
(2011) 11 BOM CK 0043

In the Bombay High Court

Case No : Letters Patent Appeal No. 173 of 1997 in W. P. No. 2537 of 1984 (D)

Paiku Chindhu Supare (dead) through L. Rs. and Another	APPELLANT
Vs	
Narayandas Chandumal (dead) through L. Rs. and Others	RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 14, 16, 17, 19
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 102, 49, 60, 61, 68

Citation : (2012) 2 ALLMR 232 : (2012) 3 MhLj 227

Hon'ble Judges : P.D. Kode, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : N.S. Bhattad, for the Appellant; N.W. Sambre respondent No. 1 A.D. Sonak, Assistant Government Pleader Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

B. P. Dharmadhikari, J.—The unsuccessful petitioners in Writ Petition No. 2537/1984 have questioned judgment dated 5-9-1991 delivered therein. The dispute arises out of allotment of evacuee agricultural lands Survey Nos.97 and 100, situated at village Lapka, Tahsil - Ramtek, District - Nagpur. Briefly stated, the said lands were initially allotted on 27-6-1956 to respondent No. 1 Narayandas in present Letters Patent Appeal. Thereafter, the same have been allotted to one Rijhumal on 18-10-1957 and the present appellants have purchased said lands from Rijhumal on 15-5-1967. By judgment delivered by Authorised Chief Settlement Commissioner, Maharashtra State at Bombay in Department Reference No. 1/1976, allotment made in favour of Late Rijhumal, has been set aside. This order was questioned by the purchasers from Late Rijhumal in Writ Petition No. 2537/1984 and that writ petition has been dismissed.

2. We have heard Advocate Shri N. S. Bhattad, learned counsel for the appellants, Advocate Shri N. W. Sambre, learned counsel for respondent No. 1(c)

and learned Assistant Government Pleader Shri A. D. Sonak for respondent No. 5.

3. After narrating the facts, Shri Bhattad has contended that Narayandas had given up his claim for allotment of agricultural lands and was interested in Shop No. 34. Because of this, the said agricultural lands were available for allotment again and have been allotted after following due procedure to Late Rijhumal on 18-10-1957. The possession of said land was never delivered to Narayandas and no Sanad was executed in his favour. On 23-9-1965, Sanad of said land came to be granted in favour of Rijhumal and, thereafter, appellants purchased that property vide registered sale deed on 15-5-1967.

4. He has invited attention to provisions of Rule 61 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as "1955 Rules") to urge that as Narayandas had not deposited balance amount as possession was never taken by him and he had opted to claim Shop No. 34, he had refused allotment and, therefore, order dated 27-6-1956 was not in existence. The deeming fiction invites in Rule 61 of 1955 Rules has been pressed into service by him for the said purpose. Support is also being taken from Rule 68 and Appendix II with these Rules to urge that as Sanad has been executed in favour of Rijhumal and he was already in possession, allotment in favour of Rijhumal could not have been cancelled in Departmental Reference.

5. The provisions of section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "1954 Act") are relied upon to support the contention that law does not envisage anything like departmental reference. The cognizance of dispute between Rijhumal and Narayandas taken by respondent No. 5 is, therefore, without jurisdiction. The judgment of Hon'ble Apex Court in the case of Anirudhsinhji Jadeja and another Vs. State of Gujarat, is relied upon to urge that the direction issued by respondent No. 5 cannot have effect of cancellation of allotment or cancellation of Sanad in favour of Rijhumal as the parliament has conferred that power upon Managing Officer u/s 19 of the Act. The provisions of section 17 of the Act are also pressed into service with contention that unless and until allotment and Sanad in favour of Rijhumal is cancelled, there cannot be any order in favour of Narayandas in present circumstances. To press into service the limited scope of revisional powers of respondent No. 5 u/s 24(1) of 1954 Act, support is being taken from judgment of Division Bench of this Court reported in the case of Bhoorsingh Palasingh vs. Kesumal Aratmal and others, AIR 1979 Bombay 143. Finding of absence of any locus in appellants to challenge the order passed in Departmental Reference recorded by the learned Single Judge is challenged by pointing out Rule 102 of 1955 Rules with contention that said Award does not contemplate only cancellation or setting aside of transfers of evacuee property and discretion has been given about the measure to be resorted.

