

(1959) 04 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 851 of 1958

S. Gurdit Singh Wadhera

APPELLANT

Vs

Regional Settlement Commissioner and Others

RESPONDENT

Date of Decision : 20-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 10

Citation : AIR 1960 P&H 58

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

(1) Gurdit Singh petitioner claims to be a displaced person from village Daulatala, District Rawalpindi and after migration on the partition of this country he settled down at Khanna in District Ludhiana. His claim for a house left in Pakistan was verified for Rs. 6,100/- by the Claims Officer. Ambala, on 18-1-1952 under the Displaced Persons Claims Act. The petitioner alleges in his petition that he had left no agricultural land in Pakistan and he preferred no claim for allotment of land under the Displaced Persons Land Claims Act with the result that he was not allotted any land at all by the Custodian of Evacuee Property.

The petitioner further alleges that to his great astonishment he received a notice No. 93(C) 54, dated 4-5-1954, from Shri Puran Chand, Settlement Commissioner, Additional, Delhi, to the effect that it had been ascertained from the Rehabilitation Department, Jullundur, that agricultural land measuring 3/4 unit had been allotted to him with the result that petitioner's claim for rural building, of which the value had been assessed at Rs, 6,110/- was not maintainable and was thus liable to be dismissed. The petitioner was informed that if he was desirous of contesting this statement, he should prefer his objections in writing on or before 22-5-1954. The writ petition continues that the petitioner accordingly submitted his objective stating that he had made no claim for any allotment nor had any allotment of land been made to him by the Department of the Custodian, Evacuee Property.

The petitioner was again given a notice dated 6-9-1954 by Sri H. C. Hans, Additional Settlement Commissioner, Delhi, requiring the petitioner to attend his office either in person or through his authorised agent as it was through to revise the order of the Claims Officer dated 18-1-1952. After attending some hearings Shri H. C. Hans, Additional Settlement Commissioner, by his order dated 11-10-1954, discharged the notice of revision and confirmed the order of the Claims Officer dated 18-1-1952. The petitioner was again sent a notice dated 30-11-1956 from the District Urban Resettlement Officer, Ludhiana, requiring him to appear before the said Officer on 4-12-1956 in connection with the investigation of Government dues outstanding against the petitioner, who appeared and submitted that he had taken no loan or grant from the Government and thus nothing was due from him.

The petitioner says that he was informed that he had been called by some mistake. Again a notice, without number and without date, was sent to the petitioner, by the District Urban Resettlement Officer, Ludhiana, to appear before the said Officer on 6-8-1957, in connection with the investigation of Government dues outstanding against him. The petitioner says that he again appeared and after he had explained the matter he was again told that he had been called by mistake, and that nothing was due from him. Still another notice dated 22-1-1957 was received by the petitioner from the Settlement Officer, Ludhiana, calling upon him to attend his office on 29-1-1957 in connection with the petitioner's compensation application. The petitioner says that he appeared in response to this notice but was again informed that he had been called by mistake.

Yet another notice dated 12-4-1957 from the Assistant Settlement Officer was served on the petitioner requiring him to appear before the said Officer on 17-4-1957 in connection with his compensation application. The petitioner accordingly appeared but he alleges that he was again informed that he had been called by mistake and could go back. The petitioner alleges that to his greatest astonishment he received yet another notice dated 26-12-1957 from the Regional Settlement Commissioner, Jullundur stating that since no compensation was admissible to him in respect of his claim verified in his favour and bearing index No. P/RP2/3712 for the reason that he was an allottee of agricultural land and as such his rural claim being less than Rs. 10,000/-was not maintainable.

In reply to this notice the petitioner sent a representation through his Advocate on 18-1-1958 to the Regional Settlement Commissioner, Jullundur, with a copy to the Chief Settlement Commissioner stating that Shri H. C. Hans, Additional Settlement Commissioner, Delhi, had on 11-10-1954 after holding an enquiry came to the conclusion that the petitioner had no land in Pakistan nor had he got any allotment of evacuee land made in his favour, with the result that the petitioner's claim, as verified by the Claims Officer, had been upheld and confirmed. A request was made in this representation to withdraw the notice dated 26-12-1957. In reply to this representation the petitioner's counsel was

informed by the Regional Settlement Commissioner in March 1958 that the petitioner could file an appeal to the Chief Settlement Commissioner if he was dissatisfied with the order of the Regional Settlement Commissioner dated 22-11-1957.

