
(1979) 01 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 369 of 1976

Ram Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 02-01-1979

Acts Referred:

Nator Rules, 1968 — Rule 27

Citation : AIR 1979 HP 52 : (1979) ShimLC 153

Hon'ble Judges : T.U. Mehta, C.J.;D.B. Lal, J

Bench : Division Bench

Advocate : Ramesh Chand, for the Appellant; A.G. and M.R. Vasudeva, for the Respondent

Final Decision : Allowed

Judgement

T.U. Mehta, C.J.—The petitioner, Shri Ram Singh, applied for the grant under the Rules called "Resettlement and Rehabilitation of Bhakra Dam Oustees (Grant of Land) Scheme, 1971", hereinafter shortly referred to as the "Resettlement Scheme of 1971". Under this Scheme an "oustee" means a person who has been deprived of his house, land or both on account of acquisition proceedings in connection with the Bhakra Dam Project and entitled to compensation in lieu therefor. The petitioner claims to be one of such oustees and has, therefore, filed an application for grant of land under Rule 9 of the Rules framed by the Government under the said scheme. After his application was processed, the Resettlement and Rehabilitation Officer, Bilaspur district, recommended the grant of 3 bighas 7 biswas of land of Tika Chandpur comprised by khasra No. 1280/1144/1 in favour of the petitioner. This recommendation was made as per annexure "A" which is dated 19-12-1972. Pursuant to this recommendation, the Deputy Commissioner sanctioned the grant in favour of the petitioner on 20-12-1972 as per annexure "B". Thereafter, PATTA annexure "C" was issued in his favour on 15-10-1973, and mutation was also sanctioned on 27-5-1974 as per annexure "D".

2. Then on 13-2-1975 the petitioner made an application for exchange of land purporting to be an application under Rule 27 of the Nautor Rules, 1968. In this application he stated that he was in possession of the land comprised by khasra No. 428/4 but that land should be exchanged for Khasra No. 1280/1144/1 which was actually granted in his favour under the Resettlement Scheme of 1971, During the pendency of this application for exchange, respondent No. 4 appeared before the Deputy " Commissioner, who was hearing that application, and took objection against the original grant made in favour of the petitioner on 20-12-1972 as per annexure "B", The objection was that the petitioner was in possession of more land and has obtained the grant in his favour by practising fraud. The Deputy Commissioner, believing that Rule 27 of the Nautor Rules, 1968 applied to the facts of the case, went into the question whether the grant in favour of the petitioner, made as per annexure B was correctly made or not and came to the conclusion that that grant should be set aside. He accordingly passed the following order :

"In view of this the order dated 20-12-1972 needs to be reviewed and accordingly the case be referred to the Divisional Commissioner for obtaining permission." He thus referred the matter to the Divisional Commissioner for review of the grant made in favour of the petitioner as per annexure "B".

3. The short question which arises to be considered is whether the order dated 18-8-1975 passed by the Deputy Commissioner (Annexure "E") referring the matter to the Divisional Commissioner is a legal order or not. It is an admitted position that the grant which was made in favour of the petitioner as per annexure "B" was under the Resettlement Scheme of 1971. This Resettlement Scheme itself makes some provision about the exchange of land in Rule 13 which is in the following terms:

"Rule 13, Exchange--Notwithstanding anything in the scheme the allotment of land may be made by the Deputy Commissioner, Bilaspur in exchange for an oustee's land acquired for Bhakra Dam Project, as provided hereinbefore, provided that an oustee, has not received any compensation for his land acquired and that the compensation for his land has been deposited in the Government account."

This rule has no application to the facts of the present case and, therefore, the application for exchange made by the present petitioner before the Deputy Commissioner could not be considered as an application under Rule 13 quoted above. The rules framed by the Government under the Resettlement Scheme of 1971 are self contained rules and for the implementation of this Resettlement Scheme provisions contained in the Nautor Rules, 1968 could not have been invoked either by the petitioner or by the Deputy Commissioner. The Rules of Resettlement Scheme of 1971 have their own scheme which is quite independent of the scheme contemplated by the Nautor Rules. This particular position will be clear by reference to Rule 8-A of the Nautor Rules which is in the following terms :

"Rule 8-A. Nothing under these rules, shall apply to the grant of land for the rehabilitation of persons displaced, as a result of anything done for any public purpose to be recognised as a public purpose for this rule, by the State Government, grant of land for this purpose will be made according to the formal scheme approved by the State Government either generally or specifically for each project or scheme or other action entailing such displacement."

Thus this rule specifically takes out the application of Nautor Rules to the grants made for rehabilitation of displaced persons. Under the circumstances the petitioner could not have invoked Rule 27 of the Nautor Rules, 1968 and his application for exchange under that rule, was liable to be dismissed on that short ground. But what the Deputy Commissioner has done in this case is as per order annexure "E", to assume jurisdiction under Rule 27 of the Nautor Rules, 1968 which jurisdiction he did not have. Therefore, the order found at annexure "E" is obviously non est. If that order is non est then the reference made by him to the Divisional Commissioner would also be non est,

4. It should be noted here that the rules of Resettlement Scheme of 1971 contemplated an appeal in Rule 14 which is in the following terms:

"Rule 14. Appeal--An appeal from the order of the Deputy Commissioner, Bilaspur under para 11 of the Scheme shall lie to the Divisional Commissioner within sixty days from the date of order. A further appeal from the appellate order of the Divisional Commissioner shall lie to the Financial Commissioner within 90 days from the date of the order of the Commissioner.

Provided that no second appeal shall lie when the original order is confirmed on the first appeal."

Nobody had filed any appeal under Rule 14. Respondent No. 4 who is an objector, had not filed any appeal under Rule 14. Under the circumstances the action of the Deputy Commissioner holding that the grant made in favour of the petitioner as per annexure "B" was wrongly made, is found to be totally without jurisdiction.

5. It may be noted here that in the absence of any appeal preferred by a competent person under Rule 14 of the Rules under the Resettlement Scheme of 1971 it would always be open to the Government to move suo motu for the cancellation of the grant but in that case the condition No. 7 of the PATTA which contains an arbitration clause, and which has a binding effect between the grantor and the grantee, would come into play and, therefore, in a case in which the Government is of the opinion that the original grant was made under the influence of some fraud, and for that reason the grant is liable to be set aside, then the only remedy would be to invoke the arbitration clause contained in condition No. 7 of the PATTA. Therefore, if the Deputy Commissioner, or for that matter the Divisional Commissioner, is of the opinion that the petitioner has obtained the grant in his favour under the Resettlement Scheme of 1971 by practising fraud, it would be open to these authorities to make a report to the

Government to invoke arbitration clause for the purpose of setting aside the PATTA. But so long as the arbitration proceedings are not so undertaken the PATTA cannot be unilaterally cancelled by any authority of the Government in a suo motu action.

6. In view of this we allow this writ petition, set aside the order which is found at annexure "E" and make the rule absolute accordingly without any order as to costs.