

(2019) 08 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3670 Of 2017

Ram Parkash And Others

APPELLANT

Vs

Financial Commissioner (Revenue), Punjab And Others

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Displaced Persons (Compensation And Rehabilitation) Act, 1954 — Section 32
Displaced Persons (Compensation & Rehabilitation) Rules, 1955 — Rule 66
Punjab Package Deal Properties (Disposal) Amendment Bill, 2009 — Section 4(b)(i)

Citation : (2019) 08 P&H CK 0098

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Som Nath Saini, T.P.S.Chawla

Final Decision : Dismissed

Judgement

Augustine George Masih, J

1. Challenge in this writ petition is to the order dated 18.01.2011 (Annexure P-14) passed by the Claims commissioner, Punjab-respondent No.4, rejecting the claim for allotment of land in the State of Punjab under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, "the 1954 Act") and the order dated 26.10.2016 (Annexure P-17) passed by the Financial Commissioner, Revenue, Punjab-respondent No.1, dismissing the appeal of the petitioners.

2. It is the contention of learned counsel for the petitioners that the impugned orders, which have been passed by the Claims Commissioner dated 18.01.2011 as well as the Financial Commissioner dated 26.10.2016 are unsustainable in the light of the fact that the claim of the petitioners is based upon the assessment with regard to the entitlement of the predecessor in interest i.e. Milapi Bai as also the admission of the fact that the claim of the predecessor in interest was referred to the Government of Punjab for allotment of agricultural land vide communication dated 01.04.1977 (Annexure P-5). The factum of entitlement is not disputed by any of the parties and because of non-availability of the records,

the petitioners cannot be disentitled to their established rights. He asserts that the Division Bench of this Court had directed the Union of India to send the relevant record to the concerned authority for further action in accordance with law vide order dated 04.03.2009 in Civil Writ Petition No.14385 of 2005, which clearly indicates that the Central Government had to provide the records and the factum of the claim having been referred to Government of Punjab for allotment of agricultural land as per Section 32 of the 1954 Act stood established. The said issue could not have been reopened by the authority. His contention is that the claim of the petitioners could not have been rejected on the ground that their predecessor in interest was a non Punjabi claimant as it is not in dispute that as per the provisions of Section 32 of the 1954 Act read with Rule 66 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (for short, "the 1955 Rules"), the matter had been duly referred to the Government of Punjab vide order dated 01.04.1977, which fact is admitted by the respondents and has also been acknowledged in the order dated 25.02.2005 (Annexure P-9) passed by the Managing Officer (Headquarters), Punjab. Another assertion, which has been put forth by counsel for the petitioners is that the copies of various orders, which have been passed by the Central Government authorities under the 1954 Act, leave no manner of doubt that the petitioners were entitled to allotment of agricultural land under the 1954 Act and the rejection of their claim on the basis of technical grounds is not sustainable. He, thus, contends that the impugned orders cannot survive and deserve to be set-aside with a further prayer for issuance of a writ of mandamus for allotment of land to the petitioners as per their entitlement.

3. On the other hand, learned counsel for the State has taken a plea of inordinate delay which has occurred on the part of the petitioners in putting forth their claim as they have been sleeping over their rights since the passing of order dated 30.03.1988 (Annexure P-7) by the Settlement Commissioner, New Delhi. He asserted that as per this order dated 30. 08.1988, the records were very much available with the Central Government and the same were never sent thereafter to the Punjab Government though the case of the petitioners was duly returned by the Government of Punjab to the Central Government for sending the records as per letter dated 04.04.1979. He asserts that after the case of the petitioners alongwith others was sent to the Central Government, the same was never referred back or sent to the Government of Punjab and, thus, it is apparent that the Central Government had thereafter either not taken a decision thereon or would have referred the claim of the predecessor in interest of the petitioners to some other State for settlement of their claim. He has justified the orders passed by the Claims Commissioner as well as the Financial Commissioner, Revenue, Punjab, which have been impugned herein on the grounds which have been relied upon for rejection of claim of the petitioners.

4. I have considered the submissions made by counsel for the parties and with their assistance have gone through the records of the case.

