
(1985) 06 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 3 of 1978

Santokh Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-06-1985

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 24, 25, 26, 30, 7

Citation : (1985) 14 ILR HP 480

Hon'ble Judges : V.P. Gupta, J;T.R. Handa, J

Bench : Division Bench

Advocate : Kedar Ishwar, for the Appellant; P.A. Sharma, K.D. Sood and Manmohan Singh Gujral and K.D. Shridhar, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—Feeling aggrieved from the order dated 20-12-1977 passed by a learned single Judge of this Court in C.W.P. No. 30 of 1975, the Appellant has filed the present appeal.

2. Briefly the facts are that Raghbir Singh Respondent No. 3 filed a C.W.P. No. 30 of 1975 in this Court challenging the orders dated 12-2-1975 passed by Shri Gulab L. Ajwani, Deputy Chief Settlement Commissioner, exercising the powers of Central Government under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter the Act) on the grounds that house property No. 46 situate in Mandi measuring 651 sq. yards of khasra No. 1479 and 1480 was transferred to him by allotment and he became the sole owner of this property. This property originally belonged to one Ajmer Khan who migrated to Pakistan on the partition of India. It was declared as evacuee property and was put in the compensation pool. It was, thereafter allotted to the Petitioner in lieu of his verified compensation claim. The excess amount of compensation of this property was paid by him and thus he became the owner of the property from November 1, 1953.

3. The present Appellant was claiming that he was in possession of a portion of the property. He got his portion numbered as 46-A and subsequently entered into an agreement with the Government for house property No. 46-A transferred to him on 27-6-1964. Respondent No. 3 alleged that the Appellant had no verified claim and being a non-claimant was not entitled to have the property in preference to him.

4. The Appellant contested the claim of the Respondent No. 3 and claimed that the property occupied by him and numbered as 46-A was a separate unit. He further claimed that this property even if a part of house property No. 46 was in his occupation since 1947 and as such he was entitled to retain its possession and the same could be allotted to him because it was divisible.

5. Both the Appellant and Respondent No. 3 are displaced persons. House property No. 46 at Mandi comprises of a house and vacant land bearing khasra No. 1479 and 1480 measuring 651 sq. yards. It originally belonged to Ajmer Khan (a Muslim evacuee). The Respondent No. 3 had a verified claim and under the provisions of the Act and the rules made thereunder, he was entitled to get ownership in this property transferred in his favour in lieu of his compensation claim. Earlier the total compensation for house property No. 46 was fixed at Rs. 4643/- and the Respondent No. 3 was asked to pay an amount of Rs. 2479/- after adjusting his verified compensation claim of Rs. 3903/-. Respondent No. 3 paid the full price on 5-2-1964 and the title of house property No. 46 passed to him with effect from 1-11-1953. It ceased to be a part of the compensation pool.

6. The Appellant claiming to be in occupation of a portion of the property got this separate portion numbered as 46-A. He also entered into an agreement with the Government on 27-6-1964 for transfer of title of the property No. 46-A being transferred to him. When Respondent No. 3 came to know about this transfer in favour of the Appellant, he filed a revision petition before the Chief Settlement Commissioner, New Delhi, who sent the case to the Managing Officer for verifying the facts. It appears that the Managing Officer found some mistakes regarding the valuation of the property and he recommended that the transfers in favour of Respondent No. 3 and the Appellant be cancelled. The valuation of house property No. 46 was found to be Rs. 6326/-.

7. Subsequently Shri K.L. Wasan, Settlement Commissioner, found that Respondent No. 3 was entitled to property No. 46 in preference to the Appellant (who was a non-claimant) and vide orders dated 27-2-1965 the transfer and the agreement in favour of the Appellant was set aside. Respondent No. 3 was asked to pay the difference in price. The Appellant filed a revision petition to the Central Government which was accepted by Shri Rajni Kant vide his order dated 9-9-1968. Shri Rajni Kant directed that the property situate in khasra Nos. 1479 and 1480 be disposed of afresh according to law.

8. Respondent No. 3 thereafter filed. C.W.P. No. 142 of 1968, challenging the order dated 9-9-1968 passed by Shri Rajni Kant and he claimed that he was the

sole owner of house property No. 46 and the Appellant had no right in this property. This petition was allowed on 6-8-1970 by Justice T.V.R. Tatachari, who quashed the order dated 9-9-1968 passed by Shri Rajni Kant and also came to the conclusion that Respondent No. 3 was the owner of house property No. 46 situate in Khasra Nos. 1479 and 1480 with a plot area of 651 sq. yards and the two portions of superstructure therein, one in possession of the Appellant and the other in possession of Respondent No. 3.

9. Two Letters Patent Appeals Nos. 28 of 1970 and 36 of 1970 were filed on behalf of the Appellant and the Union of India against the judgment dated 6-8-1970 passed by Justice Tatachari. Both these appeals were dismissed by a Division Bench vide orders dated 31-8-1973 and the order of the learned single Judge was upheld. The result was that the order dated 9-9-1968 passed by Shri Rajni Kant was vacated. The learned Judges of the Division Bench, however, held that the single Judge should have only quashed the orders of Shri. Rajni Kant and should not have given findings on facts.

