
(2017) 12 MP CK 0008
In the Madhya Pradesh High Court
Case No : 7728 of 2012

PRITMA JOSHI AND ANOTHER

APPELLANT

Vs

BARKATULLAH VISHWAVIDYALAYA

RESPONDENT

Date of Decision : 11-12-2017

Acts Referred:

[Madhya Pradesh Land Revenue Code, 1959](#), [Section 110](#), [Section 109](#) -
[General Clauses Act, 1977](#), [Section 6](#)

Citation : (2017) 12 MP CK 0008

Hon'ble Judges : Vandana Kasrekar

Bench : Division Bench

Advocate : Sanjay K. Agrawal, ?N.S. Chouhan

Final Decision : Allowed

Judgement

1. The petitioners have filed the present petition challenging the order dated 08.11.2011 passed by respondent no.1 thereby cancelling the order dated 08.09.2006 by which the petitioners were allotted a land.
2. The petitioners are daughter and son of late Vani Bai Sobhani,. Late Vani Bai Sobhani migrated from Lahore. She was a Displaced Person and filed a claim application to the General Custodian regarding immovable property which was left by her in East Pakistan before Government of India under Displaced Persons (Claims) Act, 1950 (hereinafter referred as "the Act") before General Custodian Government, Delhi, which

was accepted as "VERIFIED CLAIM". On the basis of "Certified Claim" under the orders, the Chief Custodian Commissioner, an immovable property. Quarter No.50/9, situated at Bairagarh was allotted to the Displaced Person under the Act of 1950 and 1954. However, the mother of the petitioners could not get the physical possession of the allotted property. Thereafter, an application was submitted on 24.04.2000 to the State Custodian Commissioner Court (Rehabilitation Department) Government of M.P., Bhopal, then on 28.11.2005, the mother of the petitioners has submitted an application that if the possession of the said property could not be delivered of the allotted property than in its place some other property reserved by the Rehabilitation Department in village Behta may be allotted to her. The State Custodian Commissioner Court (Rehabilitation Department) Government of M.P., Bhopal sent a memo dated 23.12.2005 to the Collector, Bhopal that if the possession of the allotted property is not possible then alternative property available may be allotted to her. The Collector, Bhopal thereafter referred the matter to Nazul Officer, Bhopal, who in his turn referred it to Pirbandhak Adhikari Custodian Tahsildar, under Displaced Persons (Claims) Act s 1950 and 1954. After enquiry into the matter Pirbandhak Adhikari reported that the allotted property is not locateable and, therefore, the delivery of possession is impossible, however, an alternate land is available which is part of Khasra No.30/2/1, situated at Revenue Village Behta, Bairagarh, District Bhopal may be allotted to her. On enquiry report and recommendation, the Court of Custodian Commissioner, State of M.P. (Rehabilitation Department), Bhopal vide letter dated 08.09.2006 has allotted to her the

recommended property i.e. 0.21 acres land forming the part of khasra no.30/2/1. In consequence of the order, the State Government of M.P. Rehabilitation Department directed the Custodian and Pirbandh Adhikari, through Collector Bhopal to get the "Sanad" registered by stamps and Registration Office. Accordingly, Nazul Officer Bairagarh Bhopal got the "Sanad" registered of the said property on 14.11.2006 in the name of the mother of the petitioners thereafter copy of the said Sanad was given to the mother of the petitioners. The petitioners thereafter filed an application under Section 109 of the M.P. Land Revenue Code for mutating her name on the said land and after enquiry under Section 110 of the M.P. Land Revenue Code, name of the mother of the petitioners was recorded thereafter possession of the said property was delivered to her on 20.12.2006. After a period of 5 years, the respondents had passed an order dated 08.11.2011 thereby cancelling the allotment dated 08.09.2006 made in favour of the petitioner on the ground that the Act of 1954 is repealed 06.09.2005. Being aggrieved by that order, the petitioner has filed the present writ petition.