6. Learned counsel for the appellants states that as there is no absolute bar, finding of absence of locus is misconceived. To urge that there is no such bar, support is being taken by Division Bench judgment of Punjab and Haryana High

Court in the case of Kundan Singh and others vs. Financial Commissioner (Revenue) and Secretary (Rehabilitation) and others, AIR 1989 Punjab and Haryana, 136.

7. Learned Assistant Government Pleader Shri Sonak for respondent No. 5 has supported the impugned order.

8. Advocate Shri Sambre for respondent No. 1(c) has, at the outset, invited attention to a certified copy of Regular Civil Suit No. 1321/1980 instituted by the present appellant in this connection. He argues that, that suit has been withdrawn without any liberty and its filing has not been disclosed to this Court while filing the writ petition.

9. Shri Sambre has relied upon observations and findings recorded by the learned Single Judge to urge that as allotment in favour of Narayandas was never cancelled in accordance with law, lands could not have been reallocated to deceased Rijhumal. He claims that the conduct of Narayandas does not in any way show that he had given up his entitlement to lands allotted on 27-6-1956. He has further stated that order dated 27-6-1956 was questioned by Narayandas in appeal before Deputy Chief Settlement Commissioner (India) and he had sought substitution of his claim qua said land and adjustment of amount towards his claim for Shop No. 34. According to him, thus Narayandas was interested in lands allotted and was trying to exchange the same for Shop No. 34. The order of Deputy Chief Settlement Commissioner (India) rejecting such adjustment passed on 4-2-1960 has not been questioned by deceased Rijhumal or by present appellant. According to him, that order shows entitlement of Narayandas to agricultural lands which form the subject-matter of present adjudication.

10. He strongly relies upon the findings of learned Single Judge to demonstrate that present appellants who lacks locus to challenge order passed in Departmental Reference in Writ Petition also do not possess locus to maintain present Letters Patent Appeal. He is relying upon Rule 102 to urge that the transfer by Late Rijhumal in favour of the present appellants is bad and contrary to law. He, therefore, states that it does not clothe him with any right. But in the alternative and without prejudice, he points out that Late Rijhumal, during his life lime, never sought any permission to transfer the lands and even did not intimate the transfer in favour of the present appellants. Absence of bona fide in appellants found in Departmental Reference by Respondent No. 5 and by learned Single Judge is shown to us to urge that looking to the conduct of the appellants, the impugned order calls for no interference. He also points out that allotment dated 27-6-1956 in favour of Narayandas has not been cancelled till date.

11. The perusal of judgment delivered by respondent No. 5 on 11-5-1979 shows that initially there was allotment order having No. 88/9503 on 27-6-1956 in favour of deceased Narayandas. There is nothing on the record to show that the Sanad, as required by Rule 68 of 1955 Rules, was issued in his favour and the note of such Sanad in his favour taken by the learned Single Judge, therefore,

appears to be incorrect. After this allotment, Narayandas did not take possession. The statement of account because of such allotment was then issued in his favour. It appears that Narayandas then gave a bid on 25-4-1958 for Shop No. 34. The said order also mentions that he had also associated other claims to cover up the deficit in price of said shop. When his claim was taken up for processing with a view to adjust price of said Shop No. 34, allotment of agricultural lands in his favour was found subsisting and, therefore, he was intimated to pay bid amount towards Shop No. 34 in cash. He did not pay that amount and his bid for shop was cancelled and on 7-4-1959 earnest money of 10% was forfeited. He then filed appeal before Deputy Chief Settlement Commissioner (India) and challenged allotment order dated 27-6-1956 with a view to procure order of adjustment of that claim amount towards the shop price. On 4-2-1960, the Deputy Chief Settlement Commissioner negated that claim because of provisions of Rule 49 of 1955 Rules. The said authority then found that allotment of agricultural lands in favour of Narayandas was not cancelled and Regional Settlement Commissioner had not taken any proceeding u/s 19 of 1954 Act for cancellation of that allotment. As allotment was found valid, that authority directed Narayandas to take possession of the lands allotted, if he so desired.

