
(1969) 12 DEL CK 0013

In the Delhi High Court

Case No : Letters Patent Appeal No. 37D of 1965

Union of India and Others

APPELLANT

Vs

Sardar Anant Singh

RESPONDENT

Date of Decision : 22-12-1969

Acts Referred:

Citation : (1970) ILR Delhi 35

Hon'ble Judges : Om Prakash, J; Jagjit Singh, J; Hardayal Hardy, J

Bench : Full Bench

Advocate : K.S. Chawla, A.S. Dua, D.D. Chawla and M.K. Chawla, for the Appellant;

Judgement

Jagjit Singh, J.

(1) The following questions were referred to the Full Bench :-- (i) Whether the Press Note, annexure G, had the status of law and conferred a legal right on the respondent to get his unauthorised occupation of the flat regularised ? (ii) If it be held that the Press note had not the status of law but was merely an administrative or executive direction, could the respondent still invoke the jurisdiction of this Court and claim that his unauthorised possession should on the basis of the Press Note be regularised ?

(2) Detailed facts reading to the case giving rise to the above questions are given in the order of reference. In order, however, that the implications involved in the two questions may be appreciated it would be necessary to very briefly mention some of the facts.

(3) Admittedly Anant Singh Respondent 1s an ex-service man and a displaced person from West Pakistan. On this migration to India he was at first given tent accommodation and on January 9, 1952, shop No. 42 in Khan Market, New Delhi, was allotted to him. He also applied for flat No. 42 over that shop, hereinafter referred to for facility of reference as the flat. Though the flat had been already allotted to some other persons the respondent had somehow managed to take

possession of it either from the original allottee or in some other unauthorised manner.

(4) Due to the respondent being an ex-service man the re-settlement section of the Ministry of defense, in July 1953, allotted him a residential plot in the defense Colony. That plot was, however, surrendered by him as he was keen to have the flat allotted in his name and it appears the surrender of the plot was made on the incorrect representation that the flat had been allotted to him.

(5) The efforts of the respondent for regularization of possession of the flat, by its allotment in his name, did not materialise. The respondent had claimed regularisation of his possession on the basis of a press Note issued on June 4, 1955 by the Secretary (Relief & Rehabilitation) to the Delhi State Government Delhi. According to that Press Note about 44,000 houses, tenements or shops constructed by the Central Government for displaced persons in Delhi were to be allotted subject to certain restrictions. Paragraphs 5 and 6 of the Press Note, which are relevant for this case provided as under :-

"5. It has also been brought to the notice of the Govt. that many house tenements shops allotted on rental basis have been occupied by unauthorised persons who have obtained the accommodation from the original allottees or otherwise. It was been decided in consultation with the Central Ministry of Rehabilitation to regularise the occupation of all those who came into possession for the properties before 1st April, 1954, provided they pay to the Housing Rent Officer the entire arrears of rent due in respect of the accommodation in their possession. Occupants having verified claims will be given the facility of adjusting the arrears of rent under the Interim Compensation Scheme. 6. All un-authorized occupants who have occupied properties before 1st April, 1954, can now have their occupation regularised provided they clear off the arrears of rent as mentioned above. They should apply to the Housing & Rent Officer, Delhi, by 1st September, 55. Those who fail to have their occupation regularised by 1st November, 1955, and those who un-authorized occupied Govt. Properties on or after 1st April, 1954, will be liable to eviction and other penalties according to law."

(6) The respondent being in unauthorised occupation of the flat, long before April 1, 1954, asserted his right to have his occupation regularised in terms of paragraphs 5 and 6 of the press Note, as extracted above. After a notice u/s 3 of the Govt. Premises (Eviction) Act, 1950, issued to the respondent was withdrawn, another notice dated 7/12/1958, u/s 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act") was served on the respondent on January 16, 1959. The representation of the respondent against the order of the Managing Officer directing him to vacate the flat was rejected. The respondent then filed an appeal which was dismissed by the Settlement Commissioner, New Delhi, on July 15, 1959. A further revision to Shri G. B. Lalwani, who was exercising powers of the Chief Settlement Commissioner, also remained unsuccessful and was dismissed on March 19,

1960. His application to the Central Government, u/s 33 of the Act, was as well rejected and information to that effect was given to him by the Ministry of Rehabilitation, through a letter dated 25/7/1960. He then filed a petition under article 226 of the Constitution of India for quashing the notices and the orders of the Managing Officer, the order of the Settlement Commissioner dated 15/7/1959 and the order of Shri Lalwani dated 19/3/1960. The petition was accepted by P. D. Sharma, J. of the Punjab High Court on August 24, 1965 and a writ of certiorari was ordered to be issued for quashing the impugned orders. Directions were as well given for the occupation of the respondent being regularised on his payment of arrears of rent and on the request of the respondent for permanent transfer of the flat to him being considered according to law.

