

(1959) 10 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 395 of 1959

Ram Nath and Another

APPELLANT

Vs

Central Government, New Delhi and Others

RESPONDENT

Date of Decision : 27-10-1959

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 14
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 2, 49, 50, 51, 52

Citation : AIR 1960 P&H 330

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Judgement

(1) Numerous displaced persons left urban agricultural lands in Pakistan. They were allotted similar lands in Indian whenever possible under evacuee legislation. Some of these displaced persons who owned such lands within the corporation area of Lahore and within the municipal limits of Gujranwala were leased or allotted similar lands within the municipal area of Jullundur, Ferozepore and Amritsar. When the Displaced Persons (Compensation and Rehabilitation) Act 1954, was enacted, the Government acquired these lands and put them in the compensation pool. The Central Government on 4-6-1957 issued a press note indicating the method by which these lands would be permanently transferred. Another press note was issued on 15-10-1958 modifying the previous press note.

The Chief Settlement Commissioner on 27-11-1958 issued a memorandum purporting to clarify the terms of the press notes issued by the Central Government. According to these instructions the lessees of urban agricultural lands were given the right to select one plot, that is, one khasra number of the value of less than Rs. 10,000/- and the rest was intended to be sold by auction. Accordingly the Managing Officer called upon the displaced persons concerned to make the necessary selection for permanent transfer thereof to them Dissatisfied with these demands some of the displaced persons have filed separate petitions under Art. 226 of the Constitution challenging the validity of these Government

press notes and the memorandum issued by the Chief Settlement Commissioner.

Some of these petitions are these (Civil Writs Nos. 345, 346, 352, 353, 364, 366, 367, 368, 369, 370, 395 and 711 of 1959). The learned counsel for both sides agree that in spite of different facts in each petition, the question that requires determination in all these cases is the same and that it will be convenient to decide them all by one judgment. In fact only Civil Writ No. 395 of 1959 was argued before me and it was stated that the same arguments are relevant in all other petitions. I shall, therefore, decide all these writ petitions by this judgment.

(2) When in 1947 at the time of partition of the country Hindus and Sikhs migrated en masses from West Punjab and Muslims left this country, it became necessary to resettle the displaced persons and to get the evacuee lands cultivated. The mode adopted for giving evacuee lands to the displaced persons is described in detail by Shri Tarlok Singh in his well known Land Resettlement manual and this Manual has been accepted by the Supreme Court as a work of authority. At page 100 of this Manual Shri Tarlok Singh has stated--

"By an agreement between the two Dominions (Indian and Pakistan) agricultural property has been defined as "land not included within the limits of a Corporation, Municipal Committee, Notified Area Committee. Town Area, Small Town Committee and Cantonment, as these limits stood on 15-8-1947..... For this reason the general scheme of land resettlement comprises only those evacuee lands which re not by definition urban lands.

From the area abandoned by a displaced person, therefore, land held by him in an urban area has been placed in a separate category and only the balance of his land, described as agricultural property, is subjected to valuation and cut with a view to allotment of agricultural land in East Punjab and Pepsu."

The resettlement scheme, therefore, does not deal with urban agricultural land. It, however, deals with agricultural land in the suburbs of a city or town but by evaluating it at a higher figure on account of its location. It is, therefore, clear that under the Administration of Evacuee Property Act, 1950, the urban agricultural land was considered to belong to a special category and was leased and allotted as such to displaced persons who had left similar lands in Pakistan.

(3) These leases and allotments made by the Custodian were, however, of temporary nature. In 1954 the Government of India came to the conclusion that the evacuee property should be dealt with on permanent basis and the displaced persons should be given final compensation. Accordingly it enacted the Displaced Persons (Compensation and Rehabilitation) Act (Act No. 4 of 1954). Section 14 of this Act constituted a compensation pool which inter alia consisted of all evacuee property acquired under S. 12 of the Act. The Central Government acquired the evacuee urban agricultural lands besides other agricultural lands etc. Under S. 4 of the Act all displaced persons having verified claims were to apply for payment of compensation. This was done.

