

(1975) 11 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 60 of 1970

S. Vishan Singh

APPELLANT

Vs

Chief Settlement Commissioner and Others

RESPONDENT

Date of Decision : 05-11-1975

Acts Referred:

Citation : (1976) ILR Delhi 183 : (1976) RLR 256

Hon'ble Judges : V.S. Deshpande, J;P.S. Safer, J

Bench : Division Bench

Advocate : G.S. Vohra, M.S. Vohra, V.P. Nanda and B.S.C. Singh, for the Appellant;

Judgement

P.S. Safer

(1) This petition raises the question as to what was the effect of the abrogation of Rule 31 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 by the amendment carried out on the 3rd of August, 1963 in respect of the decision arrived at earlier on 22nd September, 1962 by the Managing Officer to transfer the property concerned in this litigation to the petitioner. In consequence of the order made by the Managing Officer the President of India entered into an agreement with the petitioner on the 29th September, 1962 in terms whereof the price of the property was fixed at Rs. 6,692 on payment of which the ownership was to be transferred to the petitioner.

(2) The petitioner and respondent No. 3 Smt. Dyali Bai were in occupation of portions of the property bearing No. XV/2827-28, Multani Dhandha, Paharganj, New Delhi and the Managing Officer found that the petitioner was in occupation of the larger area and was for that reason entitled to the transfer of the property to him. Rule 31 as it prevailed on the date of the order referred to above was in the following terms :

"RULE31. Transfer of acquired evacuee property in occupation of displaced persons none of whom holds a verified claim (1) Where an acquired evacuee

property, which is an allotable property, is in occupation of more than one displaced person none of whom holds a verified claim the property may be transferred to the displaced person who occupies the largest portion of the property, or where two or more such displaced persons occupy a portion of the property which is equal in area, the property may be transferred to the displaced person who has been in occupation of such portion for a longer period."

(3) We have reproduced only the concerned portion of Rule 31. It is obvious that in terms of the above quoted provision a non-claimant displaced person in occupation of the largest portion of the property was to be entitled to the transfer of the property to him. In case non-claimant displaced persons were to be found in occupation of equal area then the property was to be transferred to the one who may have been in occupation for a longer period. As observed earlier, the Managing Officer found in terms of his order made on 22nd September, 1962 that the petitioner before us was in occupation of the largest portion of the property and for the reason the property was directed to be transferred to him. The controversy between the petitioner and respondent No. 3 was only in respect of the area and the second part of the rule as to which of them had been in occupation for a longer period did not come in.

(4) It must be mentioned that the writ petition was heard by Prakash Narain, J., before whom the parties placed reliance on the decisions recorded in *Shrimati Balwant Kaur v. Chief Settlement Commissioner (Lands)* 1963 P.L.R. 1141 (1), *Amar Singh v. The Union of India and others* 1967 P.L.R. 132 (Delhi Section) (2) and *Pt. Dev Raj. v. The Union of India & others* 1973 P.L.R. 270 (3). He also came across the decision by a learned single Judge of this Court by which C.W. No. 614-D of 1964 *Shri Lal Chand v. G. D. Kshetra Pal and others*(4) was disposed of on 24th August. 1973. As he found that there was conflict of judicial opinion, Prakash Narain, J., referred the matter for being decided by a larger bench because he was persuaded that the decision of the Division Bench of this Court reported in *Amar Singh* (Supra) had not been brought to the notice of the learned Single Judge who disposed of C.W. No. 614-D of 1964.

(5) We have heard the parties in detail and we have been referred to the various orders passed subsequent to the initial order made on 22nd September, 1962 in terms whereof an agreement to all was executed between the President of India and the present petitioner. The original record has also been produced before us and it is very revealing that by an Appellate Order made on 30th November, 1962 by Shri Ram Kumar, Assistant Settlement Commissioner who dealt with the contention raised by the appellant Smt. Dyali Bai (Respondent No. 3 to this petition) that the area in her possession was larger than that in occupation of the petitioner, the case was remanded to the Managing Officer directing that he should satisfy himself by inspecting the site as to which of the contending parties was really in occupation of the largest area of the property.

(6) A perusal of the original record further reveals that in consequence of the direction the property was inspected and measured again. There is a note under

the date of 15th May, 1963 bearing the signatures of Mr. T. C. Dewan according to which the petitioner was found in occupation of 639. 1 sq. ft. while respondent No. 3 was found in occupation of 633.8 sq. ft. in spite of the area in the occupation of the petitioner having been found larger even after remeasurements respondent No. 3 continued to agitate the controversy. It is alleged in the petition that by his order made on hearing the appeal the Assistant Settlement Commissioner again remanded the case for taking fresh measurements. Nothing has been brought to our notice showing that any final adjudication was recorded by any officer regarding fresh measurements.

