
(1981) 07 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3077 of 1969

Ujagar Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 15-07-1981

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 7, 8

Citation : AIR 1981 P&H 366 : (1981) 3 ILR (P&H) 521

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

1. On wrong assumption that Nazar and Janga sons of Kora muslims had migrated to Pakistan their lands in India were wrongly declared as evacuee property and made part of the evacuee pool Later on a dispute being raised, it was found that the assumption was wrong and they had remained Indian citizens. Accordingly, the authorities of the Rehabilitation Department ordered that since they could not be restored back their original lands, they be allotted alternative land to the same extent from the evacuee pool As a result thereof they were given allotment of land in village Mohanpur, Sub Tehsil Guhla, District Karnal and in village Mandi Sadran, Tehsil Kuhla, District Karnal. These Lands were sold by them to favour of the petitioners.

2. Undisputably, these lands were recorded as Shamlat in the Revenue papers at the time of the partition and continued to be so thereafter Proceedings commenced to cancel the allotment of the petitioner (which included their vendors) on he assumption that the land being Shamlar had come to be vested in the Gram Panchayat over and above the alleged claim of the Rehabilitation Authorities, in treating it to be evacuee. Vide his order, dated 23rd September, 1969, Annexure "B" the Authorised Chief Settlement Commissioner Haryana, Chandigarh, cancelled the allotment on that basis and held that the land did not vest in the custodian and consequently with the Central Government under the Displaced persons (compensation and Rehabilitation) Act (hereinafter referred to

the Act) because I was Shamlat and stood vested in the Gram Panchayat. This view of the authorised Chief settlement commissioner is not good in law in view of a Division bench decision of this Court in Gram Sabha and Gram Panchayat Dahi v. Chief Settlement Commissioner, 1973 Pun LJ 398. It has been held therein that the share of the evacuee in Shamlat land of villages from which Muslims Custodian by virtue of section 7 and 8 of Administration of Evacuee Property Act 1950 Besides the aforesaid Division bench judgment S. 4 of the Administration of Evacuee property Act 1950, which is being reproduced below.

"Act to override other laws:--(1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) For the removal of doubts, it is hereby declared that nothing in any other law controlling the rents of, or eviction from any property shall apply or be deemed ever to have applied, to evacuee property."

Carries the seal of paramountcy over other laws which have been overridden. conceivably, the Parliament in its wisdom. Thought of keeping evacuee property immune from other inroads and permitted the said Act to hold sway over other laws. It cannot be disputed that the laws. It cannot be disputed that the Muslim evacuees had an interest in the Shamlat land to the extent of their evacuee share and as such it was evacuee property under the said act as the expression is defined therein. Up to that extent the property which acquired status of evacuee property ceased to be the shamlat land categorised and earmarked as such in the Revenue papers under the Punjab Land Revenue Act. The Punjab Village Common Lands Act of 1954 or 1961 could not thus restore such property back to the status of Shamlat land. Consequently, the allotment of land in favour of Nazar and Janga, he predecessors in interest of the petitioner must be held to be valid not only on the basis of the aforequoted Division Bench case which still holds the field, but also on the basis of section 4 of the Administration of Evacuee property Act 1950.

3. For the foregoing reasons, this petition is allowed and the order Annexure "B" dated 23rd September, 1969 passed by the Authorised Chief Settlement Commissioner is quashed, with no order as to costs.

4. Petition allowed.