
(1962) 10 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 229-D of 1960 and C.M. No. 248-D of 1961

Sobha Ram Sethi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-10-1962

Acts Referred:

Constitution of India, 1950 — Article 226

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

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 22, 25, 90, 90(2), 90(4)

Citation : AIR 1963 P&H 499

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : R.S. Narula, for the Appellant; S.N. Shankar, Gurbachan Singh and D.K. Kapur, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This is a petition under Article 226 of the Constitution challenging the validity of the orders dated 24-11-1955, 31-3-1960 and 21-5-1960 passed by the Regional Settlement Commissioner, respondent No. 3, Shri G. B. Lalvani, Chief Settlement Commissioner, respondent No. 2, and the Under Secretary to the Government of India, Ministry of Rehabilitation, respectively.

2. According to the allegations of Sobha Ram Sethi, petitioner, there are three independent contiguous single storeyed houses bearing Municipal Nos. 1104, 1105 and 1106 within the limits of the Municipal Corporation of Jabalpur in Madhya Pradesh. They originally belonged to one Mohd. Umar, who, subsequently, became an evacuee. Each of these houses is built on an area of approximately 180 square yards and consists of four rooms, a kitchen, a bath, a lavatory, a verandah on the back side and a verandah in front, besides a courtyard at the back. Each house is enclosed by separate walls and has independent access on both sides on which it opens into the streets and is separately assessed to municipal tax.

Houses Nos. 1104 and 1106 are in occupation of two separate non-displaced persons. In the year 1952/1953, house No. 1105 (hereinafter referred to as the house in dispute) was allotted by the Custodian of Evacuee Property to the petitioner at Rs. 18/- per month and he has been regularly paying rent for the same. In or about 1955 the house in dispute was acquired by the Central Government u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954) hereinafter referred to as the Act) and became its property. Since then the petitioner was treated as an allottee of the Central Government in the Ministry of Rehabilitation. Subsequently, the petitioner applied for the payment of compensation against his verified claim. He was entitled to the payment of the said compensation by transfer of the house in dispute to him and by recovery of the balance of the price of the said house, if any, by instalments, according to the provisions of Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules 1955 (hereinafter referred to as the Rules). The value of the house in dispute was Rs. 7,000/- and it was, therefore, an allottable property with-in the meaning of Rules 22 and 30.

Houses Nos. 1104 and 1106 were, however, non-allotable properties, although they were of the value of less than Rs. 10,000/- each, because they were in occupation of non-displaced persons. The Regional Settlement Commissioner, Nagpur, issued a notice that several acquired properties, including houses Nos. 1104 and 1106, were to be auctioned on 23-11-1955 onwards. In the said notice wherever more than one house were to be treated as a single property or were to be sold as one unit, the said properties had been listed as one item. Houses Nos. 1104 and 1106 had been listed under separate items, whereas the house in dispute being an allottable property, was not included in the sale proclamation. On 24-11-1955, respondent No. 3, came to the spot for the sale of houses Nos. 1104 and 1106. There he orally directed that the house in dispute may also be sold along with houses Nos. 1104 and 1106 as one single unit. Thereupon, the petitioner and his attorney protested against the said order on the ground that these were three separate houses, but despite this respondent No. 3 put all the three houses to sale as one unit and they were purchased by Bul Chand, Hotu Mal and Dharam Dass, respondents 4 to 6.

On 28-11-1955 objections were filed against the said sale and a prayer was made for setting aside the same and for transfer of the house in dispute by allotment. No. hearing of the objection petition was granted but the same was dismissed on 13-12-1955 by the Regional Settlement Commissioner. On 22-12-1955 an appeal was filed to the Chief Settlement Commissioner against the order dated 24-11-1953 passed by the Regional Settlement Commissioner, by which the house in dispute had been put to auction. No intimation of any date of hearing of the appeal having been received from the Office of the Chief Settlement Commissioner, a number of reminders were sent by the petitioner. Ultimately, his attorney appeared personally before Shri L. J. Johnson, the then Chief Settlement Commissioner, at New Delhi on or about 6-4-1956 in connection with the appeal. The said officer heard him and ordered the stay of confirmation

of the sale in favour of respondents 4 to 6. These stay orders were duly communicated to respondent No. 3 by Shri Mehar Singh Chadha on behalf of the Chief Settlement Commissioner on 6-4-1956 (annexure "D"). He was also requested to intimate the circumstances under which the house in dispute was auctioned without any advertisement.

