

(1972) 01 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 2130 of 1968

S.K.C. Mohan and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 05-01-1972

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 61

Citation : (1972) 01 P&H CK 0038

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : R.P. Bali, for the Appellant; Naubat Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—In the ultimate analysis, the question to be answered in this writ petition is whether merely going up in appeal or revision against an order of allotment of certain land accounts to refusal to accept the allotment of that land within the meaning of rule 61 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, so as to satisfy the claim of the displaced claimant for agricultural land left behind by him in Pakistan. The only other and ancillary question which will have to be decided in this case is whether a displaced allottee of agricultural land is or is not entitled to alternative allotment of other land if the land originally allotted to him is found to be not available or ceases to be available for allotment by the time the claimant's appeal and revision against the original allotment are decided. These questions have arisen in the following circumstances.

2. Sixteen standard Acres and 8 1/4 units of suburban agricultural land in Hansi were allotted to Gopal Dass (Chand), the father of the petitioner, in lieu of about 25 acres of such land left behind by him in Lyallpur. Gopal Dass having settled in Karnal District, applied for allotment of the agricultural land to which he was entitled in Panipat on the ground that the Hansi land had been allotted to him without his consent. By order dated May, 24, 1957, the allotment of land in Hansi

was cancelled and the Managing Officer was directed to allot land to the claimant in the village of his choice. Thereupon, an application was made on July 12, 1957, by the petitioners (or their father if he was still alive) for allotment of land in Panipat. The application was accompanied by a list containing the field numbers of the land which was preferred by the petitioners for allotment to them. Annexure "A" to the writ petition is a copy of that list. Some part of that land was allotted to one Mrs. Kapur on January 11, 1958, and that allotment was questioned by one Harbans Singh. That dispute was ultimately settled against Mrs. Kapur when her writ petition was dismissed by this Court on August 24, 1962. Thereafter, an allotment of 12.11 Standard Acres in Taraf Rajputan and of 3. 13 1/2 Standard Acres was made to the petitioners in Panipat on September 12, 1963. The appeal of the petitioners against that allotment was allowed by the Settlement Commissioners and the case was remanded to the Managing Officer for fresh allotment being made to them. Fresh allotment was made to the petitioners in the post-remand proceedings on October 22, 1963, by the Assistant Registrar-cum-Managing Officer, Jullundur, by making some variation in the original allotment. Petitioner's appeal against that order and further petition for revision against the appellate order were dismissed on April 21, 1965 (Annexure "H") and on July 3, 1967 (Annexure "C") respectively. Having exhausted his legal remedies for change of allotment made to him by order Annexure "B" the petitioners approached the Rehabilitation Department for delivery of possession of the allotted land to them. The patwari, however, found that part of the area allotted to the petitioners had already been allotted to different persons who had since sold away the same, that some other parts of the area belonged to Wakf Board and were in possession of that Board and could not have been allotted, that some other part of the allotted area was comprised of Thur and Sem and was of very inferior kind and situated at a far off place from the city and could not, therefore, be considered suburban land, that still other parts of the area had already been allotted to different persons (Labh Singh and Parmanand etc) and that, some area allotted as Barani was scattered in small pieces and was really waste land which was also not available as it was in the occupation and possession of unauthorised persons. All this was stated in the report of the Patwari dated February 1, 1968 (Annexure "D") relating to the land allotted to the petitioners in Taraf Rajputan. Regarding the allotment made to the petitioners in Taraf Afghana, the Patwari stated in the said report that as a result of consolidation which had taken place in that locality the Khasra number allotted to the petitioners had been extinguished at the spot and the area of the Custodian" had been lying in excess at many places which was being auctioned was far away from the road and the city. Babu Ram, Kanungo, made an endorsement on Annexure "D" to the effect that the details given by the patwari were correct. The petitioners have filed a plan (Annexure "E") showing the manner in which the area allotted to the petitioners was a scattered at 2 5 different places. The petitioners made another application for possession being given to them on January 23, 1968. That application was marked by the Rehabilitation Authorities to the Tehsildar Sales, Karnal, for report. Annexure "F"

to the petition is a copy of the report made by Shri Manohar Lal, Tehsildar Sales, Karnal, on February 5, 1968, in pursuance of that order. The Tehsildar stated in his report that he had checked up the position of each Khasra number at the spot, as detailed in the report of the Patwari dated February 1, 1968. He did not find any error in the Patwari's report. He also found that part of the land was Wakf property and could not, therefore, be allotted to the petitioners at all. He concluded his report in the following words:-

-----This case may kindly be referred to the Assistant Registrar, Haryana, Jullundur for examining whether or not alternative allotment can be made in this case.

The question of allotting the numbers desired by the applicant can be examined only after the Assistant Registrar decides the allotment of alternative Khasra numbers.

Admittedly, no further action appears to have been taken on that report. After waiting for about two months, the petitioners submitted a detailed application dated April 22, 1968, (Annexure "G") to the Chief Settlement Commissioners. After giving the history of the case, the petitioners stated inter-alia in that application as below:-

That the petitioners though legally entitled to land from the last 15 years have been made to run from one place to another.

That the officers below be directed to act on the report of Patwari and Managing Officer and allot the land to the petitioners according to their choice and their claim.

It is therefore, prayed that the petitioners be granted the relief in accordance with law by allotting them 16-8 1/4 standard acres of land of their choice.

