(1982) 10 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4787 of 1974

Shri Charan Dass APPELLANT

Vs

The Chief Settlement Commissioner Punjab and another RESPONDENT

Date of Decision : 25-10-1982

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

Citation : (1982) 10 P&H CK 0047

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : M.S. Liberhan, for the Appellant; S.L. Sarin for the Respondent No. 2, for the Respondent

Judgement

J.M. Tandon, J.—Charan Pass petitioner was allotted evacuee property No. 988-A/938-A at Pathankot which is vacant land measuring 346 Square Yards. This property was offered to be transferred to the petitioner provisionally for Rs. 3388/- subject to the confirmation of the price by the Assistant valuation Officer by the Managing Officer in July 1962. The value of the property was ultimately assessed at Rs. 54,168/- in 1968. The Managing officer vide order dated October 30, 1968 cancelled the provisional transfer of the property in favour of the petitioner on the ground that its valuation exceed the allot ability limit. The petitioner filed an appeal against a which was dismissed by the Settlement Commissioner vide order dated Feburary 5, 1969. The petitioner then filed a revision which was dismissed by the Chief Settlement Commissioner vide order dated January 15, 1970. The petitioner feeling dissatisfied with the orders passed against him filed petition u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereafter ''the Act'') which was disposed of by the Financial Commissioner (Taxation) vide order dated September 21, 1971 (P.4) The Financial Commissioner (Taxation) accepted the petition, set aside the impugned orders and remanded the case to the Chief Settlement Commissioner for a thorough probe into the matter and to decide the case afresh on merits. The Chief Settlement Commissioner was also directed to get the price of the property assessed after hearing the petitioner and to consider the desirability of the transfer of the property in dispute to the petitioner at re-assessed price by negotiation if permissible under the rules in case the reassessed price exceeded the allotability limit. The Chief Settlement Commissioner then decided the matter vide order dated July 24, 1974 (P. 5). It was held that the price of the plot was Rs. 75.000/-. It was also found that the petitioner was not in sole occupation of the property in dispute inasmuch as he had only placed one Knokha in front portion which is being used as a tea-stall and another Khokha on the Northern side in the front portion which is in occupation of one Sant Ram Halwai while the remaining entire portion was a vacant site being used for tethering cattle by Babu Ram who had also installed a wooden Khokha on it The Chief Settlement Commissioner Leld that since the property in dispute was not in exclusive possession of the petitioner, he was not entitled to its transfer. The property was, therefore, directed to be sold by public auction. The petitioner has assailed the order of the Chief Settlement Commissioner dated July 24, 1974 (P. 5) in the present writ.

2. The learned counsel for the petitioner has argued that the Chief Settlement Commissioner ought to have assessed the price of the property in dispute as it existed at the time of provisional transfer in favour of the petitioner. The Chief Settlement Commissioner has assessed the current market price of the property at Rs. 75,000/-. It has further been argued that the Chief Settlement Commissioner has erred in holding that the property in dispute is not in exclusive possession of the petitioner or it cannot be transferred to him on that ground.

3. The property in dispute was provisionally transferred to the petitioner in 1962 It is correct that for determining whether the property is allotable or not its price as it was on the date of provisional transfer shall have to be ascertained. The impugned order of the Chief Settlement Commissioner does not indicate that the price of Rs. 75,000/- is the current market price or it was the price as it existed at the time the property was provisionally transferred to the petitioner.

4. The Financial Commissioner vide his orders dated September 21, 1971 (P 4) exercising the powers u/s 33 of the Act directed the Chief Settlement Commissioner to decide the case relating to the transfer of the property in dispute to the petitioner afresh The order of the Financial Commissioner (Taxation) P. 4 has not been assailed in this writ. The Chief Settlement Commissioner in the impugned order dated July 24, 1974 (P. 5) has held that the property in dispute is not in exclusive possession of the petitioner and, therefore, he is not entitled to its transfer. In view of the order of the Financial Commissioner (Taxation) P. 4, it was within the competency of the Chief Settlement Commissioner exercising the powers u/s 24 of the Act to determine whether the petitioner was entitled to the transfer of the property or not The finding of fact recorded by the Chief Settlement Commissioner in the impugned order P. 5 that the petitioner is not in exclusive possession of the property in dispute cannot be assailed in writ proceedings. In view of the fact that the;

petitioner is not in exclusive possession of the property in dispute, he cannot claim its transfer under rule 22 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The petitioner, therefore, cannot justifiably assailt the impugned order of the Chief Settlement Commissioner.

5. In the result the writ fails and is dismissed with no order as to costs.

