
(1961) 04 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1583 of 1960

Sodhi Harbakhsh Singh

APPELLANT

Vs

The Central Government and Others

RESPONDENT

Date of Decision : 09-04-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) 04 P&H CK 0002

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

Bench : Division Bench

Advocate : H.S. Wasu and B.S. Wasu, for the Appellant; S.M. Sikri, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—This is a petition under Article 226 of the Constitution by a displaced person. He held a verified claim to the extent of Rs. 2,060/- and was allotted a residential house No. 243A/13 for his residence and two small plots each measuring about less than 100 square yards Nos. 243-B/13 and 155-A/13 situate in Gol Masjid Eazar Sharifpura at Amritsar. Against his verified claim he was permitted to permanently acquire the house. As regards the plots he was permitted to permanently acquire one plot No. 243-B/13. With regard to the other plot the department took the view that it could not be transferred to him as under the rules no two properties of the same description can be transferred to a displaced person. Now obviously there is no such rule. On an appeal by the claimant the appellate authority dismissed the appeal on the ground that the transfer of two properties of the same description would militate against the principle of multiple allotment. Rule 26 is in these terms:-

26. Where an acquired evacuee property which is an allottable property is in the sole occupation of a displaced person who does not hold a verified claim, the property may be transferred to him-

(i) in the case of an industrial concern if he pays at once not less than 25% of the value thereof and agrees to pay the balance in instalment spread over a period not exceeding 2 1/2 years from the date of the initial payment;

(ii) in the case of any other property-

(a) where the value of the property does not exceed, in the case of a shop in a rural area or in a town other than those mentioned in Appendix X, two thousand rupees and in the case of any other property five thousand rupees, if he pays at once 20 per cent, of the value thereof and agrees to pay the balance in four equal annual instalments from the date of the initial payment;

(b) where the value of the property exceeds the limits specified in clause (a), or where the property consists of a shop situated in a town specified in Appendix X, if he pays at once not less than 33 1/3 per cent, of the value of the property and agrees to pay the balance in two equal annual instalments from the date of the initial payment.

Provided that in the case of acquired evacuee property including an industrial concern which is an allotable property, he may, at his option pay at once 20 per cent of the value of the property in cash and agree to pay the balance with interest in seven equated annual instalments.

2. It is on the basis of this rule that the petitioner bases his claim for the allotment of plot No. 155-A/13 and the contention of the learned counsel is that if non-claimant is in possession of property of the value of less than ten thousand rupees he is entitled to acquire that property in preference to other displaced persons, of course on payment of its price. Mr. Sikri learned Advocate General on the other hand contends that the transfer of evacuee property to a non-claimant under rule 26 is discretionary and it is open to the department to transfer or not to transfer whole or part of the property allotted to the displaced person who does not hold a verified claim. The contention of the learned counsel for the petitioner is supported by the two decisions of this Court in Civil Writ No. 40 of 1960 decided on 10th November, 1960, by Shamsher Bahadur J. and Civil Writ No. 685 of 1960 decided on 25th April 1961, by Mehar Singh J. The contention of Mr. Sikri finds support from the decisions of the Circuit Bench, Delhi, in Civil Writ No. 313-D of 1959 and Civil Writ No. 465-D of 1957. These two decisions are not available to me here, but a reference to them has been made in the written statement filed by the department and Mr. Sikri at the bar states that in one of these decisions it is clearly ruled that the word "may" in rule 26 is to be read "may" and not "shall" and the department has the discretion to transfer the evacuee property to a person to whom it has been allotted or refuse its transfer to such person.

3. As there is a clear conflict on the interpretation of rule 25 in these decisions and by parity of reasoning the same interpretation will be applicable to rule 26, it is proper that this petition is settled by a Division Bench and this would also be in accordance with the decision of the Supreme Court where their Lordships

expressed the view that if there is a conflict of decision on a matter between. Single Benches on that Court the matter should be settled by a Division Bench. I would accordingly direct that the papers of this case may be laid before my Lord the Chief Justice for constituting a Division Bench to decide this matter.

ORDER

Dulat, J.

4. This is a petition under Article 226 of the Constitution, and it has been referred to us because the learned Single Judge who first heard it felt that there was some conflict of views concerning the meaning of rule 26 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955.