5. Briefly, the facts are that the petitioners are the successors in interest of a non-punjabi claimant, whereby the claim of predecessor-in-interest i.e. Milapi Bai widow of Aya Ram stood verified by the Settlement Officer to the extent of 16SA-9-3/4 unit against 61 acres 6K-17M of land left by her in Kotla Meeran in Tehsil Khanpur, District Rahim Yar Khan, Sind Province, Pakistan (Annexure P-1). Milapi Bai died issueless in the year 1964. After her death, Dittu Ram was appointed as her successor in interest being brother of her husband, Aya Ram vide order dated 28.04.1966 (Annexure P-2) passed by the Settlement Officer, exercising the powers of Settlement Commissioner. The verified area was revised to 18SA-15-1/2 units subsequently in favour of said Dittu Ram vide order dated 15.11.1971 (Annexure P-3).

6. Government of India vide memo dated 01.04.1977 (Annexure P-5) forwarded the claim of Dittu Ram, successor in interest of Smt.Milapi Bai to the Land Claims Officer, Punjab, Jalandhar, for allotment of agricultural land. Applying the graded cut, the Government of Punjab was asked to allot 13 standard acres 12 (7-20) units to Dittu Ram.

7. Dittu Ram died on 08.10.1977. An application was moved by Suraj Bhan, son of Dittu Ram, stating that apart from him, his step mother, Smt.Raj Kumari and sister Smt.Bhagwanti Bai, were the legal heirs. The step mother and the sister relinquished their respective shares in favour of Sh.Suraj Bhan and made a statement in this regard and filed affidavits before the Settlement Officer (Judicial), New Delhi. The said application was allowed vide order dated 18.04.1978 (Annexure P-6) and Suraj Bhan was appointed as successor in interest of Sh.Dittu Ram.

8. Dittu Ram started agitating against the order dated 15.11.1971 (Annexure P-3) by moving a representation to the extent that instead of verifying the claim in favour of Dittu Ram straightway, it should be first verified in his favour but this representation was dismissed vide order dated 30. 03.1988 (Annexure P-7). Revision petition was preferred against this order by Dittu Ram but nothing is forthcoming with regard to the outcome of the same.

9. It may be added here that Government of India, Ministry of Supply and Rehabilitation (Department of Rehabilitation), New Delhi, vide its letter dated 12.04.1977 forwarded a list in terms of Section 32 of the 1954 Act of those cases of displaced persons of non-punjabi extraction, whose land claims were to be satisfied by allotment of rural agricultural land to the Deputy Secretary of Government of Punjab, Department of Rehabilitation. Name of Dittu Ram found mentioned at Sr.No.4 of the said list. For the reason of non-receipt of records of the case, Assistant Registrar (Lands), Government of Punjab, Department of Rehabilitation, vide letter dated 04.04.1979 returned 95 cases to the Assistant Settlement Officer (Records), Government of India, Ministry of Supply and Rehabilitation, New Delhi, where the name of Suraj Bhan, successor to Dittu Ram, found mentioned at Sr.No.9. In response to this communication, Assistant Settlement Officer (Records), Government of India, replied vide letter dated

7. 04.1979 and alongwith it sent list of 27 claimants only to the Assistant Registrar (Lands), Rehabilitation Department, Punjab, Jalandhar. Name of Suraj Bhan was not included in the list of claimants. Thereafter vide letter dated 12.06.1979 of Joint Director, Government of India, Department of Rehabilitation, New Delhi, another list of 182 more non-punjabi claimants for allotment of rural evacuee land in the State of Punjab was received. Here again in the list of 182 claimants, name of Suraj Bhan did not find mentioned.

10. Although it is claimed that Suraj Bhan had made various representations to different authorities but without any result. The details thereof are not forthcoming. Suraj Bhan died on 13.05.2004 and the petitioners, being his son and daughters further filed representations and thereafter when nothing was heard, filed Civil Writ Petition No.12633 of 2004, which was disposed of by this court vide order dated 20.08.2004, directing the respondents to decide the representation of the petitioners by passing a speaking order.