10. After the decision of the Letter Patent Appeals, the matter again came up before Shri Gulab L. Ajwani, Deputy Chief Settlement Commissioner, exercising the delegated powers of the Central Government, for determination on merits the petition filed by the Appellant against the order dated 27-2-1968 passed by Shri K.L. Wasan, authorised Chief Settlement Commissioner. Shri Gulab L. Ajwani vide his orders dated 12-2-1973 ordered that the portion in occupation of Respondent No. 3 be transferred to him as per the line plan at the valuation indicated by the valuation unit and the other portion in occupation of the Appellant be transferred to him as per the valuation report dated 10-4-1958 for the amount indicated in the valuation unit. If there were any adjustments considered necessary or to be made in the appropriate/fuller enjoyment of the portion in respect of the occupation of the aforesaid two parties, they would provide for such addition/alteration themselves without in any way encroaching upon each other's rights/property portions also while transferring the property as indicated therein above. If the department wishes to have any clarification or assistance from the valuation unit, the same could be had.

11. Respondent No. 3 thereafter preferred C.W.P. No. 30 of 1975, which was dismissed by a learned single Judge on 20-12-1977.

12. We have heard the learned Counsel for the parties and have also gone through the records of the case.

13. The matters for our determination are:

(a) Whether the Appellant who is admittedly in possession of a portion of the house property No. 46 situate in khasra Nos. 1479 and 1480 total plot measuring 651 sq. yards, is entitled to get it transferred in his favour,

(b) Whether the house property No. 46-A is a separate unit, and

(c) Whether the house property No. 46 is divisible.

14. The learned Counsel for the Appellant contended that the orders passed by Shri Gulab L. Ajwani were justified in the facts and circumstances of the case. The two units, i.e. house property No. 46 and house property No. 46-A were separate. He further contended that the house property No. 46-A was in possession of the Appellant and could easily be separated from the remaining house property No. 46, even if both the properties were situate in khasra Nos. 1479 and 1480 measuring 651 sq. yards. The properties were divisible. The main contention was that both the portions of the properties were separate and should have been transferred in favour of respective occupants. Reliance was placed upon Rules 25, 26 and 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter the "Rules").

15. The learned Counsel for the Respondents contended that the house property No. 46 was one unit, situate in khasra No. 1479 and 1480 measuring 651 sq. yards. The question regarding divisibility or partition of the property was never raised by the Appellant in C.W.P. No. 142 of 1968 decided by Justice Tatachari and L.P.As. Nos. 28 and 36 of 1970 decided on 31-8-1973 by a Division Bench. The Respondent No. 3 had a verified claim and according to Rule 30 of the rules, the Appellant could not be allotted/transferred this property. The learned Counsel also contended that the rights of Respondent No. 3 accrued in 1959 when he became the owner of the property.

16. To appreciate the rival contentions, it is necessary to consider the scope and applicability of the various relevant rules to the facts and circumstances of the present case. Rules 25, 26 and 30 of the Rules read as follows:

25. Transfer of acquired evacuee property which is an allottable property to person in occupation thereof who holds a verified claim:

(1) Where an applicant for payment of compensation is in sole occupation of an acquired evacuee property which is an allottable property such property may be transferred to him in lieu of the compensation payable to him under the Act:

Provided that the total amount of net compensation payable to the applicant is not less than half in the case of property other than an industrial concern and less than one-fourth in the case of an industrial concern (or such other smaller proportion as the Chief Settlement Commissioner may in either case determine) of the value of the property as determined under Rule 24 :

Provided further that no industrial concern shall be transferred to the applicant unless he pays up the arrears, if any, of the lease money outstanding against him in respect of such concern.

(2) Where the value of the property exceeds the net amount of compensation payable to the applicant, the applicant shall be required to pay the balance either in one lump sum or in instalments spread over a period not exceeding four years in the case of property other than an industrial concern and not exceeding 2 years in the case of an industrial concern or by adjustment against the

compensation payable in respect of the verified claim of any other person.

(3) Where the amount of net compensation payable to the applicant exceeds the value of the property, the property may be transferred to the applicant and he may be paid the balance of the compensation in cash or in the form of property in accordance with the provisions of these rules.

(4) Where the value of the property is equal to the amount of net compensation, the property may be transferred to the applicant and in such a case the claim for compensation shall be deemed to have been fully satisfied.

26. Transfer of acquired evacuee property which is an allotable property in sole occupation of a person who does not hold a verified claim.-

Where an acquired evacuee property which is an allotable property is in the sole occupation of a displaced person who does not hold a verified claim, the property may be transferred to him-

(i) in the case of industrial concern, if he pays at once not less than 25 per cent of the value thereof and agrees to pay the balance in instalments spread over a period not exceeding 2\\ years, from the date of the initial payment;

(ii) in the case of any other property if he pays at once not less than 20 per cent of the value thereof and agrees to pay the balance in instalments spread over a period not exceeding four years from the date of the initial payment.

