

(1970) 08 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 142 of 1968

Raghubir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-1970

Acts Referred:

Citation : (1970) 08 DEL CK 0036

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : Ramji Das, Inder Singh, S. Malhotra and Chabildas, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This writ petition has been filed by Raghubir Singh praying that an order (Annexure "E"), dated 9th September, 1968, passed by Shri Rajni Kant, Officer, Delegated with the powers of the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954, may be quashed. The respondents to the writ petition are (1) the Union of India, through the Secretary, Ministry of Labour Employment and Rehabilitation, Department of Rehabilitation, (2) Shri Rajni Kant, Officer Delegated with the powers of the Central Government under Act No. 44 of 1954, Ministry of Labour Employment and Rehabilitation, Department of Rehabilitation, and (3) H Santokh Singh.

(2) The petitioner is a displaced person from West Pakistan. According to him, since his migration from West Pakistan he was in occupation of evacuee property No. 46 at Mandi comprising a house and vacant land of an extent of 651 squares yards and bearing Khasra Nos. 1479 and 1480 of Khewat Abadi in Mandi Town, which was left by a Muslim evacuee named Ajmer Khan who was its original owner and who migrated to Pakistan. Later on, the Central Government acquired the said evacuee property No. 46 under the provisions of the Act No. 44 of 1954, and the said property thus became a part of the compensation pool.

(3) The petitioner had a verified compensation claim of Rs. 3,903 in respect of the property left by him in Pakistan, and by virtue of the provisions of the aforesaid Act and the Rules framed there under, he became entitled to have the said property No. 46 transferred to him as a claimant in occupation thereof in lieu of his compensation claim. The Central Government, Rehabilitation Department, decided to transfer the property No. 46 to the petitioner. Annexure (A) is a copy of the communication to the petitioner from the Assistant Settlement Commissioner, Gurdaspur. It shows that the total compensation and rehabilitation grant due to the petitioner was Rs. 2,164.00, that "the value of the property No. 46 was fixed at Rs. 4,643.00, and that after adjusting the compensation amount towards the value of the property, a net amount of Rs. 2,479.00 remained to be recovered from the petitioner. It was stated in the said communication that the sum of Rs. 2,479.00 should be paid by the petitioner to the District Rent and Managing Officer, Gurdaspur, in seven equal annual installments. It was further stated in the said communication that when the balance due from the petitioner is paid, the District Rent and Managing Officer will transfer the property No. 46 to the petitioner on permanent basis under the aforesaid Act and the Rules framed there under and execute the necessary deed of conveyance. Annexure (B) is a copy of an agreement, dated 27th August, 1959, which was to be executed between the President of India and the petitioner regarding the transfer of the property No. 46 to the petitioner. The said property was described in the schedule to the agreement as "House No. 46 at Mandi (Himachal Pradesh)". The petitioner paid in full the balance amount of the price on 5th February, 1964. Annexure (C) is a copy of the Treasury Challan which shows the full payment. According to the petitioner, on the payment of the full price, the title to the property No. 46 passed to the petitioner and he became its owner with effect from 1st November, 1953, as provided in Rule 34, and the said property ceased to be a part of the compensation pool.

(4) The petitioner stated in his writ petition that subsequently, during the demarcation of the property No. 46, it came to light that some time after the allotment of the property No. 46 to the petitioner in 1959 respondent No. 3, Santokh Singh, claiming to be in occupation of a portion of the property No. 46, fraudulently and in collusion with some officials of the Rehabilitation Department, got a portion of the said property numbered as 46-A and entered into an agreement with the Government for its transfer to him on 27th June, 1964, after the title to the property No. 46 had already passed to the petitioner, and that the petitioner applied for a certified copy of the order whereby property No. 46-A was agreed to be transferred to respondent No. 3, but the copy was not supplied to him by the Rehabilitation Department. According to the petitioner, respondent No. 3 had no verified claim for compensation and was thus a non-claimant and nonallottee, and under the Act and the Rules he was not entitled to the allotment or transfer of property No. 46 or any part thereof in his favor. The petitioner further stated in his writ petition that property No. 46-A did not exist and was not included in the valuation schedule originally prepared, and pleaded that it