5. The petitioner is a displaced person. He put in a claim which was verified. It was a small claim and in satisfaction of it a residential house was transferred to him in accordance with rule 25 of the Rules framed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. He was, however, also in occupation of two vacant sites and he claimed that those should also be transferred to him in accordance with rule 26. The resettlement authorities agreed to transfer one of the sites to the petitioner treating him as a non claimant under rule 26. They, however, declined to transfer the second site observing that it was not in accordance with departmental practice to allow multiple allotments, the meaning being that one individual was not to be transferred more than one property of the same kind. It is against this decision that the present petition is directed and the argument in support of the petition is that under rule 26 the petitioner, being in the sole occupation of the disputed site, is entitled to have it transferred to him on payment of the appropriate price and there is an obligation on the part of the resettlement authorities to make the transfer. Rule 26 of the Rules says this-

Where an acquired evacuee property which is an allotable property is in the sole occupation of a displaced person who does not hold a verified claim, the property may be transferred to him.

It is somewhat doubtful, as pointed out by Mr. Sikri, whether the petitioner can legitimately be called a displaced person who does not hold a verified claim as the Rules and also the Displaced Persons (Compensation and Rehabilitation) Act seem to divide displaced persons into two separate categories, namely, those having a verified claim, as the petitioner undoubtedly did, and those not having any verified claim, and rule 26 is obviously meant to deal with those persons who, although displaced, do not hold a verified claim.

I do not, however, propose to pursue this matter further as the resettlement authorities have apparently decided to treat the petitioner as a non-claimant. The question then is whether rule 26 casts any obligation on the authorities to transfer allotable property to a non-claimant in whose occupation such property may happen to be or whether the rule merely vests a power in the authority

concerned to make the transfer or not according to the circumstances. Mr. Wasu contends that although the word used in rule 26 is "may", it really means "must". To support this unusual construction learned counsel relies largely on two decisions of this Court. The first is Civil Writ No. 40 of 1960, *Shri Ramji Dass v. The Ministry of Rehabilitation, Government of India and others* C.W. No. 40 of 1960, decided on 10th of November 1960 by Shamsher Bahadur J. and the second is Civil Writ No. 685 of 1960, *S. Karam Singh v. The Chief Settlement Commissioner, Ministry of Rehabilitation and others* C.W. No. 685 of 1960, decided on 25th of April 1961 by Mehar Singh J. in which he followed the view adopted by Shamsher Bahadur J. in the earlier case. It, however, appears that both these decisions were concerned with the meaning of rule 25 of the Rules, and what Shamsher Bahadur J. held was that in the context of rule 25 the word "may" appeared to have the force of "shall" and should be construed as such. Rule 25 is concerned with payment of compensation to persons holding verified claims and it directs that allottable evacuee property should be allotted to certain claimants provided the total amount of net compensation payable to the claimant is not less than half the value of the property. I do not see how this view turning on the context of rule 25 can necessarily apply to the construction of rule 26 which deals with another category of persons and where the context, therefore, is substantially different. It is obvious that ordinarily where the legislature uses the expression "may" when clothing an authority with the exercise of certain powers, the meaning is that such exercise is discretionary and there is no obligation on the part of the authority concerned to do the act which it is merely authorised to do. It is true, of course, that in the peculiar context of a provision of law the Court may be compelled to conclude that that provision does cast an obligation on the concerned authority, but such an unusual construction is not to be resorted to lightly and must be justified by the scheme of the provision in question. In the present case there is nothing in the context of rule 26 to justify such unusual construction. It is significant in this connection that rule 25 expressly demands that no property be transferred even to a claimant unless the value of his net compensation is at least one-half the value of the property and, in my opinion, it would be somewhat strange if a person not holding any verified claim would be entitled to the transfer of such property irrespective of its value without any discretion in the matter of transfer being left to the competent authority. Reading the two rules together, therefore, I find that the context of each is different and there is no justification for importing into rule 26 the obligation which perhaps exists under rule 25, the pre-existing conditions in the two rules being different. On the question of construction, therefore, I am of opinion that the expression "may" used in rule 26 cannot be taken as "must". Apart from this matter, however, there is the more pertinent question whether in the present case any injustice has been done to the petitioner which because of some small legal error requires to be set right by way of certiorari. As I have said, the petitioner's compensation claim has been fully satisfied by transfer of the residential house to him. He has, over and above that, been transferred a vacant site and his further claim for the transfer of another vacant site has little

merit on the ground of plain justice, for the policy of the Act is to resettle as many displaced persons as possible and there seems no reason why the petitioner should be permitted to hinder the resettlement of other deserving persons for whose benefit apparently the resettlement authorities have kept back the disputed site. In these circumstances, there is, in my opinion, no proper justification for this Court to exercise its jurisdiction under Article 226 of the Constitution and the petition must fail. I would, therefore, decline to interfere with the decision made by the resettlement authorities and dismiss the present petition leaving the parties to their own costs in this Court.

P.C. Pandit, J.

6. I agree.