The petitioner's counsel is alleged to have again written back on 16-4-1958 that the copy of the order of Shri H. C. Hans had already been attached with the previous representation and that the said order had become final and could not under the law be reversed by any authority; more particularly without notice to the petitioner. It is alleged that a request was made for verification, whether the decision of the Regional Settlement Commissioner dated 22-11-1957 actually related to the petitioner's claim, because he (the petitioner) apprehended that there was some mistake somewhere. It was further prayed that if the above decision related to the petitioner's claim then he may be supplied with a copy of the order per V.P.P. It is alleged that no reply has been received to this representation. The present writ petition has been filed on 19-8-1958 assailing the order dated 22-11-1957 on the following grounds.

(a) The petitioner had no allotment of agricultural land and thus could not be deprived of his claim for rural house.

(b) The question of allotment of agricultural land had been enquired into by Shri H. C. Hans whose order had become final and it could not be reviewed by the Regional Settlement Commissioner which is not an authority superior in rank to the Additional Settlement Commissioner.

(c) Calling the petitioner over and over again was clearly abuse of power on the part of the respondents.

(d) Failure on the part of respondent No. 1 to supply a copy of the order dated 22-11-1957 was illegal and unjust; and

(e) The assertion that the petitioner had got allotment of land is erroneous on the face of the record and no order could be passed against the petitioner without notice.

(2) In the written statement it has been expressly asserted that upon the scrutiny of jamabandi of village Daulatala, Tehsil Gujjar Khan, District Rawalpindi, received from Pakistan by the Land Claims Organisation, Punjab, the petitioner was held entitled to an allotment of 3/4 unit of agricultural land in lieu of land left by him in the said village in Pakistan and he was thus allotted 3/4 unit of land in village Bela (H. B. No. 237), Tehsil Naraingarh, District Ambala, vide allotment letter No. AB 4/237/985. The allotment, it is pleaded, was subsequently cancelled on the petitioner's failure to take possession of the allotted land.

It is also explained that the petitioner had produced before Shri H. C. Hans a memo from the Deputy Registrar, Land Claims Organisation Jullundur, addressed to him, stating that no land in village Daulatala, Tehsil Gujjar Khan, District Rawalpindi, was found in his name, and that the previous allotment in village

Bela, Tehsil Naraingarh, District Ambala, had been made against the entries of the record and the same has since been cancelled from his name form the said village; relying on his memo Shri H. C. Hans discharged the notice of revision issued to the petitioner. According to the procedure, as described in para 7 of the reply, a form is received by the different authorities concerned from the Settlement Organisation for verification of the public dues outstanding against the claimant, who applies for compensation in respect of the claim verified in his favour.

On receipt of the same a notice is issued to the claimant requiring his personal attendance in order to make necessary investigation. In the present case on receipt of such form the petitioner was asked to attend for investigation of the Government dues outstanding against him. The form was returned in original to the Settlement Organisation after making necessary enquiries in the matter. It is not admitted by the respondent that the petitioner was informed that he had been called by mistake. The petitioner was admittedly required by the Settlement Officer, Ludhiana, to appear before him on 29-1-1957 in connection with the finalisation of his compensation application and also to furnish an attested copy of the order dated 11-10-1954 passed by Shri H. C. Hans.

