
(1967) 04 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 773 of 1964

Smt. Labh Kaur

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 15-04-1967

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 7(3)

Citation : (1967) 04 P&H CK 0001

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : A.S. Sarhdi with Mr. N.S. Bhatia, for the Appellant; C.D. Dewan Advocate General Haryana, for the Respondent

Judgement

Shamsheer Bahadur, J.—This is a writ petition of Labh Kaur directed against the order passed by the Deputy Chief Settlement Commissioner on 25th September, 1959, and also the subsequent orders of the Settlement authorities to which reference would be made during the course of this judgment.

The petitioner as the widow of Bishan Singh is admittedly a verified claimant to the extent of a sum of Rs. 4790/- in respect of property left behind in West Pakistan. I say "admittedly" because the assertion made by her has been admitted in the written statement of the respondents. The petitioner was and still is in occupation of house No. 887, Ward No. 2 in Sirsa. The other occupants who were also in possession of this house, were Arjan Singh, Sunder Dass and Kishan Singh, respondents 8, 9 and 10 respectively.

3. It was on 9th of November, 1964 that the Regional Settlement Commissioner wrote to the petitioner asking her whether she was prepared to accept the transfer of the house in which she had been residing on a quasi permanent basis. Should she be willing, the value of house, according to the Regional Settlement Commissioner, "will be deducted from the interim compensation payable to you". The petitioner accepted the offer and a conveyance deed was executed in her favour on 4th June, 1958, this being Annexure B. It may be mentioned at this

stage that Labh Kaur subsequently married Kishan Singh (brother of her husband Bishan Singh) one of the occupants of the house. Sant Singh and Arjan Singh the other two occupants, moved the Deputy Chief Settlement Commissioner against the transfer which had been made in favour of Labh Kaur. In the impugned order, the Deputy Chief Settlement Commissioner directed that it should first be ascertained "whether Sant Singh is residing with his son Arjan Singh and holds a verified claim or not. If this fact is established, then the property will go to him if his claim is still subsisting..". It is not understood why such an order was necessary when earlier the learned Deputy Chief Settlement Commissioner had himself observed that "Arjan Singh is a non claimant and so are Sunder Dass and Kishan Singh". It was held by the Deputy Chief Settlement Commissioner that Labh Kaur was not entitled to be called an occupant as she was not a member of the family under rule 7(3) of the Displaced Persons (Compensation and Rehabilitation) Rules. Labh Kaur being a verified claimant and an occupant of the house could not be denied her right to allotment under rule 30 of the Rules which did not stand repealed at that time. Under this rule:- "If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allottable property, the property shall be offered to the person whose gross compensation is the highest and other persons may be allotted such other acquired evacuee property which is allottable as may be available." Labh Kaur had a clear right of allotment, being a verified claimant and in occupation of the disputed property. It is equally clear, according to the finding of the Deputy Chief Settlement Commissioner himself in Annexure C. that Arjan Singh, Sundar Das and Kishan Singh were non-claimants. It passes my comprehension how Labh Kaur's claim could be brushed aside on the ground that she was not a member of the family under rule 7(3). Consequently, the cancellation of the sanad in her favour by the Deputy Chief Settlement Commissioner is unsustainable either under sub-section (1) or sub-section (2) of section 24 of the Displaced Persons (Compensation and Rehabilitation) Act. Under sub-section (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 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 may pass such order in relation thereto as he thinks fit.

4. The property having been transferred to Labh Kaur as a verified claimant in occupation of the property and having a better right than the other occupants, the impugned order is clearly such whose legality or propriety could not be questioned. The ground given by the Deputy Chief Settlement Commissioner for setting aside the claim of the petitioner is unsustainable and utterly tenuous. Moreover, under sub-section (2) of section 24 the allotment could be set aside only if it had been obtained by means of fraud, false representation or concealment of any material fact, and such has never been the case of Sant Singh and Arjan Singh.

5. The matter subsequently went to the Settlement Commissioner Shri Shewak Ram who observed that the property having gone out of the compensation pool and conveyance deed having been executed the competent authority to interfere under sub-section (2) of section 24 was the Chief Settlement Commissioner. Shri Sapra as Chief Settlement Commissioner in his order Annexure "E" passed on 26th July, 1960, remanded the case with the direction that the observation which had been made by Mr. Tara Chand Aggarwal in the impugned order (Annexure C) should be carried out. Labh Kaur applied for review unsuccessfully and her application u/s 33 of the Act having also been dismissed on 10th January, 1964, she filed the present writ petition.

6. As I have already observed, the order passed by the Deputy Chief Settlement Commissioner on 25th September, 1959 (Annexure C) is wholly without jurisdiction. He could act neither under sub-section (1) nor sub-section (2) of section 24. The result is that this order being without jurisdiction must be set aside. The order of remand is unsustainable and is accordingly quashed. The property in dispute will remain transferred to the petitioner under the conveyance deed of 4th June, 1958. In the circumstance there would be no order as to costs.