11. In compliance with the said order, MEO-cum-Managing Officer, Punjab, passed an order dated 25.02.2005 (Annexure P-9), detailing therein the fact that the records pertaining to the claim of the predecessor in interest of the petitioners, namely, Dittu Ram as also Suraj Bhan, after his death, were not received by the Government of Punjab and their claims were returned vide letter dated 04.04.1979 alongwith 94 other cases to the Central Government, where the name of Suraj Bhan stood mentioned at Sr.No.9. Thereafter the cases of other non-punjabi claimants have been received but neither the claim of Suraj Bhan nor any records or reference has been received from the Central Government. It was further mentioned that representation dated 27.05.2004, as claimed to have been submitted by the petitioners, had not been received. In the light of the fact that the claim of the predecessor-in-interest stood returned by the Government of Punjab, which has never been sent again by the Central Government, the claim could not be processed and rather there was no claim of the petitioners pending with the Punjab Government, for which reason the representation was rejected vide order dated 25.02.2005 (Annexure P-9).

12. It may be added here that this order dated 25.02.2005 (Annexure P-9) passed by the MEO-cum-Managing Officer, Revenue and Rehabilitation Department, Punjab, Chandigarh, has not been challenged by filing an appeal or revision, rather the same has been accepted, as is apparent from the fact that the petitioners filed Civil Writ Petition No.14385 of 2005 after passing of the order dated 25.02.2005, praying therein for issuance of a writ of mandamus to the Government of India to supply the relevant records so that their claims may be finalized by the Government of Punjab. It may be pointed out that the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was repealed by the Displaced Persons Claims and other laws without any saving clause. The effect of this repeal was that the rights of the persons which had already accrued, stood terminated. The Central Government, on reconsideration of the matter, sent a clarification vide letter dated 22.09.2008 to the Government of

Punjab that this repeal would not affect the disposal of the categories of cases as stated therein and such cases would be settled under the relevant State laws.

13. The Division Bench of this court disposed of a bunch of writ petitions, including that of the petitioners i.e. Civil Writ Petition No.14385 of 2005 vide order dated 04.03.2009 (Annexure P-10) by observing as under:-

"4. Learned counsel for the State, however, has brought to our notice, the Bill, namely, the Punjab Package Deal Properties (Disposal) Amendment Bill, 2009, which, inter alia, provides for dealing with situations arising out of the repeal of the 1954 Act.

5. We are of the view that as per letter of the Central Government and order of this court passed in R.K.Suneja and another v. State of Haryana and others (supra) proceedings in the categories of cases referred in the letter of the Central Government dated 22.9.2008 will not be deemed to have ended and will continue to survive without prejudice such other steps as may be taken by State.

6. In view of the above, Union of India will send the relevant record to the concerned Authority for further action in accordance with law. The Central Government may, accordingly, do the needful within three months from the receipt of a copy of this order.

7. The petitions will stand disposed of accordingly."

14. When the records of the case were not sent by the Central Government, petitioners filed C.O.C.P. No.21 of 2010, which ultimately came up for hearing before this Court on 18.01.2011, when it transpired that the records of the claimants' i.e. predecessor in interest of the petitioners have been misplaced by the Central Government and the said records are not available. Counsel for the petitioners appears to have offered for supplying the certified copies of various orders and in pursuance thereto, counsel for the State of Punjab had stated that the petitioners' plea with respect to allotment of land shall be decided within one week on the basis of certified copies submitted by them as the original record is not traceable. On the basis of this statement, the contempt petition was disposed of as infructuous.

15. An application dated 27.01.2011 is alleged to have been submitted by the petitioners to the Special Secretary, Revenue (exercising the powers of the Claims Commissioner, Punjab). However, as is alleged, when the said application was not entertained, an application for revival of the contempt petition was submitted by the petitioners by filing C.M. No.4518 CII of 2011 in C.O.C.P. No.21 of 2010. The cognizance of said application dated 27.01.2011 was thereafter alleged to have been taken and an order dated 18.01.2011 (Annexure P-14) passed by the Special Secretary, Revenue, Punjab-cum-Claims Tribunal, wherein the claim of the petitioners was rejected primarily on the ground of fact that the records of the claim have not been submitted by the Central Government and, therefore, there was no claim pending with the Government of Punjab under the

1954 Act and since the predecessor in interest of the petitioners, Milapi Bai, was a non-punjabi claimant, therefore, the claim of the petitioners would not fall within the definition of "displaced persons" as provided under the East Punjab Displaced Persons (Land Settlement) Act, 1949 (hereinafter referred to as "the 1949 Act") and, thus, ineligible for allotment of land. Reference was also made to the effect that the claim of the petitioners has already been considered by the Managing Officer (Headquarters) and orders passed on 25. 02.2005 (Annexure P-9), which had attained finality and the same has not been challenged and, therefore, the second application was not maintainable and was hit by the principle of resjudicata.