(7) Against the order of the learned Single Judge a Letters Patent Appeal was filed by the Union of India, the Chief Settlement Commissioner, Settlement Commissioner (Government Built Property) Ministry of Rehabilitation and the Managing Officer. It was during the course of hearing of the said appeal that a Bench of this Court referred the above-mentioned questions to a Full Bench.

(8) At this stage certain provisions of the Act may be noticed. "Compensation Pool" is defined in section 2(a) to mean the compensation pool constituted u/s 14. Section 8 relates to form and manner of payment of compensation. It, inter alia, provides for payment of the amount of net compensation payable to a displaced person out of the compensation pool. Sub-section (2) of section 8 gives power to the Central Government to make rules for the payment of compensation. Certain matters which may be provided for by the rules to be made are specified in the sub-section. Section 16, under which the press Note dated 4/6/1965 was considered by the learned Single Judge to have been issued, is in the following terms :-

"16. Management of compensation pool.--The Central Government may take such measures as it considers necessary or expedient for the custody, management and disposal of the compensation pool in order that it may be effectively utilised in accordance with the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may, for the purposes referred in sub-section (1), by notification in the Official Gazette.- (a) appoint such officers as it may deem fit (hereinafter referred to as managing officers); or (b) constitute such authority or corporation, as it may deem fit (hereinafter referred to as managing corporation). (3) Every managing corporation shall be constituted under such name and shall consist of such number of persons as may be specified in the notification, and every such corporation shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued; Provided that one-third of the members of every managing corporation shall be non-officials. Section 40 is another provision in the Act which enables the Central Government to make rules for carrying out the purposes of the Act. Clause (k) of sub-section (2) thereof specifically mentions that the procedure for the transfer of property out of the

compensation pool and the manner of realisation of the sale proceeds or the adjustment of the value of the property transferred against the amount of compensation may be provided by rules". It is a common ground between the parties that no rules were made by the Central Government either u/s 8 or section 40, for regularisation of possession of persons in unauthorised occupation of property forming the compensation pool. The learned Single Judge, however, held that no limitation was placed on the powers of the Central Government to issue directions for day to-day management of the property forming the compensation pool and in terms of section 16 directions which were considered necessary or expedient for the custody and management of the compensation pool could be issued by the Central Government and "the directions embodied in paragraphs 5 and 6 of the above Press Note fall under this category and thus have force of law for the purposes of article 13(3)(a) of the Constitution."

(9) Apart from anything else the Press Note possibly cannot be considered to have been issued u/s 16 of the Act unless it was issued by the Central Government. The reason being that the power u/s 16 of taking such measures as are considered necessary or expedient for the custody, management and disposal of the compensation pool in order that it may be effectively utilised in accordance with the provisions of the Act is that of the Central Government and not that of a State Government. The Press Note was not issued by the Central Government but was issued by the Secretary (Relief & Rehabilitation) to the Delhi State Government, though in consultation with the Central Ministry of Rehabilitation. The fact that before the issue of the Press Note the Central Ministry of Rehabilitation was consulted and the instructions which were proposed to be issued by the Delhi State Government were agreed to by the Central Minister of Rehabilitation will not make the instructions embodied in the Press Note as those of the Central Government itself.

(10) When the Press Note was issued the Delhi State Government was a Part C State. In *Satya Dev Bushahri v. Pudam Der* (i) it was held by the Supreme Court that though the Part C States were centrally administered under the provisions of article 239 of the Constitution of India they did not cease to be States and did not become merged with the Central Government. That case again came before the Supreme Court and was partly reviewed in *Satya Dev Bushahri Vs. Padam Dev and Others*, regarding a different matter but once again the distinctiveness of part C States was recognised. Their Lordships of the Supreme Court while dealing with the effect of contracts with the Chief Commissioner of Himachal Pradesh in the light of the definition of "Central Government" in section 3(8)(b) (ii) of the General Clauses Act, 1897 and of section 17 of the Government of Part C States Act, 1951 (No.49 of 1951) read with section 7(d) of the Representation of people Act, 1951 (Act 43 of 1951) observed as under :-

"WE are unable to agree that Section 3(8)(b)(ii) has the effect of putting an end to the status of Part C States as independent units, distinct from the Union Government under the Constitution . It merely recognises that those States are

centrally administered through the President under Article 239, and enacts that the expression "Central Government" should include the Chief Commissioner administering a part C State under the authority given to him under Article 239. Section 3(8)(b)(ii) does not affect the status of Part C States as distinct entities having their own legislature and judiciary, as provided in Articles 239 and 240. Its true scope will be clear if, adapting it, we substitute for the words "Central Government" in Section 9 of the Act No.43 of 1951 the words "the Chief Commissioner acting within the scope of the authority given to him under Article 239.