On 30/3/1957 the petitioner received a notice from the Office of the Chief Settlement Commissioner to appear before him at Nagpur on 9-2-1957 for the hearing of his appeal. Shri L. J. Johnson heard the parties and reserved judgment. No orders seem to have been passed by Shri Johnson as the relevant file, admittedly, is not available. The petitioner came to know that respondent No. 3 had represented to the Chief Settlement Commissioner that all the three houses Nos. 1104, 1105 and 1106 were situate within the limits of the Cantonment Board, Jabalpur, which would not allow them to be treated as separate houses, because they were originally owned by one person. Since this representation was made behind the back of the petitioner and was not based on facts, the petitioner procured certificates from the Cantonment Board to the effect that the houses in question were not situate within their jurisdiction. He also obtained a certificate from the Municipal Corporation of Jabalpur indicating that the said properties were situated within the limits of the Corporation and were assessed separately as independent units. He tried to produce these documents before Shri M. L. Vijn, Deputy Chief Settlement Commissioner, New Delhi, from whom he received a notice for the hearing of his appeal on 14-7-1959 at Jabalpur. Shri Vijn, however, refused to take the same (annexures "E" and "F") because he did not hear the appeal on the ground that the auction-purchasers (respondents 4 to 6) were not present before him. The petitioner then sent duplicate copies of these documents to the Office of the Chief Settlement Commissioner.

Subsequently, when he did not receive any notice for the hearing of the appeal, he sent reminders to expedite its hearing. Ultimately, he received a notice dated 10-2-1960 from respondent No. 2 fixing the appeal on 26-2-1960 at New Delhi. On inspection of the file through his counsel at Delhi, the petitioner came to know that the Chief Settlement Commissioner had already passed an ex parte order against him four months before the hearing of the appeal and the same was based on a report sent to him by respondent No. 3 and the said orders had even been communicated to respondent No. 3 on or about 18-11-1959. At this the petitioner protested and pointed out to the Chief Settlement Commissioner that under these circumstances the hearing of the appeal by him would be meaningless. Respondent No. 2, however, observed that the previous order of the Chief Settlement Commissioner was not a judicial order. He then heard the parties and reserved judgment. No decision having been communicated to him, the petitioner sent several reminders and when no reply was received by him, he sent his attorney to Delhi on 2-5-1960. He came to know that respondent No. 2 had rejected the appeal by his order dated 31-3-1960 (annexure "K"). In the said order it was directed that the same be communicated to the parties. It was

however, never done so.

Therefore, on 9-5-1960 the petitioner submitted an application u/s 33 of the Act to the Central Government, which was dismissed on 21-5-1960 without giving any notice to the petitioner and hearing him. Against this, the present writ petition was filed on 25-5-1960.

3. Learned counsel for respondents 1 to 3 has raised a preliminary objection that this writ petition should fail on the short ground that the petitioner had no locus standi to file the same, because the question whether the property is saleable or allottable is to be determined by the officers appointed under the Act. In the present case, it has been found as a fact that the property was saleable and this finding could not be agitated by the petitioner in these proceedings. It was also submitted that it was found by the officers appointed under the Act that the entire building consisting of Nos. 1104, 1105 and 1106 was one property and not three, as alleged by the petitioner. This finding, again was not justiciable and could not be reversed by invoking the extraordinary powers of this Court under Article 226 of the Constitution. Since the property was found to be saleable, the learned counsel contended that it could not be transferred to the petitioner and this is the relief which he was claiming in the present petition and the same could not, therefore, be given to him.

4. The order to determine this question, it is necessary to refer to Rule 22 of the Rules, which is in the following words -

"Rule 22 (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 ten thousand rupees;

(b) any shop in the occupation of a displaced person, the value of which does not exceed ten thousand rupees;

(c) any industrial concern in the occupation of a displaced person, the value of which does not exceed fifty thousand rupees.

(2) A portion of a building of an acquired evacuee property which has no independent access shall not, unless Central Government otherwise directs, be allottable."

A bare reading of this Rule would show that any acquired residential evacuee property in the occupation of a displaced person, the value of which does not exceed Rs. 10,000/-, shall ordinarily be allottable.

Rule 23 says that all acquired evacuee properties, which are not allottable under Rule 23, shall ordinarily be sold. Whether a particular evacuee property in the occupation of a displaced person is allottable or not has to be determined by the officers appointed under the Act For this purpose, they have first to find out the property involved in a particular case and then to evaluate the same. In the

present case, according to the petitioner, there were three independent houses Nos. 1104, 1105 and 1106. According to the authorities, however, it was only one property and its value was assessed at Rs. 30,000/-, as mentioned in para 7 of the written statement of respondent No. 3. Rule 22 is quite clear that it is for the authorities concerned to determine as to which property was involved in a particular case. That is to say, if a dispute arose whether the property involved formed one unit or more, the decision of the officers concerned would be final. In the present case, the Regional Settlement Commissioner by his order dated 24-11-1955 (annexure R. I.) found that it was one property. This decision was confirmed in appeal by the Chief Settlement Commissioner vide his order dated 31-3-1960 the Central Government refused to interfere with the same vide its order dated 21-5-1960. Therefore, the question whether the evacuee property bearing Nos. 1104, 1105 and 1106 was one unit or three cannot be reopened in these proceedings.

5. In view of the fact that the value of this property is Rs. 30,000/-, that is more than Rs. 10,000/-, as mentioned above, it was clearly a saleable one and could not be divided and transferred to the petitioner as prayed for in his petition. It is undisputed that there is no rule under which a saleable property can be divided. It may be mentioned that the value fixed by the authorities under Rule 22 cannot be questioned by the occupant thereof, because there is no provision either in the Act or under the Rules that he should be heard before this valuation is determined.

