
(1980) 05 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Appeal No. 1082 of 1973

Sita Devi and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-05-1980

Acts Referred:

Citation : (1980) 18 DLT 221

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : P.P. Rao, Mukesh Kher, S.S. Sidhu, Venkata Ramani, Uma Jain, J.N. Aggarwal and P.N. Talwar, for the Appellant;

Judgement

M. L. Jain, J.

(1) The facts of this writ petition are that a double storeyed house bearing Municipal Nos. 375 to 379 an evacuee property of Teliwara, Shahdara was acquired under the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (hereinafter the Act). It was in the occupation of eight persons:

(1) Ramji Das (Since then left the place)

(2) Arura Ram (Since then dead-L. R. widow and two sons)

(3) Khem Singh (Since then dead-L. R. his widow)

(4) Asa Singh (Since then dead-L. R. his widow)

(5) Kidar Nath

(6) Mohan Lal

(7) Gyan Ghand

(8) Mehta Ram Kishan

(2) Out of these occupants, Khem Singh and Kidar Nath were non claimants .

The Managing Officer and the Valuation Officer recommended to the Assistant Settlement Commissioner that the property could be divided vertically into two equal portions, one, valued at Rs. 9832.00 and the other at Rs. 9208.00 portion No. 1 was in occupation of (1) Mehta Ram Kishan (2) Mohan Lal (3) (a) Ramji Dass and (b) Kidar Nath. Portion No. 2 was in occupation of (1) Aruna Ram (2) Asa Singh (3) (a) Gyan Chand and (b) Khem Singh. All the occupants except two demanded its division into eight units but the Assistant Settlement Commissioner thought that such a division will only create slums and accepted the recommendation of the managing officer. Mehta Ram Kishan had a verified claim of Rs. 61,148.00 (against which he was entitled to a net compensation of about Rs. 12,300.00 Mohan Lal, one other occupant of this portion had a claim of Rs. 18,670.00 (against which he was entitled to a net compensation of about Rs. 3,800.00). The nearest being the compensation of Mr. Mehta, portion No. 1 was allotted to him. As respects the second portion, the verified claims of the occupants were as follows : Aruna Ram "Rs. 3370.00 , Gian Ghand Rs. 5082.00 and Asa Singh Rs. 11,000.00 (against which he was entitled to a net compensation of about Rs.2100.00). So the second portion was allotted to him. This was done by the Assistant Settlement Commissioner by his order of March 10, 1960 under Rule 30 of the (Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (herein the Rules.)

(3) On March 17, 1960 the Government of India issued a circular that cases have come to its notice in which saleable properties have also been divided into independent portions with the result that portions so divided have become allottable. In no circumstances should a division of saleable properties be allowed Past Cases, however, may not be reopened.

(4) Against the decision of the Assistant Settlement Commissioner dated March 10, 1960, an appeal was taken by the remaining occupants to the Settlement Commissioner who by his order dated March 23, 1961 set aside the order under appeal and directed that the property be disposed of as a single unit. He held that there being a common staircase between the proposed two portions they cannot be held to be two distinct properties and Therefore, allottable. Relying upon a single bench decision in Dewan Chand v. Union of India 1960 P. L. R. 4, he also held that the proviso to Rule 30 leaves no doubt that before portions can be allotted to all the occupants, the property must be capable of suitable portion and the splitting of the property into two portions, was against law.

(5) Mehta Ram Kishan and Asa Singh approached the Central Government u/s 33 of the Act but by its order dated June 22, 1961 the Government of India refused to interfere with order of the Settlement Commissioner.

(6) Spurned thus, they filed a writ petition in the High Court against the Union of India in which they challenged its order of June 22, 1961 without even joining the other occupants as parties. The High-Court granted a stay on October 5, 1961 and a Conveyance deed was issued to Mehta Ram Kishan on September 3, 1963. A learned Judge of this court by his order dated February 5, 1972, set

aside the order of the Settlement Commissioner and remitted the case to the Chief Settlement Commissioner for proceeding further according to law. The learned Judge noticed the defect that the other occupants were not joined as parties, yet he thought that he could correct an error of law which he found apparent on the face of the record. The error of law that he discovered was that *Dewan Chand v. Union of India* 1960 P. L. R. (supra) stood superseded by a later Division Bench decision of the same court in *Ranjit Singh v. Union of India* 1962 P. L. R. 44 in which a shop which could be conveniently separated from the rest of the property was allotted to one occupant and the remaining two shops and whole of the accommodation on the first floor to which access was available by a staircase were allotted to another. Third occupant showed no interest. One man claimed the whole or else three divisions. It was held that the allotment called for no interference because where there are three occupants of portions of a property which can only be conveniently sub-divided into two portions; the claims of two occupants can be met.

