
(1969) 10 DEL CK 0016

In the Delhi High Court

Case No : Letters Patent Appeal No. 2 of 1969

Union of India

APPELLANT

Vs

Bishan Devi and Others

RESPONDENT

Date of Decision : 12-10-1969

Acts Referred:

Citation : (1970) ILR Delhi 1

Hon'ble Judges : H.R. Khanna, C.J.; S.I. Rangarajan, J

Bench : Division Bench

Advocate : D.K. Kapur, A.D. Chaudhary, Arun Madan, Bhawani Lal and D.N. Nijhawan, for the Appellant;

Judgement

H.R. Khanna, C.J.

(1) This appeal under Clause 10 of the Letters Patent by Union of India, Chief Settlement Commissioner and Regional Settlement Commissioner, is directed against the judgment of learned Single Judge whereby he accepted the writ petition filed by Shrimati Bishan Devi respondent quashed the order dated 14/3/1967 of Joint Chief Settlement Commissioner and the auction-sale, in respect of the property in dispute, held on 9/03/1967. Order was also made that Shrimati Bishan Devi was entitled to the transfer of the property in dispute in her favor.

(2) Brief facts giving rise to this appeal are that Shrimati Bishan Devi and her husband Buta Rani were displaced persons from Gujranwala in Pakistan. Bishan Devi and Buta Ram made separate claims for properties left in Pakistan. The claim of Bishan Devi was verified on 7/03/1951 for Rs. 24,000.00. On revision the amount was enhanced on 18/06/1951 to Rs. 29,784.00. The claim of Buta Ram was verified for an amount of Rs. 31,900.00. The property in dispute, situated in Ramesh Nagar, New Delhi, had been built by the government. It was put to auction on 27/11/1955, under the orders of the Chief Settlement Commissioner. Bishan Devi gave the highest bid of Rs. 15,400.00. Her bid was accepted and on

17/12/1955 she was told to give the registration numbers of her claim application and of any of her relatives or associate. BishanDevi gave the registration number of her claim which had been verified for Rs. 29,784.00. She also along with that associated the claim of her husband which had been verified for Rs. 31,900.00. The total compensation due on the two verified claims calculated as separate units, according to Bishan Devi, came to Rs. 17,654.00. She moved the Chief Settlement Commissioner for the finalization of her case. On 16/07/1957 the Settlement Officer issued a notice to Bishan Devi asking her to produce surrender certificate in respect of a quarter occupied by her husband in Purana Qila. She was told that unless she did so the sale of the property in her favor would be cancelled and the amount of 10% deposited by her would be forfeited. Bishan Devi was also given provisional possession of the property in dispute. Bishan Devi filed objections to the demand of surrender certificate. On 16/09/1957, Regional Settlement Commissioner passed an order clubbing the claims of Bishan Devi and her husband. It was observed that the property held by BishanDevi in Pakistan had not been shown to have been purchased by her out of her Stridhana. On 10/12/1957, BishanDevi was asked to pay Rs. 3,060.00 being the extra amount payable by her towards the sale price by reason of the clubbing together of the claims of Bishan Devi and Buta Ram. Bishan Devi did not pay that amount. On 7/02/1958 an order was made cancelling the auction-sale in favor of Bishan Devi and forfeiting the 10% deposit made by her. On February 28, 1958 Bishan Devi was asked to hand over vacant possession of the property in dispute. Bishan Devi filed an appeal against the orders dated 7/2/1958 and 28/2/1958, but her appeal was dismissed by Shri Gajendra Singh, Deputy Chief Settlement Commissioner, on August 28, 1958. Bishan Devi filed an application u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act (hereinafter referred to as the Act) against the order of Shri Gajendra Singh, but the same was dismissed on 15/06/1959.

