

(1966) 03 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2720 of 1965

Pheru Ram and Others

APPELLANT

Vs

Chief Settlement Commissioner of India and Others

RESPONDENT

Date of Decision : 04-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 34C, 34D

Citation : (1967) 1 ILR (P&H) 19

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : Roop Chand, H.S. Wasu and B.S. Wasu, for the Appellant; C.D. Dewan, Deputy Advocate-General, R.S. Dhillon and B.S. Bindra, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Pandit, J.—This petition under Articles 226 and 227 of the Constitution has been filed by Pheru Ram and his two brothers, Thakar Singh and Dalip Singh, challenging the validity of the order, dated 21st of August, 1965, passed by the Chief Settlement Commissioner, Respondent No. 1

2. The Petitioners are displaced persons and are sub-lessees of urban agricultural land comprised in various khasra numbers situate within the municipal limits of Jullundur. Out of the area with them, they were permanently transferred land of the value of Rs. 10,920 under certain Press Notes issued by the Central Government (Ministry of Rehabilitation). The Department, however, refused to transfer the remaining land to them and the same was sold by public auction. Thereupon Petitioners Nos. 1 and 3 filed a writ petition in this Court challenging the validity of the aforesaid Press Notes and it was allowed on 15th of December, 1960 and the proceedings taken in pursuance of the Press Notes were quashed. In the meantime, in pursuance of a Division Bench decision of this Court, rules

were framed by the Central Government for the permanent transfer of urban agricultural land by adding Chapter V-A to the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the rules). On the addition of these rules, the Petitioners submitted applications for the transfer of some additional land. On 28th of October, 1965, Shri R.S. Phoolka, Regional Settlement Commissioner, Jullundur, transferred some more land (of the value of Rs. 3,900) to them. Against this order the Petitioners filed an appeal before Shri Parshotam Sarup, Deputy Chief Settlement Commissioner with delegated powers of Chief Settlement Commissioner and it was contended before him firstly that the valuation of the land had been arbitrarily fixed by the Department without hearing the Petitioners and secondly that the Petitioners were not joint sub-lessees and therefore, they were entitled to the transfer of land up to the value of Rs. 15,000 each. By means of Shri Parshotam Sarup's order, dated 6th of August, 1964, the first contention was accepted and as regards the second the case was remanded with the following observations:

As regards the second contention, if the Appellants are not joint sub-lessees, they are to be treated as separate units and every one of them will be entitled to the transfer of urban agricultural land to the extent of allotable limit in his own right. If they are joint sub-lessees, they will be treated as one unit and in that case the allotable limit would be Rs. 15,000 in their joint names. They had no chance to prove that they were separate sub-lessees before the learned officer below. As such the decision made without hearing the Appellants cannot be sustained.

3. After remand Shri M.S. Kapoor, Managing Officer, heard the Petitioners and,--vide his order, dated 8th of October, 1964 he assessed the value of the land at Rs. 600 per kanal. Regarding the other matter he found that, according to the entries in the khasra-girdawari produced by the Petitioners (themselves, they were joint cultivators and therefore, they were entitled to the transfer of land as one unit up to the limit of Rs. 15,000. Against this order the Petitioners filed an appeal before Shri R.S. Phoolka, Regional Settlement Commissioner, Jullundur. Before him it was urged that prior to the framing of the rules, separate khasra numbers were offered to each of the Petitioners and therefore, they had been treated as separate sub-lessees. On 29th of January, 1965 the Regional Settlement Commissioner found that that fact was not material for the determination of the point and because, according to the revenue records, the Petitioners were joint cultivators, they were not separately entitled to the transfer of land up to the value of Rs. 15,000 each. As regards the valuation of the land made by the Department, he found that the same was rather low. Dissatisfied with this order, the Petitioners filed a revision before Respondent No. 1, which was rejected by means of the impugned order, dated 21st of August, 1965, by Shri O.N. Vohra, Settlement Commissioner with delegated powers of Chief Settlement Commissioner. It was held that the Petitioners were not entitled to claim transfer of urban agricultural land separately in their favour. Without making an application u/s 33 of the Displaced Persons (Compensation and

Rehabilitation) Act, 1954, the Petitioners filed the present writ petition in this Court on 24th of September, 1965.

4. The only point for decision in this case, on which admittedly there is no reported or unreported authority, is whether under the rules the Petitioners are entitled to the transfer of land up to the value of Rs. 15,000 each or all of them jointly have to be allotted land up to the value of Rs. 15,000. The relevant rules for the determination of this question are 34-C and 34-D which read:

[His Lordship read Rules 34-C and 34-D and continued :]

5. It is undisputed that the Petitioners are displaced persons and are real brothers. It is not their case in the writ petition that they had separate lessors or that separate sub-leases were made in favour of each one of them. It means that there was only one lease and one sub-lease. It is common ground that the land in dispute is, evacuee urban agricultural land, which consists of more than one khasra and the aggregate value of the land exceeds Rs. 15,000. It is also the common case of the parties that Rule 34-D will apply in the instant case. This rule says that where evacuee urban agricultural land consisting of more than one khasra the aggregate value of which exceeds Rs. 15,000, has been leased to a displaced person, the Regional Settlement Commissioner will select a portion of the leased land, the value of which does not exceed Rs. 15,000 and the same shall be allotted to the lessee. According to the proviso, if the lessee Pheru Ram etc. v. Chief Settlement Commissioner of India, etc. (Pandit, J.) had sub-leased the leased land or part thereof to a displaced person and that sub-lessee had been in occupation of that land or part thereof continuously from 1st of January, 1956, the Regional Settlement Commissioner would select the sub-leased land or part thereof, as the case may be, the value of which does not exceed Rs. 15,000 and the same shall then be allotted to the sub-lessee. It is further provided that no khasra shall be sub-divided for the purposes of allotment under this rule. It will be seen that this rule talks only of one lessee and one sub-lessee. Joint lessees or joint sub-lessees are not mentioned therein. Similar is the position under Rule 34-C the only difference being that Rule 34-C deals with land the value of which is Rs. 15,000 or less, while Rule 34-D is concerned with land the value of which exceeds Rs. 15,000. Under Rule 34-D, if a lessee cannot get land worth more than Rs. 15,000, surely his sub-lessee cannot get land worth more than this amount. In the instant case the Petitioners' contention before Shri Parshotam Sarup, Deputy Chief Settlement Commissioner, with delegated powers of Chief Settlement Commissioner, was that their sub-leases were separate and it was not a joint sub-lease in favour of all of them as alleged by the Department. The case was specifically remanded for determining this point. After remand, on the evidence produced by the parties the finding given by the Managing Officer was that there was a joint sub-lease in favour of the Petitioners, who were joint cultivators. This finding was confirmed on appeal by the Regional Settlement Commissioner and later on, in revision by the Chief Settlement Commissioner. This is a finding of fact based on evidence which cannot be interfered with in

these proceedings. There being one joint sub-lease, the Petitioners cannot individually get land /worth Rs. 15,000 each. They can jointly get land up to that limit, as rightly found by the authorities below. The position, in my opinion, would not have been different even if separate sub-leases had been made in favour of these Petitioners, provided the original lease was one. In the instant case however, as I have already mentioned above, it has been found as a fact that there was one joint sub-lease and not three different subleases, in favour of the Petitioners.

6. The result is that this petition fails and is dismissed, but with no orders as to costs.