

(1960) 10 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 379-D of 1959

Ram Rattan Kapur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-10-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 33, 34
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 22, 22(2), 23

Citation : AIR 1961 P&H 387

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : R.S. Narula, for the Appellant; Gurbachan Singh and Jindra Lal, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—The petitioner, Ram Rattan Kapur, has impugned the order passed by the Central Government u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) in these writ proceedings.

2. Shop No. 4868 in Katra Subhash, Chandni Chowk, Delhi, has admittedly been in occupation of the petitioner, Ram Rattan Kapur, for some years. There is also a chabutra abutting on this shop which has been in occupation of respondent No. 3, Dharma Singh since 1948. The petitioner and Dhanna Singh are displaced persons and the shop and the chabutra in their possession are evacuee property. Both the shop and the chabutra came to be valued together for allotment purposes at Rs. 10,439/- and were put up for auction as their value exceeded Rs. 10,000/-. Under Rules 22 and 23 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, all acquired evacuee property which is not allottable "shall ordinarily be sold." The property which is ordinarily to be allotted is enumerated in Rule 22 as:-

"(a) any residential property in the occupation of a displaced person, the value of which does not exceed ten thousand rupees;

(b) any shop in the occupation of a displaced person, the value of which does not exceed ten thousand Rupees; X X X X" Under Clause (2) of Rule 22, "a portion of a building of an acquired evacuee property which has no independent access shall not, unless the Central Government otherwise directs be allottable."

3. The aggregate value of the shop and the chabutra was taken into consideration by the Managing Officer in making an order that it should be put up for sale by auction under Rule 23. The shop and the chabutra were put up for auction on 14th of July 1958 and the petitioner was the highest bidder, his bid being for Rs. 18,100/-. Dhanna Singh, feeling aggrieved from the order of the Managing Officer, who directed the shop and the chabutra to be put up for auction, preferred an appeal u/s 22 of the Act. The appeal came up for hearing before the Assistant Settlement Commissioner, New Delhi (Shri R. N. Malhotra). Dhanna Singh's principal contention was that the property could easily have been separated and should not have been sold in one lot.

Relying on the report of the Assistant Valuation Officer that Shri Dhanna Singh could be allotted the portion of which he has been in occupation if he chose to erect a wall, the Assistant Settlement Commissioner, by his order dated 17th of September 1958 directed Shri Dhanna Singh to file his consent to the proposed erection by 19th of September 1958. On 19th of September 1958, the Assistant Settlement Commissioner dismissed the appeal of Dhanna Singh. As a good deal of argument has been addressed on the question whether or not this order was based on Dhanna Singh's consent, it would be well to reproduce its contents:

"Shri Dhanna Singh is present. He is not prepared to accept the division of the property on the grounds indicated by the Assistant Valuation Officer in his report dated 26th of August, 1958. In view of that his appeal is dismissed as it is not possible to allow any division against the conditions prescribed in A. V. O's notes."

4. Dhanna Singh filed a revision petition u/s 24 of the Act against the order of the Assistant Settlement Commissioner. Shri Gajendra Singh, Deputy Chief Settlement Commissioner, acting as the revisional authority, allowed this revision petition on 5th of January 1959 (Vide Annexure P. 8.) and while quashing the orders of the Managing Officer, and the Assistant Settlement Commissioner, remanded the proceedings with a direction that, "the property occupied by the petitioner should be considered as separate and action should be taken for separate disposal of the property." The respective contentions of Ram Rattan and Dhanna Singh were summarised in the order of Mr. Gajendra Singh in these terms:-

"Petitioner's only contention was that the shop allotted to him had no inter connection whatsoever with the shop No. 4868 shown as "B" in the plan filed by Shri Chainani purchased by the respondent that it was separate and at the same

time divisible. The respondents on the other hand argued that the property occupied by the petitioner forms part of the shop in possession of the respondent."

The Deputy Chief Settlement Commissioner, after considering the material which had been placed before him, came to the conclusion that there was nothing to link up the property in possession of Dhanna Singh with the property which has been in occupation of Ram Rattan. He, therefore, considered that the valuation of the two shops could not be aggregated and the order putting the property in dispute to auction was "illegal and improper." Thereafter, Ram Rattan invoked the jurisdiction of the Central Government which u/s 33 of the Act has been vested with Certain residuary powers and is empowered

"at any time to call for the record of any proceeding under this Act and to pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder."