I asked Mr. Naubat Singh, the Learned Counsel who appeared for the respondents, if he could tell me as to what action, if any, has been taken on the report of the Tehsildar Annexure "F" and on the application of the petitioners dated April 22, 1968, Annexure "G". Unfortunately, he was unable to give information about any possible orders having been passed by the Rehabilitation Authorities on either the report or on the application. It was in these circumstances that the present petition was filed on May 22, 1968 praying for quashing the order of allotment dated October 22, 1963, Annexure "B" and to issue a writ in the nature of Mandamus to the respondents, who are the Rehabilitation Authorities, to allot the land to the petitioners according to their entitlement. Rule having been issued in the case in pursuance of the orders of the Motion Bench dated July 11, 1968, the respondents filed their written statement dated June 7, 1971, wherein an objection was taken to the effect that the appellate order (Annexure "H") had not been impugned. With the leave of the Court, granted to the petitioners on August 4, 1971 in C.M. No. 5431 of 1971, the petitioners filed their amended petition dated August 2, 1971. No fresh

written statement has been filed in reply to that petition as no material change has been made in the original petition except for impugning the appellate order Annexure "H" and the revisional or 1er Annexure "C" also.

3. The main defence of the respondents to the claim of the petitioners may be noticed in the words of the respondents themselves used by them in paragraph 11 of their written statement. The respondents have stated:-

It may be submitted that the petitioners allotment was made in Panipat in the year 1963 and they have not cared to take possession so far. Consequently, as per report of Tehsildar (Sales)-cum-Managing Officer some of the land has now been disposed off for not taking possession by the petitioners. This tantamounts to a refusal and in accordance with rule 61 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, the petitioners shall be deemed to have been satisfied.

Regarding the fragmentation of the land originally allotted to the petitioners by the order Annexure "B" it has been stated in paragraph 14 of the return that every care was taken by the Managing Officer to allot the land in compact block by as the petitioners wanted allotment in Panipat only and a piece of land measuring 16-8 1/4 standard acres was not available for allotment, the Managing Officer had to make allotment in scattered pieces.

4. In petitioner's replication, filed by them in reply to the written statement of the respondents with the leave of the Court, it was stated inter-alia that the lands allotted to them were such which were not capable of being taken into possession and, in fact, the resultant effect was that the petitioners were given no land and it was just an eye wash that an allotment was shown to have been made in the papers.

Rule 61 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, reads as below:-

Where any person refused to accept the allotment of any agricultural land offered to him the claim for compensation of the allottee shall be deemed to have been satisfied to the extent of the value of the allotted land and such land shall be available for allotment to any claimant.

Neither the respondents have been able to disclose in the written statement nor their Learned Counsel has been able to show to me from the relevant records any refusal of the petitioners to accept the land allotted to them after the question of its allotment had been finally settled by the order of the Chief Settlement Commissioner, Annexure "C". There is no doubt that by their conduct in not taking possession of the land immediately after the passing of the order Annexure "B" the petitioners can be said to have not readily accepted the allotment. But it was their statutory right to go up in appeal and exercise of that right, as well the further right of revision, cannot in my opinion be held to amount to refusal to accept the allotment within the meaning of Rule 61. An

allottee would be deemed to have refused an allotment if he either expressly refuses to take possession of the allotted land after the allotment has achieved finality in the sense that appeals or revision etc., if any, preferred or filed by the allottee have been finally disposed off and he still does not offer to take possession of the land. In this case, the preferring of appeal against the order Annexure "B" or the filing of petition for revision of the order Annexure "H" cannot, in my opinion, be held to amount to a refusal to accept the allotment. The admitted history of the case clearly show that as soon as the question of allotment had been finally decided, the petitioners proceed to take steps for obtaining possession of the allotted land. The correctness of the details contained in the report of the patwari, as endorsed by the Kanungo, and the report of the Tehsildar-cum-Managing Officer (Annexures "D" and "F" respectively) has not been disputed either in the written statement or before me. I have already referred to those details. That being the case, the complaint of the petitioners contained in their final application to the Chief Settlement Commissioner Annexure "G" appears to be correct that nothing more than a paper allotment was made to the petitioners and at least substantial part of the land allotted to them by order Annexure "B" was not available for allotment to the petitioners and is, in any case, not, available for delivery of possession to the petitioners after the decision of the Chief Settlement Commissioner Annexure "C". In these circumstances, Mr. Naubat Singh submitted that the department is prepared to allot land of petitioners' entitlement, according to law, but the petitioners must realise that in the changed situation and circumstances it may not be possible to give them the entire land at one place. That is a matter which has to be decided by the department in accordance with the existing circumstances. All I need to say that in making the allotment the department must make every possible effort to give the land of the petitioners' entitlement at one place so far as possible.

5. Mr. R.P. Bali states that though originally the petitioners had preferred allotment in Panipat, they now offer to the Government to be allotted suburban agricultural land of their entitlement any where in the State of Haryana so long as they can be given the whole land of their entitlement in one compact block instead of being given in small fragments in Panipat itself.

6. For the reasons already recorded, I allow this petition, set aside the orders Annexure "B" "H" and "C" (as the land allotted to the petitioners under these orders is not available for being delivered to the petitioners) and direct the respondents to allot 16-8 1/4. Standard Acres of suburban agricultural land to the petitioners after taking the petitioners into confidence regarding the land proposed to be allotted to them. The allotment shall be made within three months from today and unless the petitioners themselves cause further delay by preferring appeals etc. against the fresh order of the allotment, possession of the allotted land shall be delivered to the petitioners, as soon as possible, after passing the orders of allotment. In the circumstances of the case, the parties are left to bear their own costs.