

(1964) 01 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1927 of 1960

Ram Swarup

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 20-01-1964

Acts Referred:

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

Citation : (1964) 01 P&H CK 0038

Hon'ble Judges : Dua, J

Bench : Single Bench

Advocate : D.D. Khanna, for the Appellant; Sohan Lal Gupta, for the Respondent No. 5., for the Respondent

Final Decision : Dismissed

Judgement

Dua, J.—The facts of this case disclose how a small mistake in not being precise can lead to a lot of avoidable controversial litigation. According to the petitioner's allegations, he is a displaced person from West Pakistan and is an allottee-occupant of an evacuee property No. WX-32 paying Rs. 4/- per mensem by way of rent since 1948. A portion of the same building which is described to be a shop bearing No. WX-32-A was in occupation of Krishan Lal, respondent No. 5, who was paying Rs. 6/- per mensem by way of rent. The municipal No. WX-32-A was originally allotted to one Dina Nath who used to do sports business under the name and style of "Forward Sports Works", Basti Nau, Jullundur. In 1953, he left that shop which was sealed by the Custodian. Sometime in 1954, Krishan Lal respondent unsealed the shop and occupied it in an unauthorised manner. The property No. WX-32-A and property No. WX-32 have been described to have separate access and approach; in other words, they are described to be distinct and divisible. The rooms marked X and Y in the plan (Annexure "A" to the writ petition) fell down on account of heavy rains in 1955 and were reconstructed by the petitioner. Sometime later, Krishan Lal requested the petitioner to allow him the temporary use of the room marked X which was acceded to, with the result

that Krishan Lal has since been using this room with the petitioner's permission as a licensee. When considering the transfer of evacuee property in occupation of non-claimants, applications were invited from intending purchasers and the petitioner on 12th June 1959 applied for the transfer to him of the property No. WX 32, He, however, did not hear anything from the department till 8th October 1951 when he was informed that the property had been ordered to be transferred in favour of Krishan Lal vide Annexure "G" to the writ petition. The petitioner preferred an appeal which was rejected by Shri Shewak Ram, Settlement Commissioner, on 17th February, 1960. A further revision to the Chief Settlement Commissioner and a still further revision u/s 33 of the Displaced Persons (C & R) Act bore no better result. It is in these circumstances that the present writ petition was filed in this Court in December, 1960. The ground on which the petitioner has challenged the various orders principally is that there is no question of the property being indivisible because the property, as is obvious, bears two separate municipal numbers and is separate to all intents and purposes; shop No. WX-32-A having an independent access being in no way dependant on the residential portion marked WX-32. It has also been pleaded that respondent No. 5 could by no means be considered to have been in occupation of a major portion of the property, because the two parties are in possession of separate properties. On 15th June, 1963, an application was filed by the petitioner under Order 1, Rule 17, read with section 151, C.P.C., alleging that on an inspection of the original rent register for the year 1951 which was forwarded by the department to this Court it has been discovered that it was really property bearing No WX-32-A which had been allotted to the petitioner and that the Rent Collector had by some misapprehension described it as WX-32 in the receipts Annexures B to F and other receipts. Similarly it is property No. WX-32 which is shown in this register to be in occupation of Dina Nath of which Krishan Lal, respondent No. 5, took possession in an unauthorized manner later, as stated in the writ petition, It was further averred that on the record it is apparent that the Managing Officer had made an offer to Krishan Lal in regard to property No. WX-32 and not WX-32-A. Amendment in the writ petition was accordingly sought in the light of these averments. Notice of this application was apparently given to the opposite party and on 5th August, 1963 at the respondents' counsel raising no objection to the amendment sought, the same was allowed. The respondents, however, wanted to meet the entries in the above register.

2. Before me, at the final hearing arguments by the petitioner have really been confined to the situation as it has emerged in the light of the rent register. According to Shri Khanna, property No. WX-32-A has all along been with the petitioner and it is property No. WX-32 which has been in Krishan Lal's occupation. The department according to the learned counsel, has throughout acted under a misapprehension which has occasioned grave failure of justice. It is, therefore, according to the counsel, a fit case for interference by this Court in the present proceedings. Reference has been made by the counsel to Rule 26 of

the Displaced Persons (C & R) Rules, 1955, which provides for the transfer of acquired evacuee property which is allottable and is in the sole occupation of a non-claimant. The counsel has in this connection emphasized that the mistake though one of fact can be rectified by this Court in the present proceedings and for this submission he has placed reliance on *Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income Tax* AIR 1955 S.C. 65, a decision dealing with Article 136 of the Constitution. He has also for this purpose placed reliance on a Bench decision of this Court in *Maharaj Krishan Khanna v. The State of Punjab etc.* (1961) 63 P.L.R. 593, special reliance having been placed on the following passage at p. 593 :

Although where facts are disputed, the Court would be reluctant in these proceedings to give any decision with regard to them but where it is possible to arrive at a conclusion on documents and other material, the genuineness and authenticity of which cannot be doubted, there can be no bar to determining a question of fact for the purpose of granting relief under Article 226.

On behalf of the respondents it has been emphatically contended that the case is concluded by a finding of fact and this Court has no jurisdiction to go into disputed questions of fact in these proceedings. According to the respondents' learned counsel the parties fought their battle throughout on the position as originally stated in the writ petition and the position now urged by way of amendment is an after-thought and, therefore, should not be entertained.

3. Dealing first with the question whether this Court can and should go into disputed questions of fact in writ proceedings, reference may be made to a decision of the Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , B.P. Sinha J., (as he then was), speaking for the Court in this case, observed as follows :

So far as we know, it has never been contended before this Court that an error of fact, even though apparent on the face of the record, could be a ground for interference by the Court exercising its writ jurisdiction. No ruling was brought to our notice in support of the proposition that the Court exercising its powers under Article 226 of the Constitution could quash an order of an inferior tribunal on the ground of a mistake of fact apparent on the face of the record." In *Satyanaryan v. Mallikarjun* AIR 1960 S.C. 127, the Supreme Court again approved this position after referring to *Hari Vishnu Kamath v. Ahmad Ishaque* (1955) 1. S.C.R. 1104. The decisions in *Ram Das T. Chugani v. Custodian General of Evacuee Property* (1961) 63 P.L.R. 339 and *Kanwar Nahar Singh v. Custodian General* (1962) 64 P.L.R. 155, also support this proposition. It is true that the language of Article 226 of the Constitution does not in terms rule out interference with questions of fact in proceedings thereunder but the recognised ratio of decided cases leads to the irresistible conclusion that as a general rule, the High Court does not interfere with findings of fact erroneously arrived at by the subordinate tribunals for they have jurisdiction and power to decide both right as well as wrong.

4. The petitioner's contention that there is apparently a misapprehension in the mind of the departmental authorities in regard to the numbers of the buildings and that this misapprehension which has perhaps resulted in confusion may or may not be right. It is, however, not a matter for a Court of writ which does not sit as a Court of appeal against there departmental decisions. The well-recognised decisions for determining whether or not the High Court should interfere under Article 226 of the Constitution do not seem to me to have been fulfilled in the case in hand. It is, therefore, unnecessary for me to refer to the arguments on the merits as to the numbers of the units in possession of the respective parties at the relevant time.

5. For the foregoing reasons, this petition fails and is hereby dismissed but without any order as to costs.