was not permissible under the Act or the Rules to create a new property No. 46-A out of property No. 46 after the latter property had been allotted and stood transferred to the petitioner, and that no action for separate demarcation of property No. 46 A was ever taken by any competent authority nor was any notice given to the petitioner regarding the same. When the petitioner came to know about the agreement in favor of respondent No. 3, he filed a Revision to the Chief Settlement Commissioner, New Delhi, objecting to the agreement to transfer property No. 46-A to respondent No. 3. The said Revision came up before Shri O.N. Vohra, Authorised Chief Settlement Commissioner, who, by an order, dated 25th February, 1965, remanded the case to the Managing Officer for looking into the matter afresh with reference to the various valuation schedules and after hearing the parties and inspection of the site if necessary. Accordingly, the Managing Officer submitted a report on 16th August, 1966 stating, *infer alia*, that there was a mistake in the valuation of the property. The said mistake will be referred to in detail presently. It appears that in view of the said report the Rehabilitation Department made a Reference u/s 24 of the Act to the Chief Settlement Commissioner requesting that both the transfers, viz., the one in favor of the petitioner and the other in favor of respondent No. 3, be cancelled on the ground that the property No. 46 had been by mistake wrongly valued at Rs. 4,643.00, while its value has been found to be Rs. 6,326.00. The petitioner, Raghubir Singh, also filed a fresh Revision u/s 24 of the Act before the Chief Settlement Commissioner praying that the agreement to transfer the property bearing No. 46-A in favor of Santokh Singh (respondent No. 3) may be set aside. The Reference and the Revision came up for decision before Shri K.L. Wason, Settlement Commissioner with delegated powers of Chief Settlement Commissioner, who, after hearing the parties, came to the conclusion that the Rehabilitation Department was bound in law to transfer property No. 46 to the petitioner who was a claimant in preference to respondent No. 3 who was a non-claimant, and that the agreement to transfer in favor of respondent No. 3 which was entered into subsequent to the transfer to the petitioner could not be sustained. He accordingly passed an order (Annexure D), dated 27th February, 1968, setting aside the transfer and cancelling the agreement, dated 27th June, 1964, in favor of respondent No. 3. By the same order, he accepted the Revision filed by the petitioner, but in view of the Reference by the Department, he directed that the petitioner should pay the difference between the price already paid by him and the valuation subsequently made by the Department.

(5) Against that order of the Chief Settlement Commissioner, respondent No. 3 preferred a Revision to the Central Government u/s 33 of The Act. The said Revision was heard by Shri Rajni Kant, respondent No. 2, who accepted the Revision by his Order (Annexure E), dated 9th September, 1968, set aside the order of Shri K.L. Wason, and directed that the property comprising Khasra Nos. 1479 and 1480 together with the structure standing thereon be disposed of afresh according to law. Aggrieved by the said order, the petitioner has filed the present writ petition praying that the said order (Annexure E) may be quashed,

and the petitioner be declared to be the transferee and owner of property No. 46, Khasra Nos. 1479 and 1480, 651 square yards in area, situated in Mandi Town, and that the respondents may be prohibited from taking any action for fresh disposal of the said property.

(6) None of the respondents filed any counter affidavit in opposition to the writ petition, but respondents 1 and 2 were represented by Shri Sushil Malhotra, Advocate, and respondent No. 3 by Shri Chhabil Dass. Advocate.

(7) It appears from the order of Shri K.L. Wason that property No. 46 is situated in Khasra Nos. 1479 and 1480 with plot area of 651 square yards, and the built up portion therein was in occupation of both Raghbir Singh (petitioner) and Santokh Singh (respondent No. 3), and that the correct value of the said property was Rs. 6,326.00. But, in assessing the value of the portion in occupation of Raghbir Singh (petitioner), the valuer took into consideration the entire area, viz., 615 square yards under Khasra Nos. 1479 and 1480 and the built up portion in the occupation of Raghbir Singh (petitioner), and assessed the value of the same at Rs. 4,578.00. However, it was offered to Raghbir Singh (petitioner) at Rs. 4,643.00. It appears that the said value of Rs. 4,643.00 was in fact the value of the adjacent property No. 47. Mandi, which had already been sold to one Lekha Singh for Rs. 4,700.00, and in whose favor a certificate of sale had been issued on 31st March, 1959. Toward- the said sum of Rs. 4,643.00 at which the entire area of 651 square yards and the built up portion therein in the occupation of Raghbir Singh (petitioner) was offered to the petitioner, a sum of Rs. 2,164.00 being the compensation due to the petitioner was adjusted, and for the payment of the balance price of Rs. 2,479.00, Raghbir Singh (petitioner) executed an agreement on 27th August, 1959. The built up portion in the occupation of Santokh Singh was originally evaluated without taking into consideration the site or the plot of 651 square yards, and the value of the super structure in his occupation was assessed at Rs. 748.00. Subsequently, the same was evaluated under a new No. 46-A at Rs. 4,578.00 taking into consideration Khasra Nos. 1479 and 1480 with a plot area of 651 square yards also. Out of the said amount, Santokh Singh paid Rs. 916.00 in cash on 27th June, 1964, as initial deposit, and executed an agreement on the same date for payment of the balance cost of Rs. 3,662.00 in Installments. When the Department, discovered the wrong valuation, it made a reference to the Chief Settlement Commissioner u/s 24 of the Act for cancellation of the transfer of the portion of property No. 46 at Mandi and also the agreements dated 27th , August, 1968 and 27th June, 1964 executed by Raghbir Singh (petitioner) and Santokh Singh (respondent No.3) respectively. The said Reference and the Revision filed by Raghbir Singh came up for consideration before Shri Wason. Shri Wason pointed out in his order that the property in question was indivisible, that there was no dispute about the fact that Raghbir Singh was a claimant while Santokh Singh was a non-claimant, that it was a settled principle of law that when the contest is between a claimant and a non-claimant there is no obligation on the part of the Department authorities to hear a non-claimant, because the property has to be transferred to

