

(1965) 05 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 668 of 1961

Umrao Singh

APPELLANT

Vs

The Chief Settlement Commissioner, Punjab, and Another

RESPONDENT

Date of Decision : 24-05-1965

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 19

Citation : (1965) 05 P&H CK 0033

Hon'ble Judges : R.S. Narula Subedar, J;Dua, J

Bench : Division Bench

Advocate : Har Bhagwan Singh, for the Appellant; C.D. Dewan, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—Subedar Umrao Singh, the petitioner in this case, was admittedly a military personnel and it is further admitted that on account of his gallantry during World War II he was awarded a Victoria Cross in the year 1946. He was given two squares of land in chak Nos. 643 and 644 in Tehsil Jaranwala, District Lyallpur (now in West Pakistan). The petitioner claimed that he had also obtained possession of the said land. After the partition of the country he was allotted 62 standard acres and 13 units of agricultural land in the area of village Barkat Abad, Tehsil Jhajjar, District Rohtak. It is also admitted on behalf of the State that this land was permanently transferred to the petitioner on 17th November, 1955. From the copy of an order dated 13th May, 1960 passed by the Managing Officer, Lands Claims Jullundur (annexure "C" to the writ petition) it appears that a notice was issued to the petitioner to show cause why the permanent allotment of the land in question in his favour may not be cancelled as the revenue papers received from Pakistan did not show that the petitioner had taken actual possession of the land in question. The Managing Officer, who passed the said order dated 13th May, 1960, appears to have sent the case to the Chief Settlement Commissioner with the request that permanent rights obtained by

the petitioner may be set aside because his possession was not found to be recorded in the papers received from Pakistan. It is significant to note that though before recommending the case to the Chief Settlement Commissioner for cancellation of the transfer of permanent rights in the land in question to the petitioner the Managing Officer did realise the necessity of allowing the petitioner an opportunity of showing cause against the proposed action, he did not insist on the course originally adopted by him and sent up the case even after realising and placing on record the fact that the show cause notice had not been served on the petitioner.

2. In pursuance of the recommendation of the Managing Officer the case went up to Shri J.M. Tandon, Chief Settlement Commissioner, Punjab, Jullundur, who by his ex parte order dated 27th May, 1960 (copy annexure "B" to the writ petition) accepted the recommendation of the Managing Officer and cancelled the permanent rights acquired by the petitioner in the land in question presumably on the assumption that the notice issued to the petitioner had been served on him but he had intentionally not turned up. This is significant from the following observations in the order of the Chief Settlement Commissioner, dated 27th May, 1960:

A notice was issued to the Allottee. He has not turned up. I agree with the report of the Managing Officer and cancel the permanent rights acquired by Hv. Umrao Singh with respect to the land measuring 63 13 standard acres allotted to him in village Barkat Abad.....

Some communication, which the petitioner calls a notice, appears to have been sent by the Managing Officer to the petitioner on 18th May, 1960 (presumably erroneously typed in annexure "A" to the writ petition as 18th June, 1960). From letter dated 2nd June, 1960, (Copy annexure "A" to the writ petition) it appears that by the said communication dated 18th May, 1950 the petitioner was required to attend the office of the Chief Settlement Commissioner on 27th May, 1960. The commanding Officer stated in his letter dated 2nd June, 1960 to the Managing Officer that the petitioner received the said notice on 2nd June, 1960, and, therefore, could not attend on 27th May, 1960, as desired, and required at least 15 days" notice to enable the petitioner to attend the next hearing of the matter.

3. The Managing Officer, Jullundur then passed an ex-parte order dated 3rd June, 1960 basing himself on his original note dated 11th May, 1960 and stating that the said note would form part of his order. In this formal order the Managing Officer wrote as follows:

The permanent rights obtained by Shri Umrao Singh have been set aside by the Chief Settlement Commissioner vide his order dated 27th May, 1960 (presumably reference is to order dated 27th May, 1960). Accordingly the allotment of 62-13 standard acres found in excess with Hav. Umrao Singh in village Barkat Abad, Tehsil Jhajjar, District Rohtak is hereby cancelled.