3. Respondents have filed their return and in the return they have submitted that the petitioner has filed an application for allotment of land under the Act of 1954. She did not take physical possession of the property earlier allotted to her i.e. quarter no.50/9. The Act of 1954 had been repealed by the Central Government while Displaced Persons (Claim and other Laws) Repeal Act, 2005 w.e.f. 05.09.2005 (hereinafter referred as "the Act 2005") without stipulating any saving clause. As on date of repeal, no application of the petitioner claiming allotment of land under the provisions of the Act was

pending and it is the matter of record that she moved an application claiming alternative allotment of land on 28.11.2005. After repeal Act of 2005, all the forums created under the Act became ceased to continue further including Office of State Custodian Commissioner Court (Rehabilitation Department) Government of M.P., Bhopal to whom the application was addressed. There was no occasion to proceed with the aforesaid application in absence of any forum after repeal of the Act, though her application was taken into consideration by the concerned authority. The contention of learned counsel for the petitioner that his claim is covered under the Verified Claims and, therefore, allotment could not cancel in view of the order of the Central Government dated 22.09.2008 is also misconceived. As per the definition of Verified Claim given in the Act of 1954 in Section 2(e) does not cover the claim registered and verified by the appointing authority, in respect of which, no dis-satisfaction wholly or partially is expressed by the allottee. In absence of any such pleadings and in view of the fact that as on the repeal of the Act no such proceedings were in existence, the allotment of alternative land vide order dated 8.09.2006 cannot be said to be justified.

4. The petitioners have filed the rejoinder to the said reply. In the rejoinder petitioners have submitted that on 05.09.2005 the proceedings of handing over the vacant possession of the then Government Build up Property was pending. In fact, from perusal of the Annexure P-3 and new Annexure R-1 make it crystal clear that the case was pending at the time of alleged cancellation of the impugned order. The proceedings of delivering the actual/physical possession of the

Government Build up Property were also pending and when it was realized by the respondents that the physical possession of the said property could not be delivered then another alternative property was allotted. He submits that there is no saving clause under the Act the Central Government by issuing the notification in the year 2008 has clarified the said clause. Learned counsel for the petitioner argues that the impugned order dated 08.11.2011 is illegal and arbitrary and has been passed without issuing any show cause notice or giving any opportunity of hearing in the matter. It has been submitted that the Sanad has already been registered in the name of the mother of the petitioners and, therefore, the same could not be quashed by the impugned order. The Act of 1954 was repealed by the Act of 2005 on 05.09.2005 on the date of Repeal Act proceedings for allotment of land were pending consideration before the competent authority. Hence the said proceedings were saved and not affected by the Repeal Act . In this respect, the Ministry of Home Affairs, Government of India issued a direction to all the Chief Secretaries of the State and Administrator under the UTS clarifying that the enactment of the Displaced Persons (Claims and Other Laws) Repeal Act, 2005. After clarification of the Central Government the State Government has issued a Sankshepika on 11.08.2011 requested the clarification or opinion of the Law Department. The Law Department has replied that the clarification of the Central Government is self explanatory. Thus, as per the petitioner, the Repeal Act of 1954 had no effect on the allotment of the land of the petitioner whatsoever. The allotment order issued in favour of the petitioner has attained finality and the Sanad has already been registered in the name

of the petitioner. He also relied on the judgment passed by the Apex Court in the case of Union of India Vs International Sindhi Panchayats and Others passed in Civil Appeal No.6703/2008 decided on 20.04.2014.