6. The petitioner in the writ petition has claimed that respondents 1 to 3 be directed not to sell house No. 1105 by public auction but transfer the same to him under Rule 25. This relief, as discussed above, cannot be granted to him, because the property involved is a saleable one and, as such, cannot be divided and transferred to the petitioner under Rule 25.

7. Learned counsel for the petitioner contended that the order dated 21-5-1960 passed by the Central Government was illegal because he was not given a hearing, especially, when he had asked for the same. For this submission, he relied on a Single Bench decision of Mahajan, J., in *Dewan Jhanghi Ram v. Union of India*, 63 Pun LR 610. This question has, however, been settled by a Division Bench of this Court in *Ranjit Singh v. The Union of India*, 64 Pun LR 44, in which it was held -

"..... that a representation made to the Central Government u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act, with a view to causing it to exercise its residuary powers under that section is not a revision petition and is not governed by Rule 105 of the Rules framed under the Act. Although before any previous decision is reversed u/s 33 of the Act, the person likely to be prejudiced by it should be given an opportunity to be heard, it does not mean that any person who chooses to make a request to the Central Government for the purposes of reversing some earlier decision must necessarily be given a personal hearing before the decision of the Government not to interfere is

communicated to him."

There is, thus, no force in this contention.

8. Learned counsel then submitted that the order dated 24-11-1955 passed by the Regional Settlement Commissioner was bad in law, because he had no jurisdiction to order the sale of house No. 1105, when the same was not mentioned in the proclamation of sale and, consequently, its sale was in contravention of Rule 90 (2) (4).

9. There is no merit in this objection as well, because the petitioner has not been able, to show that he had suffered any substantial injury, as mentioned in proviso to Sub-clause. (3) of Rule 92, by this sale. It is not his case that if the proclamation of sale regarding this property had been issued in time, he would, have also bid for the same in order to purchase it. All that he is claiming is that a particular portion of this property, namely, 1105, should have been transferred to him under Rule 25 and this relief, as I have already mentioned above, cannot be granted to him.

10. Learned counsel next contended that the order dated 31-3-1960 passed by the Chief Settlement Commissioner was meaningless, because his client's appeal had already been decided by the authorities concerned much before the decision, by this officer. In this connection, reference was made to a memorandum dated 9-1-1960 (annexure FF).

11. The Department in its return has stated in para 20 that no judicial order was passed by the Chief Settlement Commissioner" prior to the hearing of the appeal by Shri G. B. Lalvani on 26-2-1960. The order of the Chief Settlement Commissioner, referred to by the petitioner, was merely a policy decision. In view of this reply by the Department and the fact that the petitioner was given a proper hearing by the Chief Settlement Commissioner before he passed the impugned order, no useful purpose will be served by quashing that order and sending the case back to him for rehearing the appeal on this ground, especially, when the order of the Regional Settlement Commissioner dated 24-11-1955 is not being quashed by this Court.

12. Learned counsel also argued that there were the following errors apparent on the face of the order dated 31-3-1960 passed by the Chief Settlement Commissioner:

(i) he considered the report of the Regional Settlement Commissioner dated 21-4-1956, which was sent for behind the back of the petitioner;

(ii) he was wrong when he stated that when the property was sold, it was advertised as 1-1104-1106. In fact, it was 1104 and 1106; and : .

(iii) he was also wrong when he described house No. 1105 as the Central Room of the building, when, in fact, it consisted of four rooms a kitchen, a bath, a lavatory, a verandah on the back side and a verandah in front, besides a

courtyard at the back.

13. I, however, find that in the latter part of his order, the Chief Settlement Commissioner has held -

"The record of the case shows that the property in question was owned by the same evacuee and as the said property has only one plinth, and one roof, it could only be regarded as one building. There is nothing in the rules to permit the divisibility of saleable properties."

Therefore, it cannot be said that the decision of the Chief Settlement Commissioner is based merely on the report of the Regional Settlement Commissioner dated 21-4-1956. As already held above, even if house No. 1105 was not advertised for sale, the petitioner had not suffered any substantial injury. It appears that the word "Central Room" was used loosely by the Chief Settlement Commissioner: to indicate the central portion of this property. Moreover, on the merits this decision has not been shown to be contrary to law and this Court cannot, therefore, interfere with the same in proceedings under Article 226 of the Constitution.

14. Lastly, it was contended that the order passed by the Regional Settlement Commissioner was mala fide. But nothing has been pointed out on the record to show that the said officer was, in any way, inimically disposed towards the petitioner.

15. In view of what I have said above, the preliminary objection raised by the learned Counsel for respondents 1 to 3 prevails. In these circumstances, it is not necessary to decide the points raised by the Learned counsel for respondents 4 to 6.

16. The result is that this petition fails and is dismissed, but the parties are however, left to bear their own costs in these proceedings.