27. xxxxxxxxx

28. xxxxxxxxx

29. xxxxxxxxx

30. Payment of compensation where an acquired evacuee property which is an allotable property is in occupation of more than one person.-If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and. the other persons may be allotted such other acquired evacuee property which is allotable as may be available :

Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him.

Explanation I.-The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allotable property hold verified claims and some do not hold such claims.

Explanation II.-If any acquired evacuee property has been allotted to a member of a family as defined in sub-rule (3) of Rule 7 who does not hold any verified

claim and if Anr. member of the family holding a verified claim is in occupation of such property, the compensation payable to such other member of the family may be adjusted against the value of the property .

17. Now the Appellant is occupying a portion of house property No. 46 but he is not in sole occupation of this house property. For the applicability of Rule 25 an applicant should hold a verified claim and the property should be in his sole occupation. As the Appellant is not in sole occupation of house property No. 46, therefore, this rule is not applicable to him. The provisions of this rule will also not apply to Respondent No. 3 because he too is also not in sole occupation of the property of house property No. 46 although he has a verified claim in his favour.

18. Rule 26 also cannot apply because the Appellant is not in sole occupation of the evacuee property of house property No. 46.

19. The only other rule which can apply in the present case is Rule 30 of the Rules. Both the Appellant and Respondent No. 3 are in possession of portions of property of house No. 46. The Appellant, however, is not holding a verified claim and for this reason he cannot claim partition of the property as is provided in the first part of Rule 30. The learned Counsel for the Appellant laid much stress on Explanation I of Rule 30 and contended that the provisions of Rule 30 would apply in the present case and the property should be partitioned between the Appellant and the Petitioner (Respondent No. 3).

20. We simply disagree with the contentions of the learned Counsel for the Appellant. Rule 30 can only apply where" the property is to be partitioned between more than one per-, son, holding verified claims. In such a case if the property is i in occupation of more persons, holding verified claims, then the property is to be offered to the person whose net compensation is nearest to the value of the property and the other persons (that is, the persons in occupation and holding verified claims) can be allotted such other acquired evacuee property which is allottable as may be available. The proviso to Rule 30 will become applicable in a case where an allottable property is capable of being suitably partitioned. In case the allottable property is capable of being partitioned, then the Settlement Commissioner shall partition this property and allot to each such person (that is, a person having a verified claim) a portion of the property so partitioned having regard, to the amount of net compensation payable to him.

21. Explanation I to Rule 30 has been added to this rule iso that in case of an allottable property capable of being parti-tioned, a person who does not have a verified claim may not claim the property, which is in his occupation. This explanation is added so that the main rule along with its proviso may also apply in cases where allottable property is in occupation of several persons some of whom may be holding verified, claims while Ors. may not be holding verified claims. This rule, in fact, is for the benefit of the persons who hold verified claims and it cannot apply for the benefit of persons who do not hold verified claim. This

is the only and just interpretation of Rule 30 read with its proviso and the explanation. A person not holding a verified claim cannot claim any partition of the pro-property even if he is in occupation of a portion of the allottable property and partition can only be claimed by persons who are holding verified claims.

22. This view also finds support from *Kewal Singh v. Government of India* (AIR 1963 Pun 246) wherein the scope of explanation to Rule 30 was examined and it was held that in case of disputes between a claimant and a non-claimant the property must be allotted to the claimant under Rule 30 and the explanation must be held applicable to such a case.

23. Similarly in *Tirath Singh Vs. Union of India (UOI) and Others*, it was held that for the applicability of Rule 30 a displaced person should hold verified claim and unless he fulfilled this qualification or eligibility he cannot claim any benefit of Rule 30.

24. We may observe that in C.W.P. No. 142 of 1968 (Annexure F to the writ petition) the Appellant never raised any controversy that house property No. 46 and house property No. 46-A were separate units. In fact, it was one single property, that is, house property No. 46 measuring 651 sq. yards comprised in Khasra Nos. 1479 and 1480.

25. The learned Counsel for the Appellant also contended that the Appellant had a verified claim. This plea was never raised before the learned, single Judge during the pendency of the writ petition. It is not possible for us to consider this contention of the learned Counsel for the Appellant because no material was available to the learned single Judge who decided the writ petition. Further the only question before this Court for adjudication is as to whether the orders passed by Shri Gulab L.Ajwani are liable to be quashed or not. In view of this, this contention of the learned Counsel for the Appellant cannot be considered and accepted.

26. We may add that originally the property was considered to be one unit which was numbered as house property No. 46 which is standing on a compact plot of land. Thus only Rule 30 of the Rules can apply to such a property and we have already held that the Appellant cannot take the benefit of this rule.

27. As a result of the above discussion, we do not find any merit in this appeal which is hereby dismissed.