a claimant as a matter of right and the Department is under a statutory obligation to transfer the property to a claimant when the contestant is a non-claimant as held by the High Court of Punjab and Haryana in Mohinder Singh v. Union of India, 1967 P.L.R. 950, and that the transfer made in favor of Santokh Singh could not be allowed to stand as the property was indivisible, he was a non-claimant, and the transfer in his favor was made subsequent to the transfer in favor of Raghubir Singh. In the result, Shri Wason accepted the departmental reference partly, set aside the transfer in favor of Santokh Singh: and cancelled the agreement, dated 27th June, 1964, which was entered into between Santokh Singh and the Department. He also directed that the deposit made by Santokh Singh be refunded to him. He accepted the Revision filed by Raghubir Singh, and directed that the transfer in favor of Raghubir Singh will subsist provided he deposited the balance amount as per the new valuation report submitted by the Managing Officer (T) within a period of two months from the date of his order, and that in case the said balance amount is not deposited by Raghubir Singh, the transfer in his favor will also stand cancelled and the property may then be disposed of in accordance with the Rules.

(8) As already stated, the matter came up in Revision filed by Santokh Singh, respondent No. 3, u/s 33 of the Act before Shri Rajni Kant (respondent No. ?) who was delegated with the powers of the Central Government under the Act. Shri Rajni Kant set aside the order of Shri Wason, and directed that the property comprising Khasra Nos. 1479 and 1480 together with the structure standing thereon be disposed of afresh according to law. after giving an opportunity of being heard to the parties concerned. The reasons given by him for setting aside the order of Shri Wason were as follows:-

"from the facts narrated above, it would be obvious that the property, the value of which was assessed at Rs. 4,643.00 was agreed to be transferred to Shri Raghubir Singh. The learned Authorised Chief Settlement Commissioner has confirmed the said transfer on the condition that Raghubir Singh deposits the balance amount as per new valuation report made by the Managing Officer within a period of two months from the date of his order. The Managing Officer has assessed the value of Khasra Nos. 1479-80 with an area of 651 sq. yds. together with two sets of structure one in possession of Shri Santokh Singh and the other in possession of Shri Raghubir Singh at Rs. 6,326.00. The property originally transferred to Shri Raghubir Singh for Rs. 4,643.00 consisted of Khasra Nos. 1481-82 with an area of 219 sq. yds. and a portion of construction lying in Khasra Nos. 1479-80. According to the order of the Authorised Chief Settlement Commissioner, Shri Raghubir Singh was, Therefore, required to deposit the difference of amount between Rs. 6,326.00 and Rs. 4,643.00 so that transfer made in his favor may subsist. The transfer already made in his favor related not to the property consisting of Khasra Nos. 1479-80 with an area of 651 sq yds. and two super-structures aforesaid but It related to Khasra Nos. 1481-82 with an area of 219 sq. yds. with a portion of structure of Khasra No. 1479-80 If the transfer already made in favor of Shri Raghubir Singh is to subsist, it will really

add further confusion in the case because Khasra No. 1481-82 with an area of 219 sq. yds. stands already transferred to Shri Raghubir Singh to take possession of that area comprising in the said Khasra. We will be perpetuating an irregularity and confusion in the case, if the transfers made in favor of Santokh Singh and Raghubir Singh are not set aside and the property comprising in Khasra No. 1479-80 and structure thereon are not disposed of afresh according to law. For the reasons thus stated, I allow the petition, set aside the impugned order dated 27-2-68 and direct that the property comprising Khasra No. 1479-80 together with structure standing thereon be disposed of afresh according to law, after giving an opportunity of being heard to the parties concerned. Inform.