12. In face of this order, Narayandas pursued the matter with the department and sought possession of agricultural lands. These lands, in the meanwhile, came to be allotted to Late Rijhumal vide Allotment Order No. 244 dated 18-10-1957 and its possession was also handed over to him. In view of this position, Departmental Reference was then made by the Collector and the Settlement Commissioner, Nagpur on 5-1-1973 for cancellation of allotment order dated 27-7-1956 issued to Narayandas. This departmental reference was rejected by Chief Settlement Commissioner on 7-9-1973 in a suo motu Reference No. 8/1973. The said authority observed that the Collector needed to examine the issue properly and to submit a proper reference afresh. Thereafter, the Collector and the Settlement Commissioner, Nagpur submitted a fresh reference and moved that authority to cancel the subsequent allotment order issued in favour of Late Rijhumal. The impugned order dated 11-5-1979 is passed by respondent No. 5 in his later reference which has been registered as Departmental Reference No. 1/1976.

13. Perusal of provision of section 24 of 1954 Act shows the power of revision of the Chief Settlement Commissioner. It's sub-section (1) permits him to call for the record of any proceeding at any time for satisfying himself as to the legality or propriety of any order passed by the Settlement Officer, Assistant Settlement Officer, Assistant Settlement Commissioner, Additional Settlement Commissioner, Settlement Commissioner, Managing Officer or Managing Corporation. Sub-section (2) then enables him to pass an order directing that no compensation shall be paid or reduce amount of compensation or cancelling the lease or allotment granted, if he is satisfied that such order of payment or allotment was procured by means of fraud, false representation or concealment of any material

fact. Sub-section (3) obliges him to give reasonable opportunity of being heard to a person prejudicially affected by his order. Sub-section (4) permits aggrieved person a remedy of further appeal before such authority as may be prescribed by Central Government. It is, therefore, obvious that powers u/s 24(1) of 1954 Act can be exercised even suo motu. The fact that impugned judgment is passed in proceeding u/s 24 of 1954 Act is not in dispute. Merely because there is no express provision in 1954 Act which contemplate such Departmental Reference, that by itself is not sufficient to vitiate the jurisdiction u/s 24 of 1954 Act as exercised by respondent No. 5.

14. Perusal of judgment in case of Anirudhsinhji Karansinghji shows that Hon''ble Apex Court has considered provision of section 20-A(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 about grant of approval for recording of information about the commission of an offence under the TADA. Statutorily that power is vesting in District Superintendent of Police. Facts show that instead of granting such prior approval, District Superintendent of Police on his own requested the Additional Chief Secretary to accord that permission to proceed under the TADA. Hon''ble Apex Court has found this abdication of his power by District Superintendent of Police.

15. Here, the facts narrated by us above clearly show that on 4-2-1960 when the Deputy Chief Settlement Commissioner (India) rejected appeal of Narayandas, he found that allotment in his favour was already subsisting and, therefore, directed Narayandas to proceed to take possession of lands which form subject-matter of present litigation. Narayandas, thereafter, took steps and claimed possession of these lands. On 18-10-1957 itself these lands were allotted to vendor of present appellants, namely Rijhumal and he was also placed in possession of those lands. It is in this background that the Collector and Settlement Commissioner at Nagpur was constrained to make departmental reference. The reference was obviously because of the inconsistent position which could not have been repaired by him. His allotment order dated 27-6-1956 was found in force and hence superior authority like Deputy Chief Settlement Commissioner (India) had advised Narayandas to take possession. But the said authority had handed over possession to Late Rijhumal on 18-10-1957 itself while allotting the land to Rijhumal. The said authority, therefore, suggested cancellation of allotment dated 27-7-1956 in favour of Narayandas. This was not accepted by revisional authority and vide order dated 7-9-1973 it directed the Collector and Settlement Commissioner to give a fresh look to the matter and to submit a fresh proposal. The Collector then moved revisional authority for cancelling the subsequent allotment order in favour of Rijhumal. This allotment order was dated 18-10-1957.