(3) During the pendency of Bishan Devi's application u/s 33 of the Act, the Chief Settlement Commissioner issued a memorandum on 27/12/1958, Paragraphs 1 and 4 of that memorandum, with which we are only concerned, read as under :-

"In super session of the instructions contained in this office letter noted in the margin on the above subject, it has been decided that cases kept pending on the ground that inquiries were to be made whether or not the property which is the subject of the claim and which is shown in the name of a particular claimant was not purchased benami, the claimant may be paid on the basis of the claim assessment order as it stands, if the value of the claims Rs. 1,00,000.00 or less. This means that where any claims valued at one lakh or less, it will not be clubbed on the ground that the inquiry whether or not it is a benami transaction has not been done. 4. These instructions will be effective from the date of the issue, and past cases will not be re-opened."

(4) After the issue of the above memorandum. Bishan Devi filed an appeal against the order directing the clubbing of her claim with that of her husband.

This appeal was accepted by Shri S. R. Anand, Assistant Settlement Commissioner, as per order dated 20/3/1959. It was held that the claim of Bishan Devi could not be clubbed together with that of her husband and that she be paid compensation for the claim verified in her favor without clubbing the same with that of her husband. After the above order had been made by Shri Anand, Buta Ram, husband of Bishan Devi, surrendered possession of the house in his occupation in Purana Qila. He also filed an application that in view of the order of Shri Anand the case might be reopened and property be transferred to Bishan Devi. Buta Ram was thereupon informed that the case had been sent to another official for doing the needful. Buta Ram died on January 9, 1965.

(5) In March, 1967, it is stated, the Regional Settlement Commissioner directed that the property in dispute be sold by Public Auction on 9/03/1967. Bishan Devi filed an application u/s 33 of the Act against the proposed resale of the property. During the pendency of the revision the property in dispute was sold by auction on 9/03/1967 and was purchased by Subash Chander respondent for Rs. 24,050.00. Application u/s 33 of the Act filed by Bishan Devi was dismissed on 14/03/1967 by Shri H. R. Nair, Joint Chief Settlement Commissioner with delegated powers of the Central Government. Bishan Devi thereupon filed the present writ petition under Article 226 of the Constitution of India for quashing the order dated 14/3/1967. Prayer was also made that the property in dispute be not sold by public auction as the property was in the meantime sold and purchased by Subash Chand. he too was impleaded as a party under order dated 6/12/1967, of Andley, J.

(6) The learned Single Judge in allowing the writ petition held that the order dated 7/2/1958, cancelling the auction-sale in favor of Bishan Devi, as well as the order dated 28/8/1959 made by Shri Gajendra Singh stood superseded by the order dated 20/3/1959 of Shri Anand. The order dated 14/3/1967, made by the Joint Chief Settlement Commissioner, was held to be not in conformity with law, as, in the opinion of the learned Single Judge, the Joint Chief Settlement Commissioner had not applied his mind to all the various grounds especially that relating to the order of Shri Anand. View was also expressed by the learned Single Judge that a personal hearing should have been given to Bishan Devi or her counsel before the dismissal of her application u/s 33 of the Act by Shri Nair, although it was observed that it was not necessary to base the decision on that ground. The resale of the property in favor of Subash Chander was held to be illegal.

(7) We have heard Mr. Kapur on behalf of the appellants, Mr. Bhawani Lal on behalf of Bishan Devi respondent and Mr. Nijhawan on behalf of Subash Chander, and are of the view that no case has been made for interfering with the decision of the learned Single Judge in accepting the petition of Bishan Devi. It would appear from the resume of facts given above that subsequent to the order dated 16/9/1957 of the Regional Settlement Commissioner by which the claims of Bishan Devi and her husband were clubbed together as also subsequent to the

