
(2005) 01 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10773 of 2002 (O and M)

Siri Chand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 10, 12, 24, 33, 4

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 3.4, 67A

Citation : (2005) 140 PLR 96 : (2005) 3 RCR(Civil) 661

Hon'ble Judges : Satish Kumar Mittal, J; N.K. Sud, J

Bench : Division Bench

Advocate : S.N. Saini, for the Appellant; Ritu Bahri, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—In this writ petition filed under Articles 226/227 of the Constitution of India, petitioner Siri Chand has challenged the order dated 3.9.2001 passed by the Chief Settlement Commissioner, Rehabilitation Department, Haryana, vide which the alternative allotment of land measuring 14 Kanals 10 Marlas in village Sonata and 16 Kanals 16 Marlas in village Ugala made in his favour vide order dated 31.5.1995, by Naib Tehsildar (Sales)-cum-Managing Director, was set aside in exercise of suo-motu power u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act); and the order dated 3.5.2002 passed by the Commissioner and Secretary to Government, Haryana, Rehabilitation Department (respondent No. 1) vide which the afore-said order was confirmed in exercising the power of Central Government u/s 33 of the Act.

2. In this case, petitioner Siri Chand claims himself to be the son of Bishan Dass, a displaced person. On 31.9.1994, he filed an application before the Naib Tehsildar (Sales)-cum-Managing Officer, Land Claims Organisation, Rehabilitation

Department, Haryana, Chandigarh, for allotment of land alleging therein that his father Bishan Dass was allotted land to the extent of 3 standard acres in village Loharu, district Bhiwani, which was later on cancelled on the ground of non taking of its possession. Therefore, he requested that an alternative allotment of the land should be made to him. The said application was neither signed nor verified by the petitioner nor any document whatsoever was annexed with the said application such like, earlier allotment order, cancellation order, copy of the jamabandi or copy of the verified claim. The said application was allowed by the Tehsildar (Sales) vide order dated 31.5.1995 and the petitioner was allotted land measuring 14 Kanals 10 Marlas in village Sohata and 16 Kanals 16 Marlas in village Ugala. The said order was passed without hearing the representative of the department. The copy of the order was forwarded to one Narender Kumar, who alleged to be a General Attorney of the petitioner.

3. Subsequently, the department filed an application u/s 24 of the Act before the Chief Settlement Commissioner for setting aside the afore-said order dated 31.5.1995 in exercise of his suo-motu power as illegal allotment was made in favour of the petitioner in a mala fide manner. Vide order dated 3.9.2001, the Chief Settlement Commissioner set aside the afore-said allotment while giving the following reasons:-

(a) That in the instant case, the disputed person Bishan Dass was initially allotted land in village Loharu, District Bhiwani on Quasi Permanent basis in the year 1949, but when he did not take possession of the same, the said allotment was cancelled before coming into force of the Act of 1954. Since in this case the original allottee did not take possession of the allotted property which was later on cancelled, therefore, his case is not covered u/s 10 of the Act. However, such displaced person had the option to file an application u/s 4 read with Rules 3.4 and 67A of the Rules within the prescribed period i.e. upto 31.12.1963, if he had a verified claim, but no such application was either made by the original allottee or his legal heirs up to 31.12.1963. The instant application was made by the petitioner in the year 1994 at a much belated stage.

(b) That the Tehsildar (Sales)-cum-Managing Officer was not the competent authority or having any jurisdiction to make alternative allotment. Therefore, he was no authority to decide the claim made by the petitioner for allotment of alternative land. Therefore, the order dated 31.5.1995 is without jurisdiction and nonest.

(c) That the allotment vide order dated 26.6.1995 was made of extraneous consideration and was based on fraud. The application was not signed and verified by the petitioner. Neither any proof that he is the only legal heir of the original allottee was annexed nor any proof regarding the verified claim or any jamabandi or order of cancellation was produced. The application was made after lapse of 45 years whereas the displaced person Bishan Dass had expired in the year 1971. The allotment letter was sent to one Narender Kumar, who claimed himself to be the general power of attorney of Bishan Dass.

4. The afore-said order was confirmed in revision by the Commissioner and Secretary to Government, Haryana, Rehabilitation Department vide order dated 3.5.2002.