16. Thus, the said office, placed in peculiar situation, invoked the powers of superior authority u/s 24 of 1954 Act. That authority has accordingly taken cognizance of the dispute u/s 24 of 1954 Act and has passed impugned order after giving all concerned necessary opportunity of hearing. Both the petitioners

before the learned Single Judge, Narayandas and legal heirs of deceased Rijhumal were party-respondent in this proceeding. We are, therefore, not in a position to hold that there is any abdication by either Collector and Settlement Officer in favour of that authority or then absence of jurisdiction in the said revisional authority. Impugned order is not liable to be quashed and set aside on that ground.

17. The contention about bar envisaged by Rule 102 of 1955 Rules now needs to be considered. Rule 102 appears in Chapter XVII which deals with powers of Managing Officers. The said Rule has head note "cancellation of allotments and leases." A Managing Officer or a Managing Corporation is authorized to cancel an allotment or terminate a lease or vary the terms of any such lease or allotment, if it finds that the allottee or lessee has sublet or parted with possession of the whole or any part of the property allotted or leased without the permission of a competent authority. The Rule making authority has used word "may" while conferring this power but then scheme of Rule 102 in its entirety needs to be seen to understand the purpose thereof. Clause (b) contemplates a user by such lessee or allottee for a purpose other than one for which property was allotted or leased. Clause (c) contemplates commission of any act which is destructive of or permanently injurious to the property. Clause (d) then contemplates inability to procure vacant possession. Clause (e) is a residuary provision. Thus, because of various contingencies in which allotment or lease may be required to be interfered with the word "may" has been used. Similarly, looking to those contingencies, the Managing Officer has been given discretion even to alter the terms and conditions of any such lease or allotment. Hence, discretion conferred is wide, because of contingencies which may fall for consideration. The nature of power to be exercised depends upon the contingency presented to the Managing Officer or Corporation. This word "may" therefore, cannot be construed to hold that the subletting or parting or transfer is accepted and permitted by 1954 Act or 1955 Rules. The judgment of the Division Bench of Punjab and Haryana High Court in case of Kundan Singh and others vs. Financial Commissioner (Revenue) and Secretary (Rehabilitation) and others (supra), relied upon by the petitioners is totally irrelevant in this background. There provisions of section 19 and purchase of land from an allottee has been looked into. It was found that there was no proof on record that the said allottee had acquired right to transfer land by virtue of proprietary rights or ownership rights under Sanad. In this background, the Division Bench has found that allottee Kartarsingh or his son could not have transferred the land unless the proprietary rights or ownership rights under the Sanad had been granted to them under 1954 Act. There was no proof and also no pleading about grant of any such rights to Kartarsingh. These lines used by the Division Bench, do not mean that in present situation deceased Rijhumal could have transferred the suit lands in favour of the present appellant. The facts show that a Sanad was given to Rijhumal in 1965 and he has sold the property in 1967 to present appellants. The appellants, therefore, could have produced said Sanad before the respondent No. 5 or then in writ petition before