In this petition, two matters were prominently mentioned; (1) Dhanna Singh had agreed to delivery of possession of the chabutra in his occupation to Ram Rattan on payment of consideration which was supported by a receipt and (2) the actual handing over of the possession by Dhanna Singh to the petitioner on 19th of September, 1958. It is surprising that these allegations did not find any mention in the fairly detailed order of Mr. Gajendra Singh passed on 5th January, 1959. As I have already indicated, the Deputy Chief Settlement Commissioner based his order on the report of the Valuation Officer that the property could be separated and that both the contesting parties were in occupation of separate and divisible portions.

5. The Government of India communicated its decision to Shri Ram Rattan on 6th of August, 1959 (Annexure P. 10) in which one Raja Lal Gupta, P. C. S., Under-Secretary to the Government of India, stated that he had been "directed to say" that the Central Government "see no reason to interfere" with the order dated 5th of January 1959 of the Deputy Chief Settlement Commissioner. The petition of Ham Rattan u/s 33 of the Act was, therefore, rejected.

6. Mr. Narula, who has put up a very forcible argument on behalf of the petitioner Ram Rattan, has characterised the acts of Dhanna Singh as a "black-mailing operation", who having at first agreed to part possession with the chabutra in pursuance of the order of the appellate authority dated 19th of September 1958 and having received consideration for it, has now resiled from it. In support of this assertion, Mr. Narula has stated that the entire price had been paid by Ram Rattan and all that remained to be done was the issue of a sale certificate which was held up because of the appeal which was filed by Dhanna Singh. The suggestion of the learned counsel is that Dhanna Singh parted with the possession of the chabutra in pursuance of an agreed order after having received some payment as consideration, in support of which a photostat copy, Exhibit P.

3, has been filed in this Court.

The order of the Assistant Settlement Commissioner passed in appeal does not support the result contended for by the learned counsel. In the order it is indicated that Dhanna Singh was not prepared to accept the division of the property which was proposed by the Assistant Valuation Officer and as the partition did not have his assent, the appellate authority dismissed the appeal. It is impossible to deduce from this order that Dhanna Singh had signified his assent to an agreement in pursuance of which the chabutra was delivered to the petitioner. Ram Rattan, nor does the ensuing contention of Mr. Narula that the delivery of possession by Dhanna Singh on 19th of September 1958 must be taken to mean the termination of the dispute commend itself to me.

The argument which has been advanced by Mr. Gurbachan Singh, the learned counsel for Dhanna Singh, is perfectly legitimate that possession was delivered because Dhanna Singh's appeal was dismissed by Mr. Malhotra, Assistant Settlement Commissioner on 19th of September 1958. It is well to remember that Dhanna Singh filed his revision petition in time u/s 24 of the Act. This also negatives the view that the dispute had been finally settled by agreement between the parties on 19th of September, 1958.

7. The petitioner, in order to succeed in these proceedings, must show that there is a manifest error of law in the order which was passed by the Central Government u/s 33 of the Act by which the order passed in revision by the Deputy Chief Settlement Commissioner was affirmed. The delivery of possession and the passing of the money, as is evidenced from the receipt Exhibit P. 3, constitute the linchpin on which the case of the petitioner must hang. The respondent, Dhanna Singh, in his rejoinder has totally denied the execution of the receipt which has been stigmatised as a forgery. It is also denied that delivery of possession was given on 19th of September 1958 though there is an admission to this effect in the rejoinder filed by the Union of India.

Be that as it may, it is not a fact which is admitted that the possession was handed over to Ram Rattan by Dhanna Singh in pursuance of an agreement. These two questions of fact form the basis of the argument which has been addressed by the learned counsel for the petitioner. It is contended that both these allegations were prominently brought to the notice of the Central Government in the revision petition filed u/s 33.

