
(1973) 07 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 4040 of 1970

Rajwant Singh and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

Date of Decision : 31-07-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32

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

Citation : AIR 1974 P&H 137

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Judgement

1. Bant Ram alias Sant Ram (since deceased), husband of respondent 6 and father of respondents 7 to 13, was a displaced person from West Pakistan and was allotted a parcel of agricultural land measuring 1 standard Acre and 111/2 Units in village Pehowa. Tehsil Guhla, district Karnal, in 1950, in lieu of the land left by him in Pakistan. This allotment was cancelled by the Managing Officer, respondent 4, by his order dated September 10, 1962, and the land was allotted to Chuha Mal, respondent 5, on the following day and the proprietary rights in respect thereof were transferred in his favour by Sanad dated February 25, 1963, Chuha Mal thereafter sold the said land to Avtar Singh, the father of the petitioners, by means of a registered sale deed dated April 3, 1963. Bant Ram filed an appeal against the order of the Managing Officer dated September 10, 1962, cancelling his allotment which was accepted by the Assistant Settlement Commissioner with powers of Settlement Commissioner, Punjab, Jullundur, on August 9, 1963, and the case was remanded to the Managing Officer for re-decision. Against that order, Chuha Mal filed a review petition which was accepted on June 5, 1965, and the order of the Managing Officer cancelling the allotment of Bant Ram dated September 10, 1962, was restored. Against that order, Bant Ram filed a revision petition to the Chief Settlement Commissioner which was dismissed by the Authorised Chief Settlement Commissioner, Haryana, at Jullundur, by order dated October 24, 1967. The case was forwarded to the

Tahsildar (Sales)-cum-Managing Officer, Kaithal, with the direction that an alternative allotment in village Pehowa or in any nearby village, according to his choice, may be given to Bant Ram. Bant Ram then filed Civil Writ No. 44 of 1968 in this Court challenging the order of the Managing Officer dated September 10, 1962, the order of the Assistant Settlement Commissioner passed on review dated June 5, 1965, and the order of the Authorised Chief Settlement Commissioner, Haryana, dated October 24, 1967. This writ petition was dismissed by the Motion Bench on January 5, 1968, with the only word "dismissed". Bant Ram then filed a petition u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (hereinafter called the Act), before the Central Government which was accepted on November 10, 1970, by Shri Damodar Dass Commissioner Revenue and Secretary to Government, Haryana, Rehabilitation Department, exercising the powers u/s 33 of the Act. The order of the Authorised Chief Settlement Commissioner dated October 24, 1967, was set aside and the allotment of the land originally made in favour of Bant Ram was restored. The present writ petition has been filed by the sons of Avtar Singh challenging that order, and praying that it should be quashed.

2. Written statement has been filed by respondents 6 to 13, who are the heirs of Bant Ram deceased. The learned counsel for the petitioners has very strenuously argued that after the dismissal of Civil Writ No. 44 of 1968 by this Court, a petition u/s 33 of the Act was not competent before the Central Government as the decision of this Court operated as *res judicata*. It is submitted that all the Tribunals within the jurisdiction of this Court are subject to its superintendence under Article 227 of the Constitution and the order passed by this Court dismissing Civil Writ No. 44 of 1968 had the effect of affirming the order of the Authorised Chief Settlement Commissioner, dated October 24, 1967, and in fact the order of the Authorised Chief Settlement Commissioner merged into the order of the High Court and thereafter it was the order of the High Court that was operative. The matter having been decided by this Court, the Central Government had no further jurisdiction in the matter. I have given my careful thought to this submission made by the learned counsel, but I do not find any substance therein. It has to be remembered that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution has been conferred by the Constitution by way of extraordinary remedy. The Rehabilitation authorities mentioned in the Act, including the Central Government u/s 33 thereof, are not Courts or Tribunals sub-ordinate to the High Court and against their orders, no appeal as a matter of right, lies to the High Court nor has been provided by the statute. The orders passed by any of the authorities under the Act can be challenged in this Court by way of a writ of certiorari. It is not a statutory remedy but constitutional remedy. While exercising the powers under Article 226 of the Constitution, this Court exercises equitable jurisdiction and is not bound to interfere unless there is an inherent lack of jurisdiction in the Tribunal or Court which passed the order or gross injustice has been done or on some other well-recognised grounds. This extraordinary remedy provided by the Constitution

does not oust the remedies provided under the statute and the decision of this Court on a petition under Articles 226 and 227 of the Constitution will operate as *res judicata* before any other Tribunal or Court only if the matter is decided on merits after hearing both the parties. An *ex parte* order dismissing the petition under Articles 226 and 227 of the Constitution in limine is neither an order on merits nor operates as *res judicata*, as has been ruled by their Lordships of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, . That was a case in which a writ petition had been dismissed by the High Court under Art. 226 of the Constitution and a petition under Art, 32 of the Constitution was filed in the Supreme Court on the same facts and for the same reliefs. A question arose whether the decision of the High Court operated as *respondent judicata*. Their Lordships held that the order having been passed by the High Court on merits operated as a bar to the making of the petition under Article 32 of the Constitution. In paragraph 19 of the report, their Lordships observed as under:--

"If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits, it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy, it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order, then such dismissal cannot be treated as creating a bar of *res judicata*. It is true that, *prima facie*, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of *res judicata* against a similar petition filed under Article 32."