(11) A contract with the Chief Commissioner would, Therefore, u/s 9 read with Section 3(8)(b)(ii) of the General Clauses Act, be a contract with the Central Government, and would operate as a disqualification for election to either House of Parliament u/s 7(d) and 9 of Act No.43 of 1951, and it would be a disqualification u/s 17 of Act No.49 of 1951 for election to the Legislative Assembly of the State."

(12) In a later decision also relating to a part C State, *Suite of Vindhya Pradesh v. Moula Bux and others*") Hidayatullah, J. (as his Lordship then was), while delivering judgment of the Court, held that section 79(a) of the Code of Civil procedure, which says that in a suit by or against the Central Government the proper plaintiff or defendant, as the case may be, is the Union of India, does not apply to a part C State. *lii H.L. Rodhey and ors. v. Delhi Administration and ors.* (4) the view taken was that Part C States were not identical in all respects with Union territories.

(13) THE. Press Note issued by the Delhi State Government, when it was a Part C State, cannot be regarded to be a Press Note of the Central Government. Consequently the directions embodied in the Press Note cannot be considered to have been issued by the Central Government in exercise of powers vested in it u/s 16 of the Act. It follows that the Press Note had no statutory basis and did not have the status of law and conferred no legal rights on the respondent to get his unauthorised occupation of the flat regularised.

(14) Even if the Press Note can somehow be regarded to have been issued by the Central Government, u/s 16 of the Act, still that fact alone will not give it the status of law and confer any legal right on the respondent. In *Ram Nath & another v. Central Government and other* (5) *Bishan Narain. J* of the Punjab High Court was of the view that section 16 of the Act cannot be construed to enable the Central Government to determine the mode of transfer of any property forming part of the compensation pool without making rules for that purpose and that the section was not intended to empower the Government to ignore and bypass sections 8 and 40 of the Act and also to deprive Parliament of its control over the rule making power of the Government. A Bench of the same High Court, consisting of Tek Chand and Pandit, JJ. in the case of *Bishan Singh v. Central Government and others* considered the validity of a Press Note issued by the Central Government on June 4, 1957 regarding permanent transfer of evacuee

urban agriculture lands in the Punjab and in the erstwhile Pepsu Union. It was held. " as under :-

"IN my opinion, section 16 has to be read along with section 8 of the Act, and section 16 only provided a procedural machinery or the custody, management and disposal of the compensation pool. Right of disposal of the compensation pool is there but it is subject to the provisions of the Act, and the Act says that the rules shall be framed under sections 8 and 40. The Central Government cannot override and by-pass section 8(2) and section 40(2) (c) and (j) of the Act, It cannot take recourse to section 16 of the Act of prescribing a. mode for payment of compensation to displaced persons of this class by the issuing for these press notes and without framing relevant rules for the purpose, especially when section 8(2) of the Act specifically mentions that rules should be made for providing the form and the manner in which compensation may be paid to different classes of displaced persons."

(15) In *The Chief Commissioner and other v. Messrs Madan Engineering Tool Products and others* (7) though the point was left open yet Dua, J. (now a Judge of the Supreme Court) observed that section 16 of the Act providing for management of compensation pool merely authorised the Central Government to take suitable measures necessary or expedient for the custody, management and disposal of the compensation pool in order to effectively utilise it in accordance with the Act and that ministerial steps or administrative decisions taken in pursuance of this power may be lawful steps and lawful decisions but it would be going too far to say as a general proposition that every administrative decision u/s 16 attains the status of law as envisaged in article 13 of the Constitution. The judgment of P.D. Sharma, J. in the present case was noticed but the view taken therein was considered not to be supportable.

(16) The learned counsel for the respondent tried to distinguish the cases referred to above by urging that the present case had nothing to do with the form and manner of payment of compensation and, Therefore, no rules were necessary to be framed u/s 8 of the Act. There is, however, no merit in this contention. The houses, tenements or shops constructed by the Central Government for displaced persons in Delhi became part of the compensation pool. Regularising of unauthorised occupation of any property which was part of the compensation pool could not be unconnected with the disposal of that property and consequently had effect on the form and manner of payment of compensation. This matter could legally be provided by rules under sections 8 and 40 of the Act and in the absence of rules any directions issued in the form of a Press Note were mere administrative directions without having the status of law.