(7) All the parties then appeared before the Authorised Settlement Commissioner who by his order dated October 13, 1972, this time maintained the order of the Assistant Settlement Commissioner. It was urged before him that the property was not allotable but the learned Authorised Settlement Commissioner held that the case has been remanded by the High Court with certain specific directions and that the Assistant Settlement Commissioner had correctly determined the eligibility for transfer of the two units of the property to Mehta Ram Kishan and Asa Singh.

(8) The matter then came up before the Government of India u/s 33 of the Act. It was held by them that having regard to the terms of the High Court's remand order, the eligibility and division of the property arrived at in favor of Mehta Ram Kishan and Asa Singh for the transfer of the two portions was correct. The petition, was dismissed on July 30, 1973.

(9) Hence the present writ petition in which it is prayed that the order of the Government of India of 30th July 1973, of the Authorised Settlement Commissioner of October 13, 1972, of the Assistant Settlement Commissioner of March 10, 1960 and the conveyance made in favor of Mehta Ram Kishan be cancelled and the one to be made in favor of Asa Singh's widow be restrained.

(10) The first contention of the petitioners is that the impugned order of the Authorised Settlement Commissioner and the Government of India were a nullity as they were made in pursuance of the order of the High Court which itself was a nullity because (i) it was passed in the absence of the necessary parties namely, the other occupants of the property, because (ii) while setting aside the order of the Settlement Commissioner of March 23, 1961 it did not care to set aside the order of the Government of India dated June 22, 1961, which had confirmed it, and because (iii) the finding that the property was not divisible, was the finding of fact arrived at by the Settlement Commissioner in his order of March 23, 1961, which could not be unsettled by the High Court. Even if the petitioners had

participated in the proceedings subsequent to the High Court's order and even if they had not taken steps for the recall or reversal of the High Court order, the petitioners can yet question the validity of the High Court's order and the subsequent proceedings taken by the authorities on its basis. They also contend that the impugned orders did not care to examine the merits of the case and were passed in breach of the instruction of the Government of India of March 17, 1960.

(11) The respondents on the other hand contend that having acquiesced in the High Court's order, the petitioners cannot now challenge its validity. As a matter of fact it has not been done so in the petition. They maintain that the order was otherwise valid because the four persons not joined as parties to the writ petition were not necessary parties, no relief was claimed against them, they did not challenge the vertical division. They further urge that it was within the sole discretion and power of the government to determine whether any property is allottable or saleable. The valuation of the property has not been challenged and allotability has been decided upon after the Assistant Settlement Commissioner had considered the valuation and had inspected the site. This Court cannot say what is allottable and what is not. The circular letter of March 17, 1960 of the Government of India has no application in the cases decided before that date.

(12) I have considered. There is no force in the contention that the High Court had by its order of February 5, 1972 had disturbed any findings of fact arrived at by the Settlement Commissioner. It has simply not done so. But the High Court order deprived itself of its binding nature and validity because it could not correct even an apparent error of law, unless the parties affected were before it and it further created an anomalous situation by not disturbing the order of the Government of India in which the order of the Settlement Commissioner dated March 23, 1961 shall be deemed to have merged. The order of the Settlement Commissioner was in favor of the petitioners and they had succeeded in frustrating the attempt of two of the occupants to have the property-wholly allocated to them. If that order was reversed, then, it could not be said that they were not affected or no relief was sought against them. They were by any standard a necessary party and a writ petition decided without hearing them, cannot bind them. The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, has no application to this case, as in that case rules of seniority made by the Railway were challenged as unconstitutional. No relief was sought against any particular officer's seniority and Therefore it was held that since validity of policy decision was questioned, the employees who were likely to be affected need not be impleaded. At best they were proper parties. In the instant case, the judgment: was a nullity vis-a-vis the petitioners and no acquiescence. It can be agitated at any stage of the proceedings. Secondly, if the order of the Settlement Commissioner is set aside, it does not mean that with it falls the order of the Government of India. It will be seen that in the Jt. Secretary to the Joint Secretary to the Government of India and Others Vs. Khillu Ram and Another, the High Court had quashed the order

made u/s 33 of the Act, while the order in our case stands intact. For these reasons, I am of the view that the subsequent proceedings were also bad in law.