It is equally vehemently asserted by the respondent, Dhanna Singh, that no argument on this matter was ever addressed earlier before the Deputy Chief Settlement Commissioner who heard the revision petition and this finds support from the fact that the order of Mr. Gajendra Singh, which discussed the points raised before him in a detailed manner, did not make a mention of the petitioner's allegation. One would have expected that if the points had been urged, important as they are, they would have been dealt with by the revisional authority. There is, thus, force in the suggestion of the learned counsel for

respondent that the allegations for forgery and delivery of possession were an after-thought.

In any event, it would not be appropriate for this Court to embark on an enquiry or investigation into questions of fact on which it would be necessary to adjudicate before coming to a conclusion that there is an error on face of the record which alone would give jurisdiction to this Court to interfere in certiorari proceedings.

8. Mr. Narula has argued that the Order passed by the Central Government u/s 33 is void inasmuch as it was passed without any hearing to the petitioner. It is also submitted that Mr. Raja Lal Gupta, who communicated the order of dismissal, was not a person notified under the Act to exercise powers u/s 33 of the Act. It has further been urged by the counsel that the order passed u/s 133 is of quasi-judicial nature and it was incumbent on the authority hearing the revision to give notice of it to the petitioner. In examining these contentions of the learned counsel, it would be well to point out that the provisions with regard to appeal and revision are made under Chapter IV of the Act under the caption "appeal, revision and powers of officers under the Act." Section 22 provides for an appeal to the Settlement Commissioner from order of the Settlement Officer or the Managing Officer within 30 days of the passing of such order.

Under Sub-section (3) of Section 22, the Settlement Commissioner "may, after hearing the appeal" confirm, vary or reverse the order appealed from, and pass such order in relation thereto as he deems fit. Section 23 is also a provision for appeals from the orders passed by the Settlement Commissioner, Additional Settlement Commissioner or Assistant Settlement Commissioner or a managing corporation. Sub-section (2) of Section 23 says that "no appeal shall lie from any order passed in appeal u/s 22." It is, thus, clear that there is only one single right of appeal which may be preferred either to the Settlement Commissioner or to the Chief Settlement Commissioner. Sub-section (3) of Section 23 says that the Chief Settlement Commissioner may after hearing the appeal confirm, vary or reverse the order appealed from and pass such order in relation thereto as he deems fit. Section 24 deals with the revisional powers of the Chief Settlement Commissioner who is authorised to "call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass order in relation thereto as he thinks fit,"

Sub-section (3) of Section 24 provides that "no order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard. It was under the provisions of Section 24 that Mr. Gajendra Singh heard the revision petition after hearing both sides. Section 25 deals with review from unappealable orders of the Settlement Officer u/s 5. There is also a provision for rectification of clerical or arithmetical mistakes under

Sub-section (2) of Section 25. Section 27 is the last section in Chapter IV and lays down that every order made by any officer or authority shall be final.

9. The impugned order was passed u/s 33 of the Act. This Section falls in Chapter V under the caption "Miscellaneous" and is styled as "certain residuary powers of Central Government." The phraseology used in Section 33 is in sharp contrast to the language which has been employed in the appeal, revision and review provisions under Chapter IV. The Section is to this effect:-

"The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder."

10. It has been contended by Mr. Jindra Lal, the learned counsel for the Union of India, that Section 33 authorises the Central Government to act administratively in its discretion and does not enjoin it to act judicially or quasi-judicially. The circumstances of the case" are the governing consideration for any action which may be taken by the Central Government. These powers are not of the nature of revision and are styled as residuary powers of the Central Government implying thereby, according to Mr. Jindra Lal, that the Government is free to act in any manner it pleases so long as such action is not inconsistent with the provisions of the Act and the Rules made thereunder.

The Central Government may act on grounds of policy, compassion or any other consideration so long as the proposed action is not in derogation of the statutory provisions. There is cogency in the arguments of Mr. Jindra Lal though I must confess that it might lead to judicial and quasi-judicial orders passed under Chapter IV being rendered nugatory. In any event, it is not essential to decide this point and I refrain from expressing any opinion on it.