The petitioner did furnish that copy of the said date, in the light of which the mater was again referred to the Rural Screening Branch, Jullundur, for elucidation in view of the contrary report furnished by the Deputy Registrar, Land Claims Organisation, and the Rural Screening Branch Jullundur. The Screening Branch again represented that an area of 3/4 unit of agricultural land had in fact been allotted in the names of Shri Gurdit Singh which was subsequently cancelled as the allottee had not taken possession of the area. It was also reported that the allotment could be restored to the petitioner on his application. The petitioner was thus again called to clear his position and to inform him that there was actually an entry in the revenue records regarding ownership of land in his name and that it was open to him to get the area re-allotted by approaching the Land Claims Organisation

It is emphatically denied that the petitioner was ever called by mistake or unnecessarily. Being an allottee of less than 4 acres of area of rural agricultural land, the petitioner it is alleged, was not entitled to receive compensation separately in respect of his verified claim for a rural building, the assessed value of which was less than Rs. 10,000/-, as provided in rule 65(2) of the Displaced Persons (Compensation and Rehabilitation) Rules and the petitioner was accordingly informed. He was also told that it was open to him to file an appeal to the Chief Settlement Commissioner under the rules if he felt aggrieved with the order dated 22-11-1957. It was also suggested that if the petitioner was not interested in getting the agricultural land he could pursue his remedy under rule 97.

An objection is also raised in the written statement that the petition having not exhausted the remedies available to him under the Displaced Persons

(Compensation and Rehabilitation) Act, 1954, the present writ petition is not maintainable; particularly as his counsel, Shri Harbans Singh Gujral, had been expressly informed that the matter could be taken up in appeal to the Chief Settlement Commissioner. No representation dated 16-4-1958 has, according to the written statement been received by the Department either from the petitioner or from his counsel.

(3) The counsel for the petitioner has, after taking me through his writ petition, submitted that in fact neither did he own any land in village Daulatala (Pakistan) nor did he apply for allotment of agricultural land to the Rehabilitation Department with the result that there could not possibly be any allotment in his favour. In my opinion, this contention is not open to the petitioner in the present proceedings. The scope of a petition under Art. 226 of the Constitution is very limited. It cannot review, reweigh or re-assess the finding of fact given by the Departmental Tribunals. The order dated 22-11-1957 clearly states that as the applicant is an allottee of less than 4 acres of agricultural land no compensation is admissible to him.

As is obvious from the written statement the petitioner was clearly informed that there existed an entry in the revenue records regarding ownership of land in his name and that he could get the area re-allotted by approaching the Land Claims Organisation. The petitioner was also clearly informed about the allotment and the subsequent cancellation for his failure to take possession of the allotted land. The petition was in the hands of an Advocate of this Court of considerable standing to whose care he had entrusted his case. The fact that the petitioner did not choose to prefer an appeal as suggested by the Department to his counsel is also not without significance; the petitioner could have no appeal re-agitated the factum both of his ownership of land in Pakistan as well as of allotment of agricultural land in India in his favour.

Knowing the difference between the scope of appeal or revision before the departmental authorities and the scope of a writ petition in this Court, the petitioner has, for reasons best known to him, chosen to approach this Court under Art. 226, without utilising the remedy available with the departmental authorities. In this connection I must also notice the officer made by the learned Advocate General at the Bar, that even now the petitioner could prefer an appeal before the departmental authorities, which would not be opposed on the plea of limitation. When I put this offer to Mr. Gujral he declined to accept it and merely contended that he could not expect any fair deal from the Department concerned. This was hardly a satisfactory reply. There is absolutely no material on the record to justify any inference of bias on the part of the departmental officers against the petitioner.

In view of this discussion it is not possible for me to hold that the finding of fact on which the impugned order is based is open to attack in these proceedings. There is no such error apparent on the face of the record as can be rectified by this Court in writ proceedings. The Officers of the Rehabilitation Department

appear to have acted within their competence and power and their proceedings are not open to scrutiny for ascertaining whether their conclusions on facts are right or wrong. See Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, at pages 412-413.

(4) It is next contended by the counsel for the petitioner that no notice was given to his client for cancelling the allotment. The written statement shows that when he was called, the position was fully explained to him and it was after he had been informed of the material facts that the order was passed by the Regional Settlement Commissioner. The learned Advocate-General has also submitted that this enquiry really related to the petitioner's application, for compensation and to refuse compensation to him does not under the law require any specific notice nor is a formal hearing necessary. The counsel submits that the petitioner's application for compensation was considered on the merits and when it was found that he had been allotted 3/4 unit of agricultural land and that the property claimed by him was of less than the requisite value, the Department could merely disallow the compensation application and no formal notice or hearing has been provided in the Act or the rules.

