "refugee" as defined in the above Act, unless one can come to the conclusion that he had since 1-3-1947 abandoned or been made to abandon his land in Bahawalpur as contemplated by Section 2(d). It is stressed that there is nothing on the record to show that the deceased had so abandoned or been made to abandon his land in the erstwhile State of Bahawalpur on account of civil disturbances or the fear of such disturbances on the partition of the country. Section 4 providing for registration of land claims entitles a refugee to submit to the Registering Officer an application for registration of his claim in respect of his land abandoned by him or which he has been made to abandon.

East Punjab Refugees Registration of Land Claims) Rules, 1948, made u/s 10 of the Act provide, inter alia, that a claim application may be presented by the Applicant either in person or through a recognised agent or be sent by registered post. These provisions it is argued, also do not contemplate registration of claims by deceased persons like Nanak Chand.

8. The Petitioners' counsel has next referred us to the Statement of Conditions for granting allotment of land issued by the Custodian under the East Punjab Evacuees' (Administration of Property), Act, 1947, and stress has again been laid on the definition of the expression "displaced person" in para 2(e) Which is identical with the definition of the word "refugee" as contained in the Land Claims Act XII of 1948. Para 3 of this Statement of Conditions provides for allotment to be made in favour of displaced persons for the period for which the land remains vested in the Custodian subject to the provisions of the present Act. Our attention has then been drawn to the East Punjab Displaced Persons (Land Resettlement) Act 1949 (Act XXXVI of 1949) in which the expression "displaced person" has again been defined in Section 2(c) in terms similar to those contained in the Statement of Conditions mentioned above and the word "allottee" has been defined in Section 2(b) to mean a displaced person to whom the land is allotted by the Custodian under the conditions mentioned above including his heirs," legal representatives and sub-lessees. Drawing further support from these statutory provisions the Petitioners' learned Counsel has contended the what the law contemplates is that the displayed person entitled to an allotment must be one who has himself abandoned or been made to abandon his land in what is now known as Pakistan and that Nanak Chand deceased could by no stretch be considered to be such a displaced person. The contention indeed goes a step further and emphasises the absence of any finding by the departmental authorities that Nanak Chand was a displaced person as defined in the statutory provisions mentioned above.

9. Here it is appropriate to reproduce para 17 on which the department relies:

17. Even where a displaced landholder in whose name land stands in the records received from West Punjab has died, the allotment is made in the name of the deceased. In the fard taqsim, therefore, the entry will be in the name of the deceased landholder. Possession is ordinarily given to the heirs but there must be regular mutation proceedings before the entry in column 3 of the fard taqsim is altered in favour of the heirs.

The department's position is that the allotment has to be made in the name of the person who is shown in the record even though he had never himself become a refugee or a displaced landholder. The Petitioner's contention on the contrary is that this para has within its fold cases of persons who were landholders at the time of their becoming displaced persons or refugees and who died afterwards but before allotment could be made in their favour.

10. The Petitioners next submission is that in any case the instructions contained

in this para merely emphasise the importance of the entries in the revenue papers for convenient and practical working of the scheme and not as a rigid rule which must always be adhered to irrespective of the obvious justice - of the claims of persona claiming title to the property as "refugees" or "displaced landholders

11. For explaining the, scope and effect of this para the counsel has taken us through "some of the provisions in Chapter II of the Manual dealing with the subject of copies of jamabandis obtained from Pakistan and the preliminary scrutiny for the determination, of rights contained in paras 23 and 24." Certain emphasis has in this connection been laid by the counsel on para 24 which envisages an inquiry about the transfer of land not incorporated "in jamabandi. This, it is argued, shows that para 17 was never intended to be rigidly construed irrespective or "regardless of the obvious justice of a displaced person's claim. Some instances have in this connection also been cited at the bar in which even the department itself did not rigidly follow this para. The first instance relates to the case of Shri Sapuran Singh who was at one time Deputy High Commissioner for India at Lahore. Proof of his father's death was admitted from some mutation in Amritsar district and the entries in the jamabandis which arrived from Pakistan were not strictly adhered to for the purpose of allotment. This instance relates to May, 1953. Another case of April, 1960, is of one Shri Ishar Singh of Faridkot in which the alleged sale of June, 1947, was recognised in spite of there being no entry in the jamabandi. In this case report relating to the sale had been entered in the roznamcha but mutation could not be sanctioned before partition. Bracketed with this case were three other cases similarly dealt with. The third case of 1961 is of Shri Jaimal Singh who had purchased land in Pakistan from Shri Hari Chand. In this case too mutation of sale had been entered but it could not be sanctioned before partition and in the jamabandi received from Pakistan the relevant entry continued to be in Hari Chand's name. The precedent of Ishar Singh's case was followed. The 4th case of 1953 relates to Kabul Singh and others where partnership was recognised on other evidence in spite of there being no entries regarding their shares in jamabandis.

12. As observed earlier para 17 has not been shown to have any statutory authority for its basis and, in my opinion, it merely embodies executive or administrative directions for general guidance. The language of this para also, considered in the light of the provisions of law noticed above, postulates a displaced landholder dying after having become a "displaced person within the relevant legal provisions mentioned" above. It does not apply to the case of a person who was not a displaced landholder at the time of his death. To accede to the department's contention that whosoever is shown in the jamabandi received from Pakistan as owner irrespective of the fact that at the time of his death he was not a displaced person must, according to para 17, be treated as a displaced landholder would, in my opinion, tend to create unnecessary difficulties and complications for the displaced claimants which the legislative policy underlying the statutory provisions dealing with this subject does not contemplate. That it

is so would also seem to have been realised by the departmental authorities who dealt with the four instances to which our attention has been drawn. I am, therefore, clearly of the opinion that para 17 neither constitutes or embodies a binding rule of law, nor does it cover cases, where deceased landholders were not displaced persons at the time of their death; it only provides for cases where a landholder dies after having become a displaced person; in other words, cases where a displaced landholder dies and not where, a landholder would have become a displaced landholder if alive at the time of the partition. The decision of the learned Single Judge in Jhanda Singh's case, ILR (1958) P&H 1090 is thus, with all respect, not in accord with the correct rule of law. On this view the Petitioners' grievance has merit and the impugned orders deserve to be quashed because Nanak Chand deceased could by no means be treated to a displaced landholder at the time of his death indeed the Respondents learned Counsel too has not attempted seriously to argue to the contrary. His only contention as mentioned earlier has been that the case is concluded by a finding of fact and that merely an erroneous construction of para 17 would not justify interference on the writ side. These contentions call for no further detailed comment and are obviously inadmissible) in view of the foregoing discussion. If on the basis of erroneous view of the scope and meaning of para 17 an order is passed prejudicially affecting the Petitioners' right, it would, on the facts and circumstances of this case, be an error apparent on the face of the record justifying interference on the writ side.

13. In the result these petitions succeed and allowing the same I quash the impugned orders. In the circumstances, however, there would be no order as to costs.

Harbans Singh, J.

14. I agree.