Announced (RAJNIKANT)

Officer, with the

Powers, the Central Govt. under Act, No. 44 of 1954: "

DATED:9-9-68.

(9) Shri Ramji Dass, learned counsel for the petitioner, contended that the above reasoning was based on a misapprehension of the facts. The contention of the learned counsel has to be accepted as correct. The statements in the order of Shri Rajni Kant, viz., "the property originally transferred to Shri Raghubir Singh for Rs. 4,643.00 consisted of Khasra No. 1481-82 with an area of 219 sq. yds and a portion of construction lying in Khasra No. 1479-80" and "the transfer already made in his favor related not to the property consisting of Khasra Nos. 1479-80 with an area of 651 sq. yds and two superstructures aforesaid but it related to Khasra Nos. 1481- 82 with an area of 219 sq. yds with a portion of structure of Khasra Nos. 1479-80," are clearly incorrect statements, Even according to the facts stated in his own order, as well as in the order of Shri Wason, Khasra Nos. 1481- and 1482 relate to property No. 47, and the same had already been transferred to Shri Lekha Singh on 31st March, 1959. The communication (Annexure A) and the agreement (Annexure B) which relate to the transfer in favor of Raghubir Singh (petitioner) show that it was property No. 46 that was transferred to Raghubir Singh. No doubt, the said Annexures do not mention either Nos. 1479 and 1480 or the area. But, it was clearly stated in the order of Shri Wason that evacuee property No. 46 is situated in Khasra Nos. 1479-80 with plot area of 651 sq. yds. The petitioner, Raghubir Singh, also averred to that effect in his writ petition which is supported by his affidavit. It has not been controverted by any counter-affidavit by any of the respondents. We have, Therefore, to proceed on the footing that property No. 46 is situated in Khasra No. 1479 and 1480 with plot area of 651 sq. yds. This property was the subject of the transfer to Raghubir Singh (petitioner) under Annexures A and B. The said property was originally valued at Rs. 4,643.00 in Annexures A and B. Raghubir Singh paid the amount in full on 5th February, 1964 as is clear from the Treasury Challan (Annexure C). On payment of the full price, the title to the said property passed to Raghubir Singh as held by the Supreme Court in Bishan Paul

Vs. Mothu Ram, , and Raghubir Singh became its owner under Rule 34 with effect from 1st-November, 1953, and the property ceased to be a part of the compensation pool.

(10) It appears from the orders of Shri Wason and Shri Rajni Kant That the property No. 46 (i.e. comprising . Khasra Nos. 1479 and 1480 with a plot area of 651 sq. yds.) contains a super-structure cue portion of which was in the occupation of Raghubir Singh and the other portion was in the occupation of Santokh Singh. But, as pointed out by Shri Wason, Raghubir Singh was a claimant and Santokh Singh was a non-claimant, and the property was indivisible. In these circumstances, as between Raghubir Singh and Santokh Singh, the former, being a claimant, is entitled to the transfer of the property in his favor, while Santokh Singh, being a non-claimant, was not so entitled, in view of the decision of the High Court of Punjab and Haryana in Mohinder Singh's case (supra), wherein it was held that when there is a contest between a claimant and a non-claimant the property has to be transferred to the claimant as a matter right, and the Departmental Authorities are under a statutory obligation to transfer the property to a claimant when the contestant is a non-claimant. Therefore, the property No. 46 (i.e. comprising the Khasra Nos. 1479 and 1480 with a plot area of 651 sq. yds. and superstructure) was rightly transferred to Raghubir Singh under Annexures A and B, and title to the same passed to Raghubir Singh on his payment of the full price fixed in the said Annexures.

