
(2002) 07 MP CK 0115
In the Madhya Pradesh High Court
Case No : M.P. No. 3181 of 1989

Shankerdas Lohana

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 2(b), 24, 33

Citation : (2003) 1 MPLJ 159

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : R.S. Tiwari, for the Appellant; Ashok Agrawal, Panel Lawyer for Respondent Nos. 2 to 6, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mishra, J.

This writ petition has been filed aggrieved by the order Annexure/P-16 passed by the respondent No. 2, State of M.P. directing the ejectment of the petitioner and to record the name of Union of India, passed on 6-8-1988 by the Rehabilitation Department of Government of Madhya Pradesh.

Petitioner avers that Shri Kalumal was a displaced person. He was resident of Sindh Prant the erstwhile undivided Hindustan. After independence Kalumal came to India and was a displaced person within the meaning of section 2(b) of Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter referred to as the "Act". Claim of Kalumal was verified by Government of India at Rs. 1,25,741/- with respect to the house and 16.241/320 units of agricultural land which he left in Sindh Prant, Kalumal settled at Jabalpur. He applied for grant of compensation and allotment of land in the District of Jabalpur. Kalumal died leaving behind his two sons; Gianchand and Shankerdas. Both applied to the settlement officer under the Act to put them on record each claiming half share in compensation. Report was prepared by settlement officer on 20-2-1956.

Shankerdas and Gianchand were recognized to be legal representatives as per order Annexure-P/1.

Late Kalumal was allotted 36 standards acres equal to 90 acres land at village Pipariya and Lakhanwara of Patwari Circle No. 58 of Jabalpur District. This order was issued on 26-6-1956. Petitioner was allotted 18 standard acres equal to 45 acres of land. Two cases for disbursement of compensation were started; one in the name of Gianchand and other in the name of the petitioner; Shankerdas. In the compensation case of the petitioner 18 standard acres land was adjusted in statement of account issued to him. One Ashok Kumar son of Gianchand wanted to grab the land. On 3-1-1970 the Managing Officer ordered the petitioner to surrender possession of the land without giving opportunity of hearing. Petitioner appealed to the higher authorities. The Assistant Settlement Commissioner, New Delhi, issued an order restraining the dispossession on 31-3-1970. In the appeal Ashok Kumar filed an application to join as a party. The application filed by Ashok Kumar was dismissed. Ashok Kumar filed a revision u/s 24 of the Act of 1954. Chief Settlement Commissioner rejected the revision as per order Annexure-P/7 dated 26-11-1971.

Petitioner had preferred an appeal against the order dated 3-1-1970 which was allowed by the Settlement Commissioner, New Delhi as per order Anneuxre-P/8 dated 15-3-1972 and a direction was issued to the Managing Officer to give effect to the adjustment of 18 standard acres of land by issuing necessary Sanad. Petitioner submits that the order is conclusive, binding and has attained finality. Revision was preferred by Ashok Kumar against the said order which was dismissed on 28-5-1975 by the Director, Department of Rehabilitation, New Delhi exercising the delegated powers of Central Government u/s 33 of the Act of 1954. Collector also initiated proceedings on the basis of complaint lodged by Shri Virumal. Collector found possession of the petitioner as per order Annexure-P/15 which was passed on 28-7-1988, there was report submitted in favour of the petitioner by the various authorities as to possession and order P/15 has been passed in favour of the petitioner.

Petitioner submits that all of a sudden without giving opportunity of hearing, without issuance of any prior show-cause an order P/16 was issued by the Rehabilitation Department of Government of M.P. on 6-8-1988 directing ejectment and for recording the name of Union of India in the revenue papers. Petitioner submits that the order is in disregard by the order passed by the Settlement Commissioner Annexure-P/8 u/s 24 of the Act Secretary of State of M.P., Rehabilitation Department has accepted the report dated 28-7-1988 and order was issued to the petitioner, thereafter file was placed before the Minister, Rehabilitation Department on 22-10-1988 who also ordered issue of Sanad to the petitioner. Both these orders were passed after the passing of impugned order Annexure-P/16. Thus, the impugned order P/16 passed on 6-8-1988 cannot be allowed to stand, however, as Sanad was not issued, the petitioner submitted representation.

The respondent No. 2 to 6 in the return contend that the claim of deceased Kalumal was verified by the Minister of Rehabilitation Department, Government of India. It has also been admitted that Kalumal was the father of the petitioner. Compensation was required to be paid is also not in dispute. No actual allotment order has been issued in favour of the petitioner. However, it has been admitted that the order Annexure-P/8 has been passed directing the Managing Officer to issue Sanad. Respondents No. 2 to 6 have also not denied that an order was issued by the Rehabilitation Department which was approved by the Minister for issue of Sanad.

Shri R.S. Tiwari, learned counsel appearing for the petitioner submits that the order P/16 passed by the Rehabilitation Department of Government of M.P. is absolutely improper, bad in law and void. Firstly; there is order of settlement as contained in Annexure-P/2 in favour of Kalumal the land mentioned which was later was confined to 18 standard acres of land as mentioned in the order of the Settlement Commissioner, New Delhi, passed on 15-3-1972. There was direction issued that Managing Officer may effect to the adjustment of 18 standard acres of land effected from the compensation application of Shri Shankerdas and arrange to issue necessary Sanad. This order has attained finality and the petition filed u/s 33 to the Director, Department of Rehabilitation by Shri Ashok Kumar against the order Annexure-P/8 was dismissed on 28-5-1979 as per Annexure-P/9. Later on the Collector has also recognized the right of the petitioner as per order Annexure-P/15 on the strength of the order passed by the settlement Commissioner and the central government as contained in Annexure-P/8 and P/9, the order P/15 passed by the Collector indicates that Shanker Das is in lawful possession of the land in question.

After few days of passing of this order P/15 all of a sudden without issuing of any notice and opportunity of hearing to the petitioner an order P/16 has been issued by the Rehabilitation Department of Government of M.P. overlooking the order passed by the Settlement commissioner and also decision of the Central Government rendered by Director in exercise of delegated power of the Central Government u/s 33 of the Act of 1954. It has also not been traversed in the return that the Rehabilitation Department after passing of the order P/16 has accepted the report dated 28-7-1988 and has ordered issue of Sanad to the petitioner. Thus, in my opinion when as per order dated 22-10-1988 the report dated 28-7-1988 has been accepted the impugned order dated 6-8-1988 P/16 stands superceded, even otherwise order-P/16 is absolutely illegal and has been passed without opportunity of hearing and in contravention of the orders Annexure/P/7 and P/8 and P/9, the impugned order P/16 cannot be allowed to stand.

Writ petition is allowed, impugned order Annexure-P/16 is quashed. Respondents are directed to issue Sanad as per order Annexure-P/8. In the facts and circumstances of the case, there shall be no order as to costs.