3. These observations clearly lay down that a writ petition under Art. 226 of the Constitution dismissed in limine by the High Court without passing a speaking order does not operate as *res judicata* in other proceedings. Doubt was raised whether such a dismissal would bar a second petition under Article 226 of the Constitution in the same High Court. This matter was considered by a Full Bench of this Court in *Bansi and Another Vs. Additional Director, Consolidation of Holdings and Others*, and it was held:-

".....that the dismissal in limine of a writ petition under Article 226 of the Constitution by a Bench of the High Court would bar a second petition by the

same petitioners to the same High Court and based on similar facts. To entertain the second petition on the same grounds would amount to by-passing the remedies by way of a review petition or taking steps to file an appeal to the Supreme Court apart from recourse to the petition to the Supreme Court under Article 32 of the Constitution. Such a course would also be wrong not only on principle but also on grounds of propriety and public policy which, subject to the well-recognised exceptions require finality of judicial proceedings so far as the same Court is concerned."

To the same effect is the judgment of the Allahabad High Court in *Mst. Chandra Kali Vs. Sitaram and Others*, . The observations of the learned Judges of the Full Bench of this Court clearly bar a second petition on the same facts in the same High Court, but not the taking of any other proceedings available to the petitioners under the law in any other forum. In my opinion, in view of the observations of their Lordships in *Daryao and Others Vs. The State of U.P. and Others*, , it was open to Bant Ram to file a petition u/s 33 of the Act before the Central Government and the order dismissing in limine the petition under Article 226 of the Constitution passed by this Court did not operate as *res judicata* nor did it bar the making of that petition. The delegate of the Central Government could, therefore, entertain and decide that petition on merits.

4. Another argument advanced by the learned counsel for the petitioners is that the order of the Chief Settlement Commissioner, which was impugned in the writ petition in this Court merged into the order of the High Court and after the dismissal of the writ petition, the operative order was that of the High Court and not of the Chief Settlement Commissioner. For this submission, reliance has been placed on the judgment of the Supreme Court in *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, . In that case, the High Court dismissed a revision petition filed against the order of the appellate Court under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, after hearing both the parties. Thereafter, the order of the appellate authority was sought to be challenged in the same High Court under Articles 226 and 227 of the Constitution. It is in that context that their Lordships observed that the principle of merger of inferior Court's order in the order of the Superior Court would not become affected or inapplicable by making any distinction between a petition for revision and an appeal. The principle of merger of orders is applicable where statutory remedies by way of appeal or revision are provided by statute in a hierarchy of Courts or Tribunals. I have already stated above that the remedy under Arts 226 and 227 of the Constitution is not an ordinary remedy but an extraordinary remedy and in exercise of that jurisdiction, the High Court can either quash the petition wholly or in part or dismiss the writ petition. It does not affirm the order of the Tribunal impugned in the writ petition when the petition is dismissed. The principle of merger of orders of inferior Courts in the orders of the superior Courts is wholly inapplicable to the writ petitions under Article 226 of the Constitution. I therefore, find no merit in the submission of the learned counsel. I may emphasise, that after the dismissal in limine of the writ petition,

the final and operative order was that of the Chief Settlement Commissioner and not of the High Court and against that order of the Chief Settlement Commissioner, the statutory remedy u/s 33 of the Act was available to Bant Ram.

5. Coming to the merits of the case, the learned counsel for the petitioners has emphasised that in consequence of the allotment made in favour of Chuha Mal on September 11, 1962, proprietary Sanad was also issued to him on February 25, 1963, and unless there was a finding that Chuha Mal was guilty of fraud in obtaining the allotment and proprietary rights, the proprietary Sanad issued in his favour could not be cancelled. In my opinion, the argument is misconceived. On September 10, 1962, when the allotment of Bant Ram was cancelled, Chuha Mal was not in the picture and if that order cannot stand, then the allotment made in favour of Chuha Mal and the proprietary Sanad granted to him fall with it. It has been stressed by the learned counsel for respondents 6 to 13 that no notice, as required by Section 19 of the Act before cancellation of the allotment, was ever issued to Bant Ram, which fact is not denied by the petitioners. The Official respondents have not chosen to appear or file any return. Chuha Mal, respondent 5, although represented by counsel, has not chosen to file any return. It is also not known on this record as to in recognition of what right of Chuha Mal, the land in dispute was allotted to him after cancelling the allotment of Bant Ram a day earlier, Respondents 6 to 13 filed their return on September 14, 1972, and the petitioners have not chosen to file any replication, contradicting the facts stated in the return nor has Chuha Mal chosen to file any return. The Financial Commissioner, who decided the petition u/s 33 of the Act, as delegate of the Central Government, was perfectly justified in observing:--

"I do not hesitate in saying that allotment of Bant Ram was cancelled in order to give undue advantage to Chuha Mal. It is unjustified and as such it cannot be considered as correct."

The only ground on the basis of which the allotment in favour of Bant Ram was cancelled was that he had not taken possession of the land and it was in occupation of an unauthorised person. It is stated by the Financial Commissioner in the impugned order that the possession was delivered to Bant Ram on June 15, 1950, vide daily diary report No. 2/3 relating to events. As per revenue papers, the possession of Bant Ram continued thereafter.

6. For the reasons given above, I find no merit in this petition which is dismissed with costs in favour of respondents 6 to 13. Counsel's fee Rs. 100/-.

7. Petition dismissed.