Section 8 lays down the mode of payment of compensation. Under this provision the compensation may inter alia be paid by sale of any property or by any other mode of transfer to the displaced persons from the compensation pool. The Central Government under S. 40 has been empowered to make rules to carry out the purposes of the Act and in particular inter alia to provide for the scales according to which, the form and manner in which, and the instalments by which, compensation may be paid to displaced persons.

Exhaustive rules under this Act have been made and are known as "Displaced Persons (Compensation and Rehabilitation) Rules, 1955" which have been modified from time to time. These Rules are divided into chapters. Chapters V to X deal with payment of compensation out of various categories of evacuee properties constituting part of the compensation pool. Chapter V makes rules relating to transfer of evacuee property. The properties mentioned therein are residential properties, shops and industrial concerns. This Chapter does not specifically deal with urban agricultural land. It is for this reason that both sides in their pleadings state that Chapter V does not deal with urban agricultural land.

Chapter VI deals with transfer of Government built property while Chapter VII deals with rural houses and shops left in West Pakistan and, therefore, have nothing to do with the present case. Chapter VIII deals with compensation payable in respect of verified claims for agricultural land left in West Pakistan. This chapter does not apply to agricultural land mentioned u/s 10 of the Displaced Persons (Compensation and Rehabilitation) Act. Chapter X deals specifically with such properties. Chapter IX deals with allotment and sale of groves and gardens outside the Punjab and Pepsu. Chapters XI and XII deal payment of compensation to different categories of displaced persons, for example, minors, inmates of a Home or infirmary etc.

(4) In this state of statutory provisions the petitioners' case is that Chapter VIII governs the present cases as this Chapter deals with agricultural land without drawing any distinction between urban and rural categories thereof particularly when no other provision in the Act or the Rules deals with such lands. It was further argued that no provision has been made for dealing with urban agricultural land which forms part of compensation pool. I am unable to accept this contention of the petitioners. Rules 49 to 69 are found in Chapter 8. Rule 50 lays down that the value of agricultural land shall be fixed in terms of standard acres and rule 51 lays down that the sale of allotment shall be the same as provided in the quasi-permanent land allotment scheme in the State of Punjab and Pepsu.

Now under this scheme only rural agricultural land as distinct from urban agricultural land has been valued in terms of standard acres on the basis of yield of crop of wheat. This mode has also been adopted in rule 2(g) of the Displaced Persons (Compensation and Rehabilitation) Rules. The mode adopted need not be described in this judgment as this method is discussed at length in the Land Resettlement Manual. There is no suggestion in any of the petitions that the

urban agricultural land was valued in terms of standard acres--the indication if any is to the contrary. R. 51 shows clearly that this chapter deals with rural agricultural land as the quasi-permanent allotment scheme in Punjab and Pepsu applied only to rural agricultural land.

It would be unreal to value urban agricultural land on the basis of wheat yield and would work hardship on displaced persons entitled to get this category of land. Such land can be satisfactorily valued only according to its market value as its value substantially increases its price. Moreover the entire evacuee property to start with vested in the Custodian under the evacuee legislation. The Custodian while administering evacuee property was entitled to lease or allot it to any person.

A scheme was devised under that Act which is discussed in the Land Resettlement Manual. By agreement with Pakistan the urban agricultural land, however, was treated as a separate category of land and was not included in the general scheme. It was treated as urban land. The Displaced Persons (Compensation and Rehabilitation) Act and the Rules made thereunder preeminently deal with evacuee property. Elaborate provisions have been made in the Rules for transferring proprietary rights in evacuee properties of each category to displaced persons.