(11) It appears that, subsequently, it was found that the valuation fixed in Annexures A and B at Rs. 4,643.00 was by a mistake and that the correct valuation was Rs. 6,326.00. It was explained that the valuer, in assessing the value of the property No. 46 which was to be transferred to Raghubir Singh, took into consideration the entire plot area of 651 sq. yds. under Khasra Nos. 1479 and 1480 and the portion of the super-structure in the occupation of Raghubir Singh and assessed the value of the same at Rs. 4,578.00, but the same was however offered to Raghubir Singh at Rs. 4,643.00 taking by mistake the value of the adjacent property No. 47 which had already been transferred to Lekha Singh on 31st March, 1959. When and how the mistake was discovered has not been made clear by the respondents. However, once the mistake in fixing the valuation was discovered, the only reasonable course open to the Department was to require Raghubir Singh to pay the balance amount. Instead, the Department assessed the valuation of the portion of the superstructure in the possession of Santokh Singh and the entire plot area of 651 sq. yds. in Khasra Nos. 1479 and 1480 at Rs. 4,578.00, and entered into an agreement on 27th June, 1964 to transfer the same to Santokh Singh, and Santokh Singh paid a sum of Rs. 916.00 as a first Installment. It has to be noted that this was done after Raghubir Singh paid the full price as fixed for him on 5th February, 1964. It is just un-understandable how the entire area of 651 sq. yds. in Khasra Nos. 1479 and 1480 which was included in the assessment in the transfer to Raghubir Singh could again be included in the assessment for the purpose of the transfer

to Santokh Singh. Obviously, Realizing the oddity of the situation, "the department suo motu made a reference to the Chief Settlement Commissioner u/s 24 of the Act requesting that the transfer in favor of Raghubir Singh and the agreements in favor of both Raghubir Singh and Santokh Singh may be cancelled. Shri Wason, for the reasons which have already been mentioned above, set aside only the agreement in favor of Santokh Singh, but maintained the agreement and the transfer in favor of Raghubir Singh subject to the payment of the difference between the valuation fixed in Annexures A and B and the correct valuation. This order was, however, set aside by Shri Rajni Kant. As pointed out above, the order of Shri Rajni Kant was based on a mis-apprehension of the facts. He further failed to take into consideration the reasons mentioned by Mr. Wason, viz., (1) that the property was indivisible, (2) that Raghubir Singh was a claimant while Santokh Singh was a non-claimant, and as such Raghubir Singh was entitled to a transfer of the entire property in his favor, and (3) that the agreement in favor of Santokh Singh was entered into subsequent to the agreement in favor of Raghubir Singh and even subsequent to the payment of the full price by Raghubir Singh as fixed in Annexures A and B. It was observed by the Supreme Court in the unreported decision, dated 18th December, 1969, in *Mis Hindustan Steels Ltd., Rourkela v. A.K. Roy and others*. Civil Appeal No. 2127 of 1969, that "there is ample authority to the effect that if a statutory tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations, certiorari may properly issue to quash its order (see *S-A de Smith, Judicial Review of Administrative Action*, (2nd Ed.) 324-235)."

(12) The above observations were made by the Supreme Court with reference to the exercise of the discretion of the Industrial Tribunal to direct or not to direct the reinstatement of a workman whose service was wrongly terminated by the employer Company. The observations will apply with greater force in the case of an exercise of the revisional powers of the Central Government u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954. The infirmities mentioned above in the impugned order (Annexure E) of Shri Rajni Kant clearly render the order liable to be quashed. The order (Annexure D) of Shri Wason setting aside the transfer in favor of Santokh Singh and cancelling the agreement, dated 27th June, 1964, which was entered into between Santokh Singh and the Department, and accepting the revision of Raghubir Singh and upholding the transfer and agreement in his favor, was quite in accordance with law.

(13) It was stated in the orders of Shri Wason and Shri Rajni Kant that according to the Managing Officer, the correct valuation of the evacuee property No. 46 situated in Khasra Nos. 1479 and 1480 with plot area of 651 sq. yards and the two portions of super-structure therein, one in the possession of Raghubir Singh and the other in the possession of Santokh Singh, was Rs. 6,326.00. Shri Wason, Therefore, in accepting the revision of Raghubir Singh, rightly held that Raghubir Singh was entitled to the entire evacuee property No. 46 situated in Khasra Nos. 1479 and 1480 with plot area of 651 square yards and the two portions of the

super-structure therein, one in the possession of Raghubir Singh and the other in the possession of Santokh Singh, and that Raghubir Singh should pay the difference between the value fixed in Annexures A and and the correct valuation of Rs. 6,326.00.

(14) For the above reasons, the writ petition is allowed, and the impugned order (Annexure B), dated 9th September, 1968, passed by Shri Rajni Kant, is quashed. In the circumstances, I make no orders as to costs in this writ petition.