16. In the revival application, this issue was agitated by the petitioners by asserting that the order, which has been passed by the Claims Commissioner dated 18.01.2011 was violative of the order passed by the Division Bench of this court in the writ petition, which argument was not accepted by this Court vide order dated 13.03.2012 (Annexure P-15). However, while dismissing the said application for revival of contempt proceedings, liberty was granted to the petitioners to challenge the said order dated 18.01.2011 before an appropriate forum.

17. Petitioners filed an appeal before the Financial Commissioner, Revenue, Punjab, who, vide order dated 26.10.2016 (Annexure P-17) dismissed the appeal by upholding the order passed by the Settlement Commissioner on the ground that no claim of the petitioners was pending with the government of Punjab as the Central Government had not returned the case of the petitioners alongwith records for allotment of land after the same had been returned by the Government of Punjab and that the predecessor in interest of the petitioners, being non-punjabi displaced persons, their claim could not be accepted under the 1949 Act of the Punjab State. Another ground for dismissing the appeal was that on the relevant date, when the Central Act was abolished as also on the enactment of the Punjab Package Deal Properties (Disposal) Amendment Act, 2009, cases which were pending on 05.09.2005 were to be decided by the concerned authorities but there being no claim pending with the Government of Punjab and further the claim of the petitioners having been rejected by the Managing Officer (Headquarters), Punjab, vide order dated 25.02.2005 (Annexure P-9), which order has neither been appealed against nor any revision preferred, their claim had to be rejected and has so rightly been done by the Claims Commissioner. This has led to filing of the present writ petition.

18. The assertion of counsel for the petitioners that the factum with regard to the non-pendency of the claim of the petitioners cannot be reopened in the light of the order dated 04.03.2009 (Annexure P-10) passed by the Division Bench of this court in Civil Writ Petition No.14385 of 2005 cannot be accepted as this court had not adjudicated upon the case on merits and had only taken into consideration the letter dated 22.09.2008 of the Central Government, clarifying their stand to the Government of Punjab with reference to the repeal of 1954 Act

as per the repeal Act 2005, wherein certain pending unsatisfied claim cases were to be settled under the relevant State laws. The relevant categories reads as under:-

"3.1 Unsatisfied certified claims filed under the Displaced Persons (Claims) Act, 1950, in which right has accrued or has been acquired and which were pending as on 6.9.2005, the date on which the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and other related Acts were repealed.

3.2. Cases in which directions have been issued by various courts for settlement of claims filed, confirming that an acquired or accrued right exists in favour of the claimant under Displaced Persons (Claims) Act, 1950.

3.3. Verified claim in which full compensation has not been given so far.

3.4. Appeals and Revision/review petitions filed against orders passed by the authorities prescribed under the repealed Acts which are yet to be disposed off."

A perusal of these categories when seen in the context of the factual position as has been narrated above, would establish beyond doubt that on the date of repeal of the 1954 Act i.e. 06.09.2005, there was no claim pending with the Government of Punjab for consideration and decision.

19. The claim of predecessor in interest of the petitioners was duly considered by the Ministry of Supply and Rehabilitation, Department of Rehabilitation, New Delhi, under the 1954 Act and thereafter vide communication dated 01.04.1977 (Annexure P-5), the compensation case of claimant, Dittu Ram son of Sh.Roshan Dass, was referred to the Land Claims Officer, Punjab, Government, Jalandhar, for allotment of agricultural land to non-punjabi claimant. This obviously was in exercise of powers under Section 32 of the 1954 Act read with Rule 66 of the 1955 Rules.