the learned Single Judge or even before this Division Bench to show that Sanad did not bar such transfer and Rijhumal was not prohibited from selling the lands to them. There is no such effort. The terms and conditions in Sanad will be and would have been decisive in this respect. As said document is not filed, we are not in a position to accept the argument based solely upon Rule 102 of 1955 Rules. The facts looked into by us also show that there was allotment in favour of Narayandas on 27-6-1956. The possession was no doubt not taken by him, but a Statement of Accounts was issued in his favour towards his rural as well as his agricultural land claims. Thus, his claim towards compensation to that extent was extinguished u/s 17(4) of 1955 Rules. On the strength of that Statement of Accounts, Narayandas's bid on 25-4-1958 for Shop No. 34 was found unsustainable. It is also mentioned that he also associated his other claims to make up for the price of said shop. When his claim was taken up the subsisting allotment of these lands in his favour was noticed. As this allotment was subsisting, he was called upon to pay the bid amount towards shop in cash. He could not deposit that amount and hence, shop allotment was cancelled and 10% amount paid by him as earnest money was forfeited on 7-4-1959. These facts, therefore, clearly show that Narayandas was banking upon these lands allotted to him and had attempted to offer back those lands towards consideration of Shop No. 34. After this cancellation on 7-4-1959, he filed an appeal before the Deputy Chief Settlement Commissioner (India) not against this cancellation dated 7-4-1959, but against the allotment order dated 27-6-1956 and made an effort to obtain an order to get price of said lands adjusted towards the price of Shop No. 34. In view of Rule 49, the Appellate Authority rejected that appeal on 4-2-1960. In that order, the Appellate Authority advised him to take possession of allotted lands, if he so desired. This act on the part of Narayandas of filing appeal and prosecuting it till 4-2-1960 again shows his intention to possess the lands and mind set. It cannot be, therefore, gathered from these facts, that he waived the rights to those lands or then benefit of the allotment order dated 27-6-1956.

18. Chapter III of 1954 Act deals with compensation pool for the purpose of payment of compensation and rehabilitation grants to displaced persons. We are not concerned with all details thereof. However, section 14 stipulates that the compensation pool consists of all evacuee property acquired u/s 12 including the sell proceeds of such property and all profits and income accrued from that property. There are also other elements which constitute compensation pool, but the same are not relevant for our purposes. The Central Government is authorized to take appropriate measures for management of compensation pool and for that purpose section 16 permits it to appoint Managing Officers and Managing Corporations. Section 17 lays down functions and duties of Managing Officers and Managing Corporations. Section 19 authorizes Managing Officer to cancel leases or allotments of any property acquired under the 1954, Act. Section 20 confers upon him power to transfer any property out of compensation pool. The transfer can be by sale of such property to a displaced persons or by

its lease or then by its allotment. Sub-section (3) of section 20 contemplates a case where ownership of any property passes to the buyer before the payment of the whole of the purchase money. Here in exercise of powers u/s 20(1)(c) the lands have been allotted initially to Narayandas and thereafter to Rijhumal. The provision of Rule 61 of 1955 Rules prescribe consequences of refusal of acceptance of allotment. Rule 60 requires allottee to communicate his acceptance of allotment to Settlement Commissioner within one month. If no reply is received by the Settlement Commissioner, allotment is deemed to have been accepted by an allottee. Here, because of conduct of Narayandas as noted above, relinquishment of allotment or waiver of allotment is being urged. There is no express communication by him refusing to accept allotment. On the contrary, his conduct noted by us above clearly shows that he accepted that allotment and wanted the lands allotted to him to be used for discharge of his obligation to pay purchase price towards Shop No. 34. The provisions of Rule 61, operate only when there is express refusal to accept the allotment of any agricultural land. The Consequence prescribed is that the claim of such allottee for compensation to that extent is deemed to have been satisfied. Such land then becomes available for allotment to any other claimant. Therefore, as per Rule 61 even if allotment is refused, the claim towards compensation is deemed to have been satisfied and thus in Statement of Accounts his entitlement to compensation gets reduced to that extent. Here that is not the position. Narayandas, all the while was making efforts to secure adjustment of the price of agricultural lands towards his claim in respect of Shop No. 34. We, therefore, find the plea of waiver as raised by the present appellants misconceived and unsustainable.