5. Counsel for the petitioner submitted that there was no limitation for filing the claim for alternative allotment of the land and Rule 67A of the Rules is not applicable in the instant case. He submitted that it was the duty of the Rehabilitation authorities to provide compensation to the displaced persons by making allotment of the land and they could not go behind the technicalities to deny compensation to such persons. Since the earlier allotment made in favour of Bishan Dass was cancelled on technical grounds of not taking possession, therefore delay should not be made fatal and on such ground the displaced person or his legal heir should not be deprived of their rightful claim. In support of his contention, he relied upon the decision of this Court in *Guran Ditta v. The Financial Commissioner (Revenue) & Secretary to Government Punjab and Anr.* 1992 P.L.J. 603. Secondly, he submitted that the Assistant Registrar, Land Claims Organisation is the competent authority who could have passed the order of alternative allotment but since the Naib Tehsildar (Sales)-cum-Managing Officer was also given such power, therefore, he was also competent to make the alternative allotment of land to satisfy the verified claim of a displaced person. Thirdly, he submitted that the power u/s 24 of the Act could be exercised only in case of fraud and concealment of facts and the said power was illegally exercised in the instant case for setting aside the order dated 31.5.1995 vide which a valid alternative allotment was made in favour of the petitioner. He further submitted that the Chief Settlement Commissioner has illegally and arbitrarily exercised his suo-motu power for setting aside a valid allotment.

6. On the other hand, counsel for the respondent has submitted that in the instant case the application was not only filed after the prescribed period of limitation but the same was not accompanied with any relevant document showing that the petitioner had any verified claim. She further submitted that as per Rule 67-A of the Rules, the displaced person or his legal heir should have applied for the alternative allotment within the prescribed period of limitation i.e. upto 31.12.1963, but in this case the application was filed only in the year 1994, much after the death of the displaced person, without there being any proof of legal heirship or the proof of any verified claim. She also submitted that the Naib Tehsildar (Sales)-cum-Managing Officer was not competent at all to make such alternative allotment and the order dated 31.5.1995 was passed by him even without providing an opportunity of hearing to the department, therefore, the said order was totally void ab initio and without jurisdiction. She further submitted that a Division Bench of this Court in *Smt. Shiv Devi and Ors. v. Financial Commissioner (Taxation) Punjab and Anr.*, (C.W.P. No. 1239 of 1972, decided on 15.2.1973), has taken the similar view that allottee who did not take possession of the allotted land before coming into force of the Act of 1954, is not entitled for allotment of land after expiry of the statutory period for making application i.e. upto 31.12.1963. She submitted that the instant case is squarely

covered by the said judgment on facts as well as on law.

7. After hearing the arguments of the counsel for the respective parties, and perusing the record of the case, we do not find any substance in the instant writ petition. From the record, it appears that originally Bishan Dass was allotted land to the extent of 2 standard acres 10 units in village Loharu, District Bhiwani, on Quasi Permanent basis vide notification No. 4892-S dated 8.7.1949. The said allotment was cancelled prior to the coming into force of the Act of 1954 because the allottee did not take possession of the same. There were two categories of displaced persons at the time of coming into force of the Act of 1954, when all evacuee properties were acquired by the Central Government u/s 12 of the said Act. One category was of displaced persons who have already been allotted land and taken possession thereof and another category was of those who have either been allotted land but possession thereof was not taken or who have not been allotted land at all. The right of first category persons has been protected u/s 10 of the Act but the persons covered under second category were required to apply fresh to the Settlement Commissioner u/s 4 of the Act, if otherwise eligible along with relevant documents within the prescribed period of limitation i.e. upto 31.12.1963, as mentioned in Rule 67-A of the Rules, which reads as under:-

"67-A. Compensation to displaced persons from West Punjab, etc., in respect of agricultural land.- Notwithstanding anything contained in this Chapter a displaced person from West Punjab or a displaced person who was originally domiciled in the undivided Punjab, but who before the partition of India had settled in North West Frontier Province, Baluchistan, Bahawalpur or Sind, whose verified claim in respect of agricultural land has not been satisfied or has been satisfied only partially by the allotment of evacuee land under the relevant notification specified in Section 10 of the Act shall not be paid compensation in any form other than the transfer of acquired evacuee agricultural land and rural houses and sites in the State of Punjab or Patiala and East Punjab States Union in accordance with the scales specified in the quasi-permanent allotment scheme operating in those States.