11. It would be quite sufficient for the purpose of this petition to say that even if the powers u/s 33 are regarded as quasi-judicial, the omission of the Central authority to have heard the case without notice to the petitioner is not a defect which would justify interference of this Court in a writ of certiorari. It was held in *In re, Shanmuga Mu-daliar* by the Division Bench of Rajamannar C. J., and Balakrishna Ayyar, J., in *In Re: V.S. Shanmuga Mudaliar*, that

"where opportunity is given to the party making a revision petition to the Board of Revenue to state all his grounds of objection to the order of the Revenue Divisional Officer, a writ of certiorari cannot be issued to quash the order of the Board merely because the petitioner is not orally heard."

All possible grounds have been urged in the petition which was submitted to the Central Government u/s 33 and indeed it is the grievance of the petitioner that the points taken up in this petition were not specifically dealt with.

12. In *F.N. Roy Vs. Collector of Customs, Calcutta*, it was held by their Lordships of the Supreme Court that "there is no rule of natural justice that at every stage

a person is entitled to a personal hearing." It is true that Mr. Savitri Parshad, who had been notified as the appropriate authority for dealing with the petitions u/s 33, did not give any detailed reasons for rejecting the petition but, in my view, he was not bound to do so. There is nothing in Section 33 to justify the inference that a detailed "speaking order" had to be passed by the Central Government u/s 33.

It would have been observed that while Sections 22, 23 and 24 enjoin the appropriate authority to give a hearing to the aggrieved party, the language employed in Section 33 empowers the Central Government to pass any order which in its opinion the circumstances of the case require, so long as it is not inconsistent with any of the provisions contained in the Act or the statutory rules. Neither the requirement of natural justice nor the phraseology of Section 33 justifies the inference, which is sought to be drawn by the learned Counsel for the petitioner, that it was incumbent on the Central Government to hear the petitioner before passing a final order. I would, accordingly, repel the submission made on behalf of the petitioner that the order passed u/s 33 not being in accordance with law or justice should be set aside by this Court under Article 228 of the Constitution of India.

13. With regard to the objection raised by Mr. Narula that "Mr. Raja Lal Gupta was not authorised to make an order u/s 33, it would be a sufficient answer to say that the Under Secretary was writing under the "directions" of the Central Government; in other words, he was not making an order of his own but was merely communicating the order which had been passed by the appropriate authority.

14. Mr. Narula has devoted a good deal of his time in arguing that the order made by the Deputy Chief Settlement Commissioner is opposed to the rules. In this connection, it is to be noted that the Deputy Chief Settlement Commissioner has merely remanded the proceedings for action to be taken for separate disposal of the properties. Whether the property is disposed of by allotment or sale is a matter for consideration of the appropriate authorities.

15. It has also been urged by Mr. Narula that Clause (2) of Rule 22 has been violated. Under this clause, "a portion of a building of an acquired evacuee property which has no independent access shall not, unless Central Government otherwise directs be allotable." There is no finding that the property has no independent access and we do not yet know whether the chabutra is to be allotted or sold. All that the Deputy Chief Settlement Commissioner has said is that the two wings of the property have to be treated separately for purposes of disposal.

16. I see no force in the point raised by Mr. Narula that the transfer of shop in favour of the petitioner constitutes a mode of compensation and this having been done, his right to hold the property has become absolute and consequently unchallengeable. This argument means that delivery of possession in pursuance

of an order is something which cannot be recalled or upset. It seems to me to be plain that if the delivery has been made in pursuance of an auction which is not in accordance with law, the possession has to be set aside. If any authority were needed for this proposition, it is provided by the recent decision in Bara Singh Vs. Joginder Singh and Others, (Chief Justice and Dulat, J.). It was held in Bara Singh's case that

"the Chief Settlement Commissioner can at any time reverse an order of the Managing Officer authorising the grant of proprietary rights even after a sanad had been granted to the claimant. The sanad or its grant being founded solely on the decision to transfer permanent ownership, that sanad must necessarily fall with the reversal of the decision on which it is based."

In the present Case, the sanad is not yet granted and there is hardly any force in Mr. Narula's reasoning that the auction in his favour is beyond attack or recall.

17. In short, I do not find or perceive any manifest error of law in the order which has been made by Mr. Gajendra Singh and confirmed by the Central Government under its residuary powers of Section 33 of the Act. This petition, therefore, must fail and is accordingly dismissed. There would, however, be no order as to costs.