(7) The grievance raised by the petitioner was that the order made on 16th July, 1964 by the Managing Officer Shri Shanti Sarup Govila purported to cancel the transfer in his favor. We have referred to the order made by the said officer. He was dealing with the order of demand made by the Assistant Settlement Commissioner on the 24th August, 1963. Instead of carrying out fresh measurements in accordance with the order of remand the Managing Officer in his order dated 16th July, 1964 recorded his conclusion :

"NOW that eligibility cannot be determined in case of properties in the occupation of more than one person after the abrogation of Rules 30 and 31 with effect from 3rd August, 1963, the property may be reported for sale."

(8) The petitioner lost the appeal which he filed against the aforesaid order and the order dated 27th April, 1965 dismissing his appeal was confirmed by respondent No. 1 to this petition on 10th August, 1965 while exercising the delegated powers of the Chief Settlement Commissioner.

(9) Urging this petition it is contended with considerable force on "behalf of the petitioner that the view taken by the Managing Officer was wholly erroneous. It is submitted that in consequence of the order made on 22nd September, 1962 the President of India had entered into an agreement to sell with the petitioner on 29th September, 1962 in terms whereof the petitioner who was to pay Rs. 6,692 had actually paid Rs. 7,256 which included some payments towards interest and that parties having acted on the agreement to sell, the transaction could not be set aside. It is also contended that the abrogation of Rule 31 on the 3rd August, 1963 did not make the slightest change in as much as the subsequent proceedings continued to be governed by that Rule. The Rules was to be held to be applicable for the reason that the transfer had been made on its basis at a time when it was the law.

(10) It has been contended on behalf of respondent No. 3 that on the same date i.e., 3rd August, 1963 an Explanation was added to Rule 22 in terms whereof the property became non-allotable. The argument is that after the 3rd August, 1963 the property could not have been allotted. We need not reproduce the Explanation added to Rule 22 as it is nobody's case that any property was allotted or transferred after the 3rd of August, 1963. The petitioner never got allotment or transfer of the property after the said date. He acquired his rights

not only in terms of the order made on 22nd September, 1962 but also under the agreement which was executed between the President of India and the petitioner on the 29th September, 1962. Respondent No. 3 had all along known that such an agreement had been executed and that the President of India and the petitioner had acted upon it in as much as payments had been made towards the sale price which had been received by the concerned authorities on behalf of the President of India. We put it to Bawa Shiv Charan Singh, learned counsel as to why respondent No. 3 did not take any steps for getting the agreement made between the President of India and the petitioner annulled. Apart from the appropriate proceedings under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 the jurisdiction of this court under Article 226 of the Constitution of India could have been invoked. The authorities acting under the aforementioned Act. never dealt with the consequential agreement which was prevailing between the President of India and the petitioner. They were all along dealing with the litigation on the basis that Rule 31 had been abrogated Bawa Shiv Charan Singh has not explained as to why respondent No. 3 never assailed the agreement d,ated 29th September, 1962.

(11) The first case on which reliance had been placed on behalf of respondent No. 3 is Smt. Balwant Kaur (Supra). The Punjab High Court was not concerned with the problem which arises before us. The scope of Section 24 of the Act was examined and it was held that an order under that provision could be made which could affect the granting of a sanad. Reliance has then been placed on behalf of respondent No.3 on the decision made by the Division Bench of this Court reported as Am,ar Singh (Supra). We have carefully examined 188 the judgment in that case. The facts of that case as well as the law laid down do not help respondent No.3. The petitioner before the Division Bench was one Amar Singh. After coming to India he occupied as tenant the entire first floor of property in 35, Naiwala. Karol Bagh, New Delhi- The ground floor of that building was originally occupied by another tenant. The petitioner wauled the property to be transferred to him. The Division Bench observed :

"ALLthe authorities below have rejected the petitioner"s claim. Hence, he come up with this petition under Articles 226 and 227 of the Constitution. In this petition he has prayed for two reliefs, namely, (i) to quash the orders passed by the respondents by issuing a writ of certiorari, and (ii) to issue a writ of mandamus to them requiring them to allot the premises in question to him."

(12) After reproducing Rules 20 and 31, the Division Bench observed in paragraph 4 of the judgment :-

"4.The authorities below have rejected the claim of the petitioner on the ground that the premises in question having been occupied by more than one occupant, rule 26 is not applicable to this case, and further as rule 31 had been abrogated before this case was decided he could not take the benefit of that rule."