It is also contended that subsequent cancellation of the allotment for failure to take possession by the claimant is immaterial, as claimants are not entitled, at their sweet will to give up land and secure rural building instead. Indeed, this position has not been controverted by Mr. Gujral, who has merely contended that his client owned no land in Pakistan and was thus not allotted any land in India. The learned Advocate-General appears to me to be right in his contention that, as is obvious from the reply filed on behalf of the respondents, the petitioner very well knew the nature of the enquiry which was being held on his compensation application.

(5) Mr. Gujral also submitted that by virtue of Rule 69 of the Displaced Persons (Compensation and Rehabilitation) Rules nothing contained in Chapter VIII of the Rules applies to agricultural land allotted in the States of Punjab and Pepsu under S. 10 of Act, XLIV of 1954. Rule 65, which occurs in this chapter, prohibits separate compensation for rural buildings in certain cases. The learned counsel submits the Rule 65 being inapplicable to the case of agricultural lands allotted in the State of Punjab, his claim for the house in question could not be thrown out.

This point having not been raised in the petition cannot be permitted to be urged. The petitioner also in his arguments tried to assail the order dated 22-11-1957 on the ground that it was not shown as to who had actually passed this order. This point again is not taken in the petition and therefore cannot be permitted to be raised at the time of arguments. The writ claimed by the petitioner in this case does not relate to a fundamental right. The right claimed is created by statute and has, therefore, to be enforced in accordance with the provisions of the same statute; redress against erroneous decisions of the departmental authorities must, therefore, generally be had by recourse to the higher departmental authorities on appeal or revision as the case may be. A writ

cannot be granted to quash the decision of an inferior tribunal within its competence or jurisdiction on the grounds that it is wrong. It must be shown, before a writ is issued, that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice : Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property,

A palpable and gross error of law apparent on the face of the record may also justify interference but there must in addition be manifest or grave in-justice: Veerappa Pillai Vs. Raman and Raman Ltd. and Others, Except for the order of Shri Hans, the counsel for the petitioner had practically nothing substantial on the merits to base his case on; the order of Shri Hans has been shown by the respondent to be based on subsequent cancellation of allotment and this order does not establish that no allotment had ever been made to the petitioner. Lastly, the delay in coming to his Court also goes against the petitioner. The impugned decision was admittedly conveyed to the petitioner by means of a letter dated 26-12-1957.

Instead of promptly, and vigilantly attacking this order before the higher departmental authorities the petitioner, curiously enough, contented himself by writing a letter through his counsel, Shri H. S. Gujral, a senior advocate of this Court, to the Regional Settlement Commissioner on 16-1-1958 (about three weeks later) merely relying on the order passed by Shri H. C. Hans. When a reply to this letter was received by the petitioner's counsel again no due diligence was shown by the petitioner or his counsel for nearly five months and time has been wasted in carrying on unfruitful and wholly unnecessary correspondence (if at all there was any correspondence) with the Department during the interval. It must be remembered that the Department has denied receipt of any letter dated 16-4-1958 and nothing has been said at the Bar suggesting that this denial is incorrect.

In my opinion, this petition is clearly liable to be dismissed on grounds of undue delay and laches on the part of the petitioner as well. Relief by way of a high prerogative writ being in the discretion of the Court want of due diligence and promptitude on the part of the claimant may afford good and valid grounds for refusing this relief : vide Akhtyar Singh v. Inspector General of Police (1955) 57 Pun LR 490: (AIR 1956 Punj 10) ; Kundan Lekha and Others Vs. State of Punjab and Another, and Gandhinagar Motor Transport Society Vs. State of Bombay,

(6) For the reasons given above, this petition fails and is hereby dismissed. In the circumstances of the case, however, there will be no order as to costs.

(7) Petition dismissed.