Provided that the displaced person applies for payment of compensation in such form not later than the 31st day December, 1963;

Provided further that if any person has been allotted land in a State other than Punjab and his land claim has not been satisfied fully, he may for the remaining claim either be allotted land due to him in that State or issued a Statement of Account which he may utilise for purchase of property forming part of the Compensation pool or for adjustment of public dues."

8. In this case, no such application was made either by the original allottee or his legal heir up to 31.12.1963. The instant application was filed in the year 1994, much after the death of the original allottee, and that too, without any particulars. Even the application was not verified by the so-called legal heir.

9. In Smt. Shiv Devi 's case (supra), in similar circumstances, this Court has

held as under:-

"We feel that there is no force in this argument. It has already been seen that the allotment made in favour of Sham Dass was cancelled and after the cancellation, that land has been allotted to somebody else. Consequently, Sham Dass had no right in the land which was originally allotted to him after the cancellation of the allotment. The only right that he had was to ask for his claim being satisfied by allotment of alternative area of land. Therefore, Sham Dass was a person who held claim duly verified "which has not been satisfied wholly or partially". Sham Dass's case squarely fell under this, definition and, therefore, under Rule 67-A he was an unsatisfied claimant and he was entitled to apply and get compensation by allotment of land, as provided in the relevant notification, but he had to make an application for the purpose before 31st December, 1963. There is no hardship involved in this. The original allotments were made as far back as 1951. The Central Government took over evacuee land in 1954. Under the Act of 1954, between 1954 and 1968 nearly nine years period had elapsed and if a claimant was not anxious for one reason or the other to get an allotment or an alternative allotment in lieu of the earlier allotment which had been cancelled, the rehabilitation authorities could not continue ad infinitum for the benefit of such a person. It would have been a different thing if an application had been made in time but the same remained pending either before the original authority who had to make the allotment or before the appellate or revisional authority. But in the present case, Sham Dass himself did not bother till his death and thereafter for three years his legal representatives, i.e. the present petitioners, did not take any steps."

10. In our opinion, the judgment cited by the counsel for the petitioner in Guran Ditta "s case (supra) is not applicable in this case. In that case, it was held that the allotment of land to displaced person could be made not only on the basis of verified claims but also on the basis of copies of jamabandis received from Pakistan. In the said case, the allotment made in favour of the original allottee was not cancelled. Therefore, the said case is distinguishable and the facts of this case are covered by the Division Bench judgment of this Court in Smt. Shiv Devi's case (supra).

11. It is also not disputed before us that the Assistant Registrar, Land Claims Organisation was the competent authority who could have made the alternative allotment. However, counsel for the petitioner contends that the Naib Tehsildar (Sales)-cum-Managing Officer was also conferred such powers but no such material has been placed on the record nor in the order dated 31.5.1995, it has been mentioned by the Naib Tehsildar (Sales)-cum-Managing Officer that he was exercising the power of Assistant Registrar, Land Claims Organisation. Therefore, we do not find any infirmity in the findings recorded by both the authorities that the Naib Tehsildar (Sales)-cum-Managing Officer was not the competent authority or was having jurisdiction to make the allotment of the land.

12. We also do not find any substance in the third contention raised by the

counsel for the petitioner that u/s 24 of the Act, the allotment could have been set aside only in case of fraud and concealment of facts, Section 24 of the Act is reproduced below:-

"24. Power of revision of the Chief Settlement Commissioner.- (1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under Sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material facts, then notwithstanding anything in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, cancelling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrears of land revenue.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under Sub-section (2) may, within thirty days of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit."

13. From the bare reading of the afore-said provision, it is clear that the Chief Settlement Commissioner may at any time call for the record of any proceeding under the Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner or Additional Settlement Commissioner passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and pass such order in relation thereto as he thinks fit. There is no condition that only on the ground of fraud, an order of allotment can be set aside. Even otherwise, in the instant case, the authorities have come to the conclusion that the impugned allotment was made in favour of the petitioner for extraneous consideration by playing fraud on the department. We do not find any illegality in the impugned orders regarding those observations.

14. In view of the afore-said discussion, there is no merit in this petition.

Dismissed.