(13) It is clear that the case before the Division Bench was the one in which no

allotment or transfer of property had been made during the period that rule 31 was in force. It was observed by the Division Bench that Rule 31 gave discretion to the authorities to allot the property and" the displaced person did not acquire any vested right to obtain the transfer of the property. For that reasons the Division Bench declined to issue any writ of mandamus. In paragraph 7 the Division Bench noticed that before the petitioner's case came to decided. Rule 31 had been obrog,ated. That is not the case before us. Rule " 31 prevailed between the parties on 22nd September. 1962. The rule has been reproduced earlier. On its clear interpretation the Managing Officer was right in transferring the property to the petitioner who was in occupation of the larger area,.

(14) The impugned orders ignored that in compliance with the order made by the Managing Officer the President of India had entered into a valid agreement on 29th September, 1962 to sell the property to the petitioner and that the parties had acted upon it. We have noticed the payments made by the petitioner- There was no challenge to the validity of the agreement to sell which we have seen in original on the record produced by the department.

(15) The reliance placed on behalf of respondent No. 3 on the decision contained in Smt. Balwant Kaur (Supra) ignores Mohinder Singh v. Union of Indi^ 1967 P.L.R. 950 (5) which we have come across and in which the learned Single Judge placed reliance on a later Full Bench of the same court, whose decision was reported in Chanan Das v. Union of India and others 1967 P.L.R. 1 (6). The learned Judge was directly concerned with Rules 30 and 31 and their scope. The argument raised before him was that since the rules had been abrogated the eligibility as between the parties could not be determined on their basis. Being concerned with Rules 30 and 31 which had been abrogated on the same day i.e., 3rd August, 1963, he observed in paragraph 10 of his judgment : "It is, Therefore, beyond dispute that at the time when the two agreements of sale in question were made. Rule 30 was in force and fully applicable." The Division Bench case decided by this Court Amar Singh (Supra) was cited before him. He considered all aspects and observed :

"INview of the ratio decidendi of Chanan Das's (Supra) it is clear that the Sixth Amendment Rule. 1963, which a.brogated rules 30 and 31, had to be treated as non- extent by the Deputy Chief Settlement Commissioner and the Government of India, while passing the impugned orders under Sections 24 and 33 of the Act."

(16) The learned Judge clearly held that for the purpose of disposal of the proceedings which had come up before the Deputy Chief Settlement Commissioner and the Government of India Rules "30 and 31 continued to prevail and the abrogation was ineffective. The Full Bench decision of the Punjab High Court, Chanan Das (Supra) and the subsequent decision by R. S. Sarkaria, J. in Mohinder Singh (Supra) were never noticed during the course of this litigation.

(17) The petitioner has drawn our attention to Pt. Dev Raj (Supra) in which it

was held that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as it may pertain to a matter of procedure, unless that effect could not be avoided without doing violence to the language of the enactment.

(18) We are of the view that the impugned orders should not have proceeded on the basis that Rule 31 having been abrogated it no longer governed the litigation between the parties. Rule 31 was the law on the 22nd September, 1962. It was the law on 29th September 1962 when agreement to sell was entered into by the President of India with the petitioner. The parties acted on the agreement. The petitioner performed his part of the agreement and payments made by him were received on behalf of the President of India. The petitioner having paid Rs. 7,256 for his performance of the contract towards the sale price of Rs. 6,692, the over payment being in respect of interest it is admitted by the parties that only a balance of Rs. 944 is to be paid by the petitioner for obtaining the sale deed. By acting upon the agreement to sell the petitioner has achieved valuable rights for obtaining the final transfer of the property.

(19) While disposing of C.W. No. 614-D of 1964 R. N. Aggarwal, J., took the view on 24th August, 1973 that in spite of the abrogation of Rule 30 the parties to the litigation continued to be governed by it because the initial determination at a date when the rule was in force. We find no reasons to differ with him and are of the view that the abrogation of rule 31 did not lead to any different result than the abrogation of Rule 30. R. N. Aggarwal, J., relied upon a passage occurring in Pt. Dev Raj (Supra) in which the Full Bench of the Punjab and Haryana High Court went to the extent of holding:

"A displaced person has a vested right not only to have the compensation payable to him ascertained but also to have his claim satisfied in the manner prescribed by the Rules. Rule 30 prescribed one of the manners."

(20) The Punjab High Court held that the Rehabilitation Authorities had no discretion to transfer or not to transfer the property and had to act in accordance with the rules.

(21) After giving our careful consideration to all the contentions raised before us, we are firmly of the view that the Rehabilitation Authorities in this case were bound to give effect to Rule 31 as it prevailed on 22nd September, 1962 when the Managing Officer made the order transferring the property to the petitioner before us.

(22) We are also of the view that the impugned orders deserve to be struck down for the reason that no attention seems to have been given to the execution of a valid enforceable agreement between the President of India and the petitioner on the 29th of September, 1962. We allow the petition and quash the impugned orders. The transfer made to the petitioner will stand and agreement dated 29th September, 1962 will be given effect to. With these observations, while disposing of the petition, we make no order as to costs.