

(2006) 10 DEL CK 0233
In the Delhi High Court
Case No : L.P.A. No. 1931 of 2006

Rajni Arora

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-10-2006

Acts Referred:

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

Citation : (2006) 92 DRJ 319

Hon'ble Judges : V.K. Jain, Acting C.J.; Kailash Gambhir, J

Bench : Division Bench

Advocate : Gita Luthra, for the Appellant; Sanjay Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, A.C.J.

1. This appeal has been filed impugning the order of the learned Single Judge, inter alia, dismissing the writ petition filed by the appellant on the ground of delay of almost 34 years. According to learned Counsel appearing for the appellant there is no delay on the part of the appellant as the appellant has moved the appropriate authorities in the year 2000 when no communication of the partition was received by the appellant. As a matter of fact, this case demonstrates a complete lackluster attitude of the appellant. The main reliance of the learned Counsel for the appellant is on order passed by Settlement Commissioner on 17.4.1971. The same is as follows:

This is a Revision petition u/s 24 of the Displaced Persons (C &R) Act against the allotment of Khasra No. 1, etc/68 min. measuring 7 bighas 16 Biswas situated in Village Kureni, Delhi and its permanent transfer to the respondent Shri Bhagwan Chand. Briefly the facts of the case are that the land in question along with other agriculture land was treated as composite property and custodian laid information before the competent officer for the separation of evacuee interest. The Assistant Custodian submitted a petition scheme in which the land in

question was allotted "Khurra" of the custodian. The partition scheme was accepted by the competent officer vide his order dated 29.06.1961. The Managing officer allotted the land to Sh. Bhagwan Chand on 15.09.1962. The not evacuee co-sharers and certain residents of the village filed objection against the partition scheme which was accepted by the competent officer and the orders dated 29.06.1961 was set aside on 1.9.1964. It is urged that after the partition scheme was set aside the allotment could not legally subsists and the Managing Officer was not justified in ordering on 31.1.1967 for permanent transfer of the land to the allottee. The contentions appear to be correct. After the partition scheme was set aside the entire matter was re-opened and the Competent Officer has to partition to composite property afresh. The Managing Officer was not justified in ordering for the permanent transfer of the allotted land as it could not be assumed that the land would be included in the Khurra of the custodian in the fresh partition scheme. He should have waited till the fresh partition was made and thereafter ordered for permanent transfer of the allotted land to the allottee. This order is clearly pre-mature and cannot be sustained.

It has been argued that the allotment should be cancelled as the partition scheme has been set aside. If the allotment is cancelled than the allottee will be deprived of his valuable right to claim alternative land. I do not consider it desirable to cancel the allotment in the present process for the reasons stated above, the revision petition is partly allowed and the order dated 31.1.1967 is set aside.

2. This order of the Settlement Commissioner was also confirmed in appeal by the Joint Secretary on 30.9.1972.

3. As a matter of fact, the aforesaid order shows that the scheme which was submitted by the custodian and the partition scheme which was accepted by the competent officer vide order dated 29.6.1961 and the land which was allotted by the managing officer to the father of the appellant on 15.9.1962 was of no consequence once the said partition scheme was set aside. It was also observed in the aforesaid order that after the scheme has been set aside, the entire matter was to be again reopened and the partition of the composite property was to take place afresh. However, in the said order of the Settlement Commissioner the allotment of the father of the appellant was not cancelled considering the fact that if the allotment is cancelled, then, the allottee will be deprived of his valuable right of claiming alternative land. Therefore, if a right was given to the deceased for claiming an alternative land in lieu of his allotment, it was incumbent on the part of the deceased to have approached the appropriate authorities for alternative, allotment. To say that they were waiting for some notice or some communication from some competent authority, is simply an after thought.

4. Before parting with the judgment, we must observe that the deceased migrated to USA. He died there in 1980. The mother of the appellant also died in 1998 after her return to India. No proceedings were carried out by the deceased

till 1980 or by his deceased wife till 1998.

5. The learned Single Judge has rightly held that the petition suffers from delay and laches.

6. Dismissed.