4. On coming to know of this order the petitioner appears to have filed a petition dated 8th July 1980 against the order of the Managing Officer dated 3rd June, 1960 to the Chief Settlement Commissioner. A copy of that application has been filed as annexure "E" to the writ petition. It was again stated therein by the petitioner that he had taken possession of the land. Para 3 of his said revision petition dated 8th July 1960 reveals a deplorable state of affairs in the office of the Chief Settlement Commissioner, Punjab relating to the issue of the notice to the petitioner. The said paragraph is reproduced below:

3. That the petitioner received a notice, dated 18th June, 1960 (wrongly dated) on 2nd June, 1960 for the first time to appear on 27th May, 1930 before the Chief Settlement Commissioner. On receipt of this notice, he through his Commanding Officer, replied to M.O. the issuing authority, that the notice was received late, fresh notice should be issued 15 days in advance. He did not receive any intimation after it.

5. In para 4 of the petition he made a complaint of his permanent rights in the land having been cancelled without any notice to him. He prayed for setting aside the exparte order dated 27th May, 1960. According to the facts stated in the final order placed on the record before us it appears that the Assistant Settlement Commissioner by his order dated 8th August, 1960 set aside the order of the Managing Officer and remanded the case for re decision on merits. In the final orders that were passed in this case by Shri Jagmohan Lal Tandon, Chief Settlement Commissioner on 20th February, 1961 it was held that "according to rules, Sh. Umrao Singh was entitled to the allotment of the land if he had taken possession of the land in Pakistan, which might have been given to him as a result of gallantry grant" and that Umrao Singh, petitioner had not been able to produce before the Chief Settlement Commissioner any evidence that he had obtained actual possession of the land in Pakistan. He, therefore, ordered, that he saw no justification to set aside his previous order dated 27th May, 1960. By this order the Chief Settlement Commissioner also set aside the order of the Assistant Settlement Commissioner by which he had in turn set aside the order of the Managing Officer dated 3rd June, 1960. This writ petition was filed for quashing the above-said proceedings and orders purporting to cancel the permanent allotment of the land in question to the petitioner.

6. My learned brother, Dua, J. directed by his order of reference dated 12th October, 1964 that it would be proper that this writ petition be disposed of by a larger Bench in the very first instance as the petition had been pending for nearly three years and a further appeal under clause 10 on the Letters Patent of this Court against his decision was likely to take easily about a year or so more.

7. Consequent on the reference, when the petition came up for hearing before us the learned counsel for the petitioner mainly stressed the ground that the instructions contained at page 315 of Land Resettlement Manual by Tarlok Singh, in Appendix IV of that book, were merely in the nature of departmental instructions and had no force of law and should not be allowed to be enforced by

the respondents. The relevant entry in the aforesaid appendix to the said book merely says that in case of gallantry awards grants, the land to be given was 100 per cent for the land left behind in Pakistan if physical possession had been taken and the grant was awarded in World War II. He has relied strongly in this connection on a Division Bench judgment of this Court (Dua and Harbans Singh JJ.) in *Om Parkash v. Chief Settlement Commissioner, Punjab, Jullundur* (1964) 66 P.L.R. 266. Overruling *Jhanda Singh v. Chief Settlement Commissioner, Punjab* ILR 1953 Ph. 1090, the Division Bench held in that case that para 17 of the Land Resettlement Manual has no statutory authority for its basis and it merely embodies the executive or administrative directions for general guidance. The same principle applies to the instant case. The learned counsel for the State has not been able to show any statutory authority under which the relevant entry had been made in appendix IV of the Land Resettlement Manual. Indeed, no statutory authority has been shown for framing the whole of that appendix. We might possibly have made an effort to go still deeper into the matter, but it is wholly unnecessary to do so in view of the fact that the solitary instruction contained on page 3(sic)9 of the said book on which reliance has been placed by the Government for quashing the impugned order does not apply to the land in question at all. The appendix starts at page 314 and is headed to apply to the "Nili Bar Colony". Within brackets under the words "Nili Bar Colony" is given the following description of the colony:

"Tahsil Pakpattan and Dipalpur, Distt. Montgomery & Vihari, Mailsi, Lodhran whole, Shujabad part, distt. Multan)" Admittedly the land of which allotment as a gallantry award to the petitioner has been admitted in the original written statement was situated in Tehsil Jaranwala District Lyallpur and; therefore, not in the Nili Bar Colony defined at page 314 of Tarlok Singh's book. Since the proprietary rights of the petitioner in the land in question have been taken away in this wholly unjustified and illegal manner and the State has not been able to justify this action on the authority of any law, I would have struck down all the orders referred to above on this short ground without going any further into the matter. It is a pity that even quasi-judicial tribunals sometimes forget that while dealing with property rights of citizens of this Republic they must take care to see that in case their orders are impugned or questioned in any competent Court they should be able to support their orders on the authority of some valid law in force. The Managing Officer, who initiated the proceedings in this case and the learned Chief Settlement Commissioner, who dealt with the case on at least two occasions, appear to have completely forgotten this well-settled principle of rule of law. The authorities should also have appreciated from the letter of the Officer Commanding of the petitioner that he should be given a more reasonable notice in view of his being handicapped as a military officer on duty in the defence of his motherland.

8. Dewan Chetan Dass, the learned Deputy Advocate General, who appeared for the State, had to defend the petition without being able to put up any cogent defence. Confronted with the above position he appeared to express without

admitting his utter helplessness to improve the matters. His argument was that the allotment to the petitioner had been cancelled u/s 19 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954) read with rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955.

9. In order to appreciate this contention of the respondents it is necessary to give in brief the law under which these allotments were made. u/s 4 of the Registration of Land Claims Act (12 of 1948) the land claims of displaced persons from West Pakistan were registered. In accordance with the provisions of the East Punjab Evacuees' (Administration of Property) Act (XIV of 1947) allotments, which were originally temporary and then ripened into quasi-permanent ones, were made of evacuee land in West Pakistan in favour of displaced persons who had left behind land in that territory of the erstwhile united India. u/s 22 of the said East Punjab Act 14 of 1947 the Punjab Government was authorised to make rules by publication of a notification in the Official Gazette for putting into effect the provisions of that Act and particularly to govern the procedure for the grant of leases, etc. It was in exercise of powers u/s 22 (2) (f) and (ff) of the said East Punjab Act 14 of 1947 that notification No. 4892/S dated 8th July, 1949 was issued which is printed as Appendix IC at pages 193 to 196 of Tarlok Singh's book.

10. In the East Punjab Refugees (Registration of Land Claims) Act (12 of 1948) a refugee was defined in section 2 (d) of that Act as follows:

"refugee" means a landholder in the territories not comprised in the province of West Punjab, or who or whose ancestor migrated as a colonist from the Punjab since 1901 to the Provinces of North-West Frontier Province, Sind or Baluchistan or to any State adjacent to any of the aforesaid provinces and acceding to the Dominion of Pakistan, and who has since the 1st day of March, 1947, abandoned or been made to abandon his land in the said territories on account of civil disturbances or the fear of such disturbances or the partition of the country.

11. Allotment of the land in question to the petitioner in West Pakistan was obviously made in pursuance of the above-said notification dated 6th July, 1949. In that notification the word "refugee" was not used and the word "displaced person" was defined to mean a landholder in the territories comprised in West Punjab, etc., who has since the 1st day of March, 1947, abandoned or been made to abandon his land in the said territory on account of civil disturbances, etc., or on account of the partition of the country.

12. The question of conferring permanent rights in the allotted land arose for the first time on the coming into force of the Compensation Act which defines "displaced person" in section 2 (b) as follows: "displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has after the first day of March, 1947, left; or been displaced from, his place of residence in such area and who has been

subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, and also includes the successors-in-interest of any such person."

