

(1974) 03 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Supreme Court Application No. 9 of 1973

Raghubir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Constitution of India, 1950 — Article 133(1)

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 33

Citation : (1974) 3 ILR HP 201

Hon'ble Judges : R.S. Pathak, C.J.;D.B. Lal, J

Bench : Division Bench

Advocate : Inder Singh and M.G. Chitkara, for the Appellant; S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioner Raghubir Singh is a displaced person from West Pakistan. Upon migration into India he entered into occupation of evacuee property No. 46 at Mandi consisting of a house and land. The property was part of the compensation pool. Upon application by Raghubir Singh the Central Government in the Rehabilitation Department decided to transfer property No. 46 to Raghubir Singh and initiated proceedings for that purpose. According to Raghubir Singh, he discovered that a portion of the property No. 46 had been allotted to the Respondent Santokh Singh as property No. 46-A. Santokh Singh had entered into an agreement with the Government for its transfer to him in June, 1964. Raghubir Singh disputed the power of the Government to effect the transfer in favour of Santokh Singh. He applied in revision to the Chief Settlement Commissioner, New Delhi against the agreement. There was a remand to the Managing Officer for fresh enquiry and thereafter a reference was made by the Rehabilitation Department u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, to the Chief Settlement Commissioner that the transfer in favour of both Raghubir Singh and Santokh Singh should be cancelled. Raghubir Singh also filed a revision petition to the

Chief Settlement Commissioner praying that the agreement in favour of Santokh Singh be quashed. Both proceedings came on for consideration before Shri K.L. Wason, exercising the powers of the Chief Settlement Commissioner. By an order dated February 27, 1968, he cancelled the transfer in favour of Santokh Singh and directed that if Raghubir Singh paid the amount due from him within two months the transfer in his favour would continue to subsist. Santokh Singh applied in revision to the Central Government u/s 33 of the Act and Shri Rajni Kant, exercising the powers of the Central Government, allowed the revision petition and set aside the order dated February 27, 1968. He directed that the property should be disposed of afresh in accordance with law. Against the order of Shri Rajni Kant Raghubir Singh filed a writ petition in this Court. The writ petition was allowed by Tatachari J. and he quashed the order passed by Shri Rajni Kant. Two Letters Patent Appeals were filed, one by the Central Government and the other by Santokh Singh. These were heard by a Division Bench of this Court. The Division Bench referred to the finding of Shri Rajni Kant that the property which was in dispute between the parties appeared to have been transferred already to one Lekha Singh and that what should have been considered for transfer to the contesting parties was the property situated in Khasra No. 1479-80 together with the structures standing thereon, and therefore Shri Rajni Kant held that the transfer in favour of Raghubir Singh was invalid. The Division Bench noted that the learned single Judge was right in quashing the order passed by Shri Rajni Kant because when identifying the property Shri Rajni Kant had not determined all the questions which arose in the case and were in controversy between the parties. The Division Bench pointed out that while the learned single Judge was right in quashing the finding of Shri Rajni Kant that the property had already been transferred to Lekha Singh he should have then allowed the matter to be determined afresh by Shri Rajni Kant or his successor in office and he should not himself have proceeded to determine those questions on the merits of the dispute between the parties when those questions had never received the consideration of the inferior authority. The Division Bench observed that it was only if Shri Rajni Kant had rendered any findings on those questions that he could have examined the validity of those findings in so far as the writ jurisdiction allowed, but when no findings at all had been given by Shri Rajni Kant it was not for the learned single Judge to proceed to give his own findings thereon. It was in these circumstances that the findings of the learned single Judge in that regard were vacated by the Division Bench. The present petition for a certificate under Article 133(1) of the Constitution is now before us.

2. We have heard learned Counsel for the parties and are not satisfied that the case raises any substantial question of law deserving the consideration of the Supreme Court. It seems to us beyond debate that in a petition for certiorari the High Court can consider whether a finding or determination of the inferior authority suffers from a jurisdictional infirmity or is illegal on the face of the record or is in breach of the principles of natural justice, but in a case where the inferior authority has not applied its mind to a question and has not rendered its

finding thereon it is not for the High Court to enter into its own determination of that question and render a finding. A determination such as the latter does not fall within the High Court's power to correct an error of law apparent on the face of the record, because indeed no error can be said to appear when the inferior authority has not given any finding at all. What can be said is that the order of the inferior authority suffers from a defect of jurisdiction inasmuch as the inferior authority has failed to decide a question which properly falls for decision. In such a case, the High Court can only quash the order and allow the inferior authority to re-examine the case and give its finding on that question.

3. The petition is rejected, but in the circumstances there is no order as to costs. The interim order dated January 28, 1974 is vacated.