(17) As the Press Note in question did not have the status of law and conferred no legal right on the respondent the writ jurisdiction of this Court could not be invoked by the respondent for having his unauthorised possession regularised. But apart from this legal aspect of the matter normally it is expected that an

authority which issues any general administrative or executive directions which are not unlawful should adopt a uniform policy in the matter of their application and not arbitrarily deny the benefit thereof only in some individual cases.

(18) In *R. Abdulla Rowther v. The State Transport Appellate Tribunal, Madras and others*" the Supreme Court confirmed the finding of the High Court of Madras which had dismissed the application of R. Abdulla Rowther for a writ of certiorari. It was observed that as the directions issued by the relevant Government order were no more than executive or administrative instructions so even if the rule as to assignment of marks had been infringed, it was not an error of law at all and so an application for the issue of a writ of certiorari based on the alleged infringement of the rule must fail. In another case, *The State of Assam and another v. Ajit Kumar Sarina and others* the Assam aided College Employees Rules (1960) regarding conduct and discipline of employees of aided institutions were held not to have a statutory force but to have been framed in order to give revised grants to private colleges to enable them to give higher scales of pay to their teachers in accordance with the recommendations of the University Grants Commission and, Therefore, no teacher of a college had any right under the rules to ask either for their enforcement or for their non-enforcement. In its judgment the Supreme Court also referred to an earlier decision in *Messrs Roman Raman Ltd. v. The State of Madras and others*" in which certain orders and directions issued u/s 43A of the Motor Vehicles (Madras Amendment), Act, 1948 had to be considered. The question which had arisen was whether the orders issued u/s 43A had the status of law or not. It was held that such orders did not have the status of law regulating the rights of parties and must partake of the character of administrative orders. It was further found that there could be no right arising out of mere executive instructions much less a vested right and if such instructions were changed pending any appeal there would be no change in law pending the appeal so as to affect any vested right of a party.

(19) In support of his contention that on breach of administrative or executive directions a person may invoke the extraordinary jurisdiction under article 226 of the Constitution *Amar Singh and others, v. Custodian, Evacuee Property Punjab* and another was cited. In that case their Lordships of the Supreme Court had held that the rights of an allottee of a quasi-permanent allotment are recognised in statutory rules and are important and constitute the essential basis of a satisfactory rehabilitation and settlement of displaced landholders and until such time as these landholders obtained Sanads to the land these rights are entitled to zealous protection of the constituted authorities according to administrative rules and instructions binding on them and of the Courts by appropriate proceedings where there is usurpation of jurisdiction or abuse of exercise of statutory powers. The instructions contained in the Press Note in the matter of regularisation of unauthorised possession not having been recognised in any statutory rules non-regularization of the respondent's occupation would not be abuse of exercise of statutory powers. Another case referred to was *Sant Ram Sharma v. State of Rajasthan and others*" in which it was observed that

Government cannot amend or supersede statutory rules by administrative instructions but if the rules are silent on any particular point Government can fill up the gap and supplement the rules and issue instructions not inconsistent with the rules already framed. No rules having been framed for regularisation of unauthorised occupations of displaced persons like the respondent the question of filling any gaps in those rules by issuing instructions did not arise. The case of *The State of Madhya Pradesh v. G. C. Mandawar* relied upon on behalf of the respondent is also distinguishable. That case related to scales of dearness allowance sanctioned by the Government of the Central Provinces and Bihar. The allowance was not held repugnant to article 14 on the ground that the scale of dearness allowance sanctioned by the Central Government was different. Venkatarama Ayyar, J., speaking for himself, Mehr Chand Mahajan C.J., Mukherjea, Vivian Bose, and Bhagwati, JJ., held that article 14 does not authorise the striking down of a law of one State on the ground that in contrast to a law of another State on the same subject its provisions are discriminatory. In the present case the Press Note has not been shown to have the status of law and any contention based on article 14 of the Constitution is, Therefore, out of place.

(20) In summing up it may be stated that the Press Note in question did not have the status of law and consequently conferred no legal right on the respondent to get his unauthorised occupation of the flat regularised. The Press Note being merely of the nature of administrative or executive directions the respondent did not have the right to invoke the jurisdiction of the Court in support of his claim that his unauthorised possession should be regularised on the basis of the said Press Note. Both the questions, Therefore, referred to the Full Bench are answered in the negative. The case shall now be laid before the Division Bench for disposal in the light of the above answers.