Various categories of properties are mentioned in the Rules and are treated separately. The special category of urban agricultural land which was treated as a distinct category and dealt with separately under the Administration of Evacuee Property Act has not been specifically mentioned in the Rules made under the Displaced Persons (Compensation and Rehabilitation) Act. Considering this legislative environment I am clearly of the opinion that if Chapter VIII was intended to apply to urban agricultural land then specific mention thereof would have been made in the preamble to this Chapter or in one of the Rules in the Chapter. In the absence of such a specific mention it must be held that Chapter VIII does not relate to urban agricultural land.

(5) In this view of the matter it is not necessary to discuss the exact scope of Rule 49.

(6) This brings me to the respondents' case. In the written statement it is stated that under rule 87 any property forming part of the compensation pool may be sold by public auction or by inviting tenders or by any other method and that the Government has as a matter of concession decided to give some land by allotment to the lessees of urban agricultural land and that the press notes merely record this concession. The learned Advocate-General urged that the various press notes are intended to convey to the public the measures that the Central Government is taking for the disposal of the compensation pool as laid down in S. 16 of the Displaced Persons (Compensation and Rehabilitation) Act and that the Chief Settlement Commissioner has acted under rule 87 when he issued his memorandum on 27-11-1958. It is necessary to examine the validity

of these contentions.

(7) Now in the present case the petitioners want that the urban land leased to them and in their occupation, should be allotted and transferred to them by setting off its valuation against the compensation payable to them in accordance with the provisions of S. 8 of the Displaced Persons (Compensation and Rehabilitation) Act. This section deals with the matter under consideration and S. 8(2) lays down that the Central Government may make rules for this purpose. These rules are to be notified in the official gazette and must be laid before both Houses of Parliament for not less than 30 days.

The control of the Parliament over these rules is thus secured. In this context it is not open to the Central Government to invoke section 16 and prescribe a mode for payment of compensation to the displaced person who are lessees of urban agricultural land by issue of press notes. Section 16(2) deals with the appointments of officers and it will not be improper to consider that section 16(1) in this context relates to appointment of officers and other cognate matters for management of compensation pool although this sub-section is rather widely worded. In my opinion it should not be so construed as to enable the Central Government to determine the mode of transfer of any property forming part of compensation pool without making rules for that purpose.

Section 16(1) construed literally gives absolute power to issue directions for management of compensation pool and if that be accepted then all the rules made under the Act and even provisions of S. 32 would become redundant and ineffective. Section 8(2)(b) specifically provides that rules should be made regulating the form and manner in which the compensation may be paid. Section 16 is not intended to empower the Government to ignore and by-pass section 8(2) and S. 40 of the Act and also to deprive the Parliament of its control over the matter. When rules relating to payment of compensation to occupants of other categories of lands have been made, I do not see why rules for urban agricultural land should also not be made. I am, therefore, of the opinion that these press notes could not validly regulate the way that compensation is to be paid out of the compensation pool to those displaced persons who have been leased urban agricultural land.

(8) Rule 87 has no application to the memorandum issued by the Chief Settlement Commissioner. This rule occurs in Chapter XIV and its preamble states that the rules in this Chapter prescribe procedure for sale of property in the compensation pool. Property may be sold in many ways and rule 87 empowers the Chief Settlement Commissioner to adopt any one or more of those various ways. This rule does not enable the Chief Settlement Commissioner to explain the press notes issued by the Central Government or as alleged by the petitioner to introduce amendments of substantial nature while construing the press note. I, therefore, hold that the memorandum issued by the Chief Settlement Commissioner on 27-11-1958 is invalid.

(9) All the orders which are challenged by these writ petitions have been made in accordance with the press notes and the memorandum discussed above on the assumption that they have the force of law. I have come to a different conclusion.

(10) The result is that all these writ petitions succeed and the impugned, orders are quashed. There can be no doubt that the absence of rules relating to urban agricultural land is due to an accidental omission and that press notes were issued to expedite disposal of compensation pool. I, therefore, leave the parties to bear their own costs of these petitions.

(11) Orders quashed.