20. It is not in dispute rather accepted that on receipt of the claim of the predecessors in interest of the petitioners alongwith 5 others vide communication dated 12.04.1977, who were displaced persons of non-punjabi extraction, whose land claims were to be satisfied by the allotment of rural agricultural land, name of predecessor in interest of the petitioners, namely, Dittu Ram stood at Sr.No.4 of the list. It appears that thereafter other cases for allotment of agricultural land of non-punjabi claimants, who were similarly displaced persons, were also received and on consideration, Government of Punjab vide letter dated 04.04.1979 returned 95 cases wherein the records were required to be produced by the Central Government as the same were not sent. Name of Suraj Bhan, successor to Dittu Ram, was at Sr.No.9 of the list, for which the requisite records was to be supplied by the Government of India. Government of India vide letter dated 07.04.1979 sent back a list of 27 claimants, in which name of Suraj Bhan did not figure. Another list of 182 more non-punjabi claimants for allotment of rural evacuee land in the State of Punjab was received from the Joint Director, Government of India, Department of Rehabilitation, New Delhi, vide letter dated

12.06.1979 but here also name of Suraj Bhan did not appear. This is obviously for the reason that Dittu Ram, predecessor in interest of the petitioners was agitating the matter by filing petitions before the higher authorities against the order of assessment dated 15.11.1971 (Annexure P-3). This matter was pending before the authorities and ultimately stood finalized on 30.03.1988. It is, thus, an admitted position and not disputed by the petitioners rather stands established that the records of the claim case were not sent to the Government of Punjab till the passing of the order dated 30.03.1988 (Annexure P-7) by the Additional Settlement Commissioner. It can, therefore, be safely said that upto the year 1988, the records were available with the Central Government and the same were never sent to the Government of Punjab.

21. It is neither the case of the Central Government nor that of the petitioners that after the passing of the above order dated 30.03.1988, the records or the claim were ever sent by the Central Government to the Government of Punjab for settlement of their claim. In view of this factual position, the question of allotment of land to the petitioners as per the communication dated 01.04.1977 (Annexure P-5) does not arise and the stand of the respondents that no claim was pending with the State of Punjab cannot be faulted with.

22. It may be added here that the petitioners, while filing Civil Writ Petition No.14385 of 2005, had not challenged the order dated 25.02.2005 (Annexure P-9) which is a well reasoned and self speaking order rejecting the claim of the petitioners on the ground that their no claim is pending with the State of Punjab because of return of the claim. Petitioners, in the writ, had prayed for issuance of a writ of mandamus directing the Central Government to supply the records to the State of Punjab so that their claim could be considered by the Government of Punjab, Department of Rehabilitation, for allotment of agricultural land to them. Meaning thereby, that the order dated 25.02.2005 was accepted by the petitioners. The Central Government has never thereafter sent the claim of the petitioners to the State of Punjab as stands established from the pleadings and records as above. Therefore, it cannot be said that the impugned orders are illegal.

23. As regards the assertion of counsel for the petitioners that the definition as given under the 1949 Act would not apply as their claim stood referred under Section 32 of the 1954 Act by the Central Government and, thus, claim of the petitioners could not be rejected by the respondents on the ground that their claim is of a non-punjabi displaced person and, therefore, not covered by the definition of 1949 Act, suffice it to say that in the light of the above findings recorded that there was no claim pending with the Punjab Government, their claim after the repeal of the 1954 Act w.e.f. 05.09.2005 had to be considered as per the prevalent State Act which was the 1949 Act. Thus, such consideration is as per the orders of the Division Bench. Since the claim of the petitioners is of Sindh Province, their claim obviously could not be accepted under the 1949 Act as their claim is not covered under the definition of the "displaced persons"

under this Act as admittedly it is applicable only to the displaced persons who belonged to the West Punjab in Pakistan only and not to the other Provinces.

24. The impugned orders passed by the authorities to the effect that the claim of the petitioners is not maintainable in view of the provisions of Section 4 (b) (i) of the amended Act of 2009 also cannot be faulted with as their claim stood rejected vide order dated 25.02.2005 (Annexure P-9) passed by the Managing Officer (Headquarters), Punjab, prior to the repeal of 1954 Act on 05.09.2005, which order has neither been appealed against nor any revision filed ever, meaning thereby the same had been accepted and attained finality and, thus, on the relevant date there cannot be said to be any proceedings pending before the authorities.

25. In view of the above discussion, the impugned orders passed by the Claims Commissioner, Punjab, dated 18.01.2011 (Annexure P-14) and by the Financial Commissioner, Revenue, Punjab, dated 26.10.2016 (Annexure P-17) are upheld. There being no merit in the writ petition, the same stands dismissed.