(13) Even otherwise, what the High Court has done was only to direct a fresh decision in accordance with law. Instead of doing so, the Authorised Settlement Commissioner and the Government of India thought that they were in fact asked to maintain the order of the Assistant Settlement Commissioner and without assigning any reasons upheld the allotability and divisibility of the property. According to Rule 23 all acquired evacuee properties which are not allotable under Rule 22 shall ordinarily be sold. Rule 22 as it stood before September 23, 1955 is as follows :-

"22.Classes of acquired evacuee properties which may be allotted__ (1) The following classes of acquired evacuee property shall ordinarily be allotted, namely : (a) any residential property in the occupation of a displaced person, the value of which does not exceed five thousand rupees; (b) any shop in the occupation of a displaced person, the value of which does not exceed five thousand rupees; (e) any industrial concern in the occupation of a displaced person the value of which does not exceed fifty thousand rupees. (2) The following classes of acquired evacuee properties shall not unless the Central Government otherwise, directs, be allotable namely: (a) a portion of a building which has no independent access; (b) any residential property wherein a shop is located".

(14) The rule has undergone some significant changes since then. In Clauses (a) and (b) of Sub-rule (1) the valuation was increased to Rs. ten thousand on September, 23, 1955 and to Rs. fifteen thousand on June 2, 1962. Sub Rule (2) was amended on June 2, 1962 so as to delete the above Clause (b) thereof. If the rule in Karam Chand Thakar Dass Vs. Union of India (UOI) and Another, were adopted then the relevant date will be the date of original allotment and in that case even the portions being of the value exceeding Rs. 5000.00 could not ordinarily be classed as allotable. If the subsequent amendment raising the limit to Rs. ten thousand as it stood in 1960 is applied, then too the value of the whole property as one unit will have to be taken into account. To do otherwise, will be to fly in the face of the rule and that is why the Government of India had to issue a circular on March 17, 1960 to correct the frequent departures from the rule. At the time the appeal was pending, the said circular could be and should have been followed. The property could not be divided in order to make it allotable. Since the value of this property exceeded Rs.10,000.00 it could not be allotted. In order to make it allotable, the Assistant Settlement Commissioner divided it vertically into two portions each valued at less than Rs. 10,000.00 and made two properties out of one. This simply could not be done specially when there was a common staircase. As per Sub-rule (2) of Rule 22 as it stood after its substitution in 1956, "a portion of a building of an acquired evacuee property which has no independent access shall not unless the Central Government otherwise directs, be allotable". The respondents contend that the word "ordinarily" in Sub-rule

(1) and "unless Central Government otherwise directs" in Sub-rule (2) admit of considerable flexibility, which is a matter within the exclusive jurisdiction of the authorities under the Act and is not open for examination by the High Court. Reliance is placed on *Girdhari Lal v. L. J. Johnson* (1961) 63 P. L. R. 183.

(15) I agree that even a property which is more than Rs. ten thousand in value can be allotted but that is not what was done or was purported to be done. If the whole property was treated as one unit and declared allottable in spite of its value that would have been a straight forward thing to do but instead a subterfuge was employed to escape the rigour of the rule. Flexibility and discretion available under the rule cannot, be allowed to bypass it in the manner it was done in this case. The requirement of an independent access could be dispensed with only by a direction of the Central Government which no one at any time cared to secure.

(16) Both Rules 22 and 30 will be applied as these stood before their amendment and omission, vide *Joint Secretary to the Government of India and Others Vs. Khillu Ram and Another*, . The correctness of this decision is not open to question though the learned counsel for the petitioners wants to reserve his right to canvass its reversal as and when it is appropriate and possible. These unamended rules were examined by the Punjab and Delhi High Courts in *Ranjit Singh v. The Union of India* (1962) 54 P. L. R. 44 (D. B.) and *Hari Singh v. Union of India and others* 1L.R. (1972) 2 Del 327. What these decisions purport to lay down is that where an allottable property is in the occupation of persons, be they claimants or non-claimants or a variety of them, all of them, shall be eligible for allotment, if it can be divided into convenient portions, but where such portions fall short of the actual number of occupants, then they can be allotted to a fewer number of occupants regard being had to the net compensation payable by them and its nearness to the value of the portion. It is not necessary that the property must be capable of division between all the occupants or none at all. But all this will follow only after the property is held allottable. It is not the intention of the rules, nor is it laid down by any authority that a property can be sub-divided in order to make it allottable within the confines of Rule 22. Allottability is to be adjudged by the concerned authorities unless it is in defiance of the law. Rule 22 as said earlier ensures flexibility to the authorities in this regard. But that is different from saying that the Assistant Settlement Commissioner is the final authority. - The rules envisage that the last word will be said by the Government of India. In this case, after the High Court order, the authorised Settlement Commissioner and the Government of India.