19. This brings us to consideration of subsequent allotment to appellants. Facts noted by us above, show a valid and subsisting allotment in favour of Narayandas even on 18-5-1957 when very same lands were allotted to Rijhumal. The perusal of Rule 68 of 1955 Rules shows that where any agricultural land is transferred to any person under 1955 Rules, the transferee is to be granted Sanad in form specified in appendix XV. Said Rule further stipulates that transfer can also be effected in any other manner in conformity with the provisions of local or special law relating to transfer of agricultural land in the area where that land is situated. Thus, Sanad is executed after the land is transferred. We have already noted section 20 above and that section contemplates allotment as one of the modes of transfer. It is to be noted that even in case of Rijhumal though allotment order is dated 18-10-1957, Sanad came to be executed in his favour on 23-9-1965. He was placed in possession at the time of allotment itself. Hence, it cannot be said that these lands have been transferred to Rijhumal for the first time on 23-9-1965. The Sanad issued is, therefore, in recognition of fact of transfer and there is no transfer because of or by way of Sanad itself. This discussion, therefore, shows that there was similar allotment in favour of Narayandas prior to allotment in favour of Rijhumal. That allotment was found subsisting by authorities and ultimately the Deputy Chief Settlement

Commissioner (India) on 4-2-1960 while rejecting appeal of Narayandas, permitted him to take possession, if he so desired. There is no order after 27-6-1955 till today cancelling allotment in favour of Narayandas. The effort of the appellants has been to demonstrate waiver of or relinquishment by Narayandas and we have found no substance in it. The learned Single Judge has considered this aspect and found, that there was no cancellation of allotment in favour of Narayandas and, therefore, the land was not available for allotment to Rijhumal. There is no argument that mere allotment of very same land in favour of Rijhumal has the effect of cancellation of allotment in favour of Narayandas. The record shows that in earlier Reference No. 8 of 1973, the authorities have recommended cancellation of allotment in favour of Narayandas, but that reference was rejected on 7-9-1973. Thereafter, a second reference was submitted in exercise of liberty given in this order and in it the proposal to cancel the allotment in favour of Rijhumal was put up. That has been accepted by the respondent No. 5 in Departmental Reference No. 1 of 1976. This acceptance on 11-5-1979 constituted subject matter of challenge in writ petition before the learned Single Judge.

20. The learned Single Judge has considered the question of bona fides of present appellants. The present appellants have stepped into the shoes of deceased Rijhumal. Rijhumal was admittedly a displaced person and his entitlement to property from compensation pool was not and is not in dispute. Rijhumal, therefore, could have been blamed for the state of affairs which fell for resolution in Departmental Reference No. 1 of 1976. The reliance by the learned Counsel for the appellants on the Division Bench judgment of this Court reported in Bhoorsingh Palasingh vs. Kesumal Aratmal and others, AIR 1979 Bombay 143 (supra) clearly shows that their questions gone into was whether u/s 20(1) of 1954 Act, a sale deed executed could have been cancelled. The express language of sections 19 and 20 has been noticed and the finding reached is Managing Officer is not authorized by law to cancel the sale deed. That is not the issue before us. Here, it is nobody's case that in appropriate cases the Managing Officer is not authorized by law to cancel the allotment. In other words, the allotment in favour of Narayandas could have been cancelled by the Managing Officer before proceeding further to allot very same property to deceased Rijhumal.

21. However, it is clear that appellants who step in shoes of allottee Rijhumal, are and were entitled to be heard in departmental reference. In fact they were parties before respondent No. 5 and an order to their prejudice or to the prejudice of their vendor could not have been passed behind their back. Hence, they had and have locus to challenge said adjudication by respondent No. 5 in writ petition and in this LPA. We cannot accept the finding or argument to the contrary. Moreover, objection raised due to filing of civil suit by them has not been substantiated. The half hearted attempt of respondent No. 1 (c) also therefore cannot succeed.

22. In view of this discussion, we do not see any merit in this appeal. There is no perversity or error of jurisdiction in exercise of his jurisdiction by the learned Single Judge, No case is made out to call for any interference. The Letters Patent Appeal is, therefore, dismissed. No order as to costs. At this stage Shri N. S. Bhattad, Advocate seeks protection of possession for a period of eight weeks so as to enable the appellant to take further appropriate steps in the matter. Shri Kalmegh, Advocate holding for Shri N. W. Sambre, Advocate and the learned AGP, are opposing the request. However, looking to the facts noted above and the continuous possession of the appellants, we protect their possession for further period of eight weeks from today. This protection shall cease to operate automatically thereafter.