5. Heard learned counsel for the parties and perused the record. The Central Government has enacted the Act which is known as the Displaced Person (Claims) Act, 1950. As per the said Act, the persons who are migrated from Pakistan are entitled to get the property in India. Accordingly, mother of the petitioners has submitted an application for allotment of the land which was accepted as Verified Claim vide Annexure P-3. The Verified Claim has been defined under the Act of 1954 under Section 2 (f) it means "Verified Claim" means any claim registered under the Principal Act in respect of which a final order has been passed under the Act. Initially, the mother of the petitioners was allotted quarter no.50/9 situated at Bairagarh, however, as the petitioners could not get the physical possession of the allotted property, therefore, vide Annexure P-4 she has submitted an application on 24.04.2000 for allotment of the handing over the physical possession of the said property. However, the possession of the said property could not be given to the petitioners and, therefore, the Collector has referred the matter to the Nazul Officer, Bhopal for allotting her the alternative property. Accordingly, Deputy Secretary vide letter 23.12.2005 has directed the Collector to submit a report whether any alternative land could be allotted to the mother of the petitioners. The Nazul Officer vide letter dated 27.01.2006 has informed the Deputy Secretary, the possession of the quarter no.50/9 could not be given to the petitioner. However, the same alternative land i.e.

khasra no.30/2/1 is available for the allotment. The Deputy Secretary thereafter vide order dated 08.09.2006 has directed the Collector to issue the Sanad in favour of the mother of the petitioners. Accordingly, alternative land was allotted to the petitioner on 15.11.2006 and Sanad has also been issued in her favour on 12.09.2006 and on the basis of the said Sanad her name was also mutated in the land record. In the meanwhile, the Central Government has repeal the Act of 1954 w.e.f. 05.09.2005 on the basis of the said repeal Act, the respondents have cancelled the allotment made in favour of the mother of the petitioners on 08.09.2005 vide order dated 08.11.2011 on the ground that after coming into force of the Repeal Act, no allotment can be made in favour of the petitioners. The Central Government has issued a notification on 22.09.2008 as per the Clause 3 of the Circular the Repeal Act would not effect the disposal of the cases which are mentioned therein, in which the Clause 3.3 provides for that it would not be applicable to the Verified Claims in which full compensation has not been given so far. The Clause 5 of the said Circular further provides that as regards the revival of the authorities prescribed under the Reveals Act it is clarified that since the subject stands transferred to the State Government the action for settlement of pending the matters can be taken by the authorities prescribed under any State Laws that may have been enacted and the State Governments are requested to take necessary time bound action for settlement of pending claims. In the present case, the mother of the petitioners has submitted an application under the Act of 1954 and her application was under process and she was allotted the land under the Act of 1954. However, the possession of the said

property could not be given to the mother of the petitioners and, therefore, in the year 2000 she submitted an application for allotment of the alternative land. The said application was processed and the plot was allotted to her on 08.09.2006. The repeal Act came into force w.e.f. 05.09.2006 which shows that at the time when the repeal Act came into the force the claim of the petitioner was pending and, therefore, the case of the petitioner is covered by the circular issued by the State Government on 21.09.2008. So far as, the contention of learned counsel for the respondents that there is no saving clause under the Repeal Act, therefore, no benefit can be given to the petitioners. The Apex Court in the case of Union of India (supra) in para 2 has held as under:-

2. As against respondents no.6 and 8, it is ordered as follows:-

It is declared that the provisions of Section 6 of the General Clauses Act are applicable to the Displaced Persons Claims and Other Laws Repeal Act, 2005 (for short " Repeal Act, 2005") and that the respondent nos. 6 and 8 herein shall continue to decide the cases and proceedings pending on the date of the said Repeal Act, 2005 and implement the decisions in the said cases under the repealed Displaced Persons Compensation & Rehabilitation Act, 1954 and other related Acts.

Thus, as per the judgment passed by the Apex Court, Section 6 of the General Clauses Act would be applicable to the Act of 2005 and thus, the respondents are bound to consider the application submitted by the mother of the petitioners under the Act of 1954.

6. Thus, in light of the above aforesaid discussion, the writ petition is allowed and the impugned order dated 08.11.2011 is hereby quashed and the respondents further directed not to interfere into the possession of the petitioners. No order as to costs.