13. Section 10 of the Compensation Act gave the power to the Government to transfer permanent rights in land to those persons who were allottees thereof under the notification dated 8th July, 1949. Relevant portion of section 10 of the Compensation Act reads as follows:

10. Special Procedure for payment of compensation in certain cases.- Where any immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published-

(a) by the notification of the Government of Punjab in the Department of Rehabilitation No. 4891-S or 4892-S, dated the 8th July, 1949, or

(b) * * * * *

and such property is acquired under the provisions of this Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition, and the Central Government may, for the purpose of payment of compensation, to such displaced person transfer to him such property on such terms and conditions as may be prescribed.

Explanation

* * * *

14. It is under this provision that permanent rights in the land appear to have been transferred to the petitioner. It cannot be disputed that the said allotment could, if at all be cancelled only if the cancellation could be justified u/s 19 of the Compensation Act read with rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. As stated above, the only ground on which the cancellation is sought to be justified is the entry in Appendix IV of Tarlok Singh's Land Resettlement Manual relating to the percentage of land to be given to displaced persons whose land in Pakistan became to be owned by them by virtue of some gallantry awards.

15. Dewan Chetan Dass, the learned Deputy Advocate General, who appeared for the State, made a desperate attempt to argue that the petitioner did not fall within the definition of the word "refugee" as given in the East Punjab Refugees (Registration of Land Claims) Act of 1948 and he could not be deemed to have "abandoned" land of which he could not show to have obtained possession and, therefore, even according to the definition of "displaced person" given in the East Punjab Act 14 of 1947 he could not be entitled to the allotment. This contention

of the learned counsel before the respondents appears to be wholly devoid of force. The transfer of permanent rights was made under the Central Act 44 of 1954. The entire set of impugned orders shows that the cancellation was based on the solitary ground that the records received from Pakistan did not show that actual possession of the land in question had been obtained by the petitioner in Pakistan. The learned counsel for the respondents was not able to show any provision in any of the relevant statutes or notifications saying that land to be allotted to displaced persons was in lieu of actual possession enjoyed in West Pakistan and was not in lieu of proprietary rights. As stated above, the only argument is that this should be presumed from the use of the word "abandoned" in the East Punjab Act 14 of 1947. It is, however, significant that in the definition of displaced person in the Compensation Act the scope has been substantially widened so as to include within that category such persons who might not have actually lived in West Pakistan but who on account of the partition of the country have now become unable to go there and manage their property. There is no authority for the proposition that unless a displaced person was in actual possession of land belonging to him in West Pakistan his quasi permanent rights in land allotted to him in East Punjab under the Punjab Government notification dated 8th July, 1949 could not ripen into permanent rights.

16. There is a further serious infirmity in the impugned order. The Managing Officer having sent out a show cause notice and having noticed that it had not been served on the petitioner proceeded to make an ex-parte recommendation to the serious detriment of the petitioner. The Chief Settlement Commissioner did not care to procure the attendance of the petitioner at all and accepted the recommendation of the Managing Officer on the assumption that the petitioner had not turned up in spite of service of notice. It appears that this is one of those rare cases where the judicial conscience of this Court is shocked by the violation of rules of natural justice by the Rehabilitation Department of the Punjab Government.

17. In these circumstances the impugned orders including the recommendation by the Managing Officer (Annexure "C" to the writ petition) dated 13th May, 1960, the order of the Chief Settlement Commissioner (Annexure "B" to the writ petition) dated 27th May, 1960, the formal order of the Managing Officer (Annexure "D" to the writ petition) dated 3rd June, 1960 and the final order of the Chief Settlement Commissioner (Annexure "F" to the writ petition) dated 20th February, 1961 cannot be sustained and must be struck down as violative of the principles of natural justice and wholly without any lawful justification.

18. This petition is accordingly accepted. The above said four orders (Annexures C, B, D and F to the writ petition) are quashed and set aside. The respondents shall be liable to pay the costs of these proceedings to the petitioner. Counsel fee is assessed at Rs. 200/-.

Dua, J.

19. I agree.