order dated 7/2/1958 by which the auction sale in favor of Bishan Devi was cancelled and the order dated 28/8/1958 of Shri Gajendra Singh, Deputy Chief Settlement Commissioner by which Bishan Devi's appeal was dismissed, the Chief Settlement Commissioner issued a memorandum dated 27/12/1958. According to that memorandum, in pending cases relating to claims of Rs. 1,00,000.00 or less the claimant might be paid compensation on the basis of claim assessment order and the claim need not be clubbed on the ground that the inquiry, whether or not it is a benami transaction, has not been done. After the issue of the above memorandum, Bishan Devi whose application u/s 33 of the Act, against the order of Shri Gajendra Singh was pending, filed an appeal against the order directing the clubbing of her claim with that of her husband. This appeal was accepted by Shri Anand as per order dated 20/3/1959 and it was held that her claim could not be clubbed together with that of her husband and that she was entitled to be paid compensation for the claim verified in her favor without such clubbing. The above order of Shri Anand was not set aside in any proceeding and holds the field. In the face of the order of Shri Anand, no order could be made for the resale of the property in dispute because such a resale could only be ordered on the assumption that the claims of Bishan Devi and her husband could be validly clubbed together and the compensation payable on account of those claims as clubbed together fell short of the amount of bid made by Bishan Devi. Such an assumption could obviously be not made in view of the order passed by Shri Anand.

(8) Argument has been advanced by Mr. Nijahwan that the memorandum dated 27/12/1958, constituted administrative instructions and could not have the force of law. It is not necessary, in our opinion, to go into this question as we are of the view that the order for resale of the property in dispute was illegal because of the order of Shri Anand. As we base our decision upon the order of Shri Anand alone, there is no need to deal with the question whether the said memorandum had the force of law. [If it was the case of the appellants that the order of Shri Anand was not in conformity with law and he was in error in relying upon that memorandum, the proper course was to assail it in appropriate proceedings. As things stand, we find that the order of Shri Anand holds the field as remarked earlier. In the face of that order the property in dispute could not be ordered to be resold.

(9) The learned Single Judge, though he did not base his decision on that ground, has also expressed the view that it is necessary that the petitioner should be given a personal hearing before his application u/s 33 of the Act is rejected by the Central Government or the authority delegated with the powers of the Central Government under that Section. A Division Bench authority of *Falshaw and Tek Chand, JJ. in case Ranjit Singh v. The Union of India and others*(1), was cited before the learned Single Judge but he expressed his disagreement with the dictum laid down in that case. After hearing the learned counsel for the parties, we, with due deference, are of the opinion that the principle laid down by the learned Judges in the case of *Ranjit Singh v. The Union*

of India others")) is correct. Section 24 of the Act deals with revision petitions which may be filed under the Act and the grounds on which such revisions can be entertained. Section 33 deals with the residuary powers and reads as under :-

"CERTAIN residuary powers of Central Government."The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made there under."

(10) According to Rule 105 of the Displaced Persons (Compensation and Rehabilitation) Rules, except as otherwise provided in the Act or in the Rules, the procedure laid down in Order Xli of the Code of Civil Procedure, shall, so far as may be applicable, apply to the hearing and disposal of appeals and revisions under the Act. A proviso was added to the above Rule as per notification published on 20/07/1963, that in the case of a revision under sub-section (4) of section 24 of the Act, it shall not be necessary to give an oral hearing if, after sending for the record, if necessary, and considering the petition for revision, the Central Government thinks fit to dismiss the revision. Before the above proviso was added a Full Bench of the Punjab High Court in *Him Lal Kher v. The Chief Settlement Commissioner, New Delhi*, (2), held that it is only after hearing the petitioner or his pleader that a revision petition can be dismissed. The Full Bench case related to a revision u/s 24 of the Act and not to a matter u/s 33 which deals, as stated above, with the residuary powers of the Central Government. If an application is made to the Central Government u/s 33 of the Act and it finds no force in the application, it is, in our opinion, not incumbent upon the Government to hear the petitioner orally. It is only when the Central Government decides to interfere with the impugned order that a duty is cast upon it to hear the other party because not to do so would offend against the principles of natural justice. We find ourselves in this respect in agreement with the following observations in the case of *Ranjit Singh v. The Union of India and others*"),

"It is, however, quite clear that the provisions of section 33 are very different from those of section 24 which is headed "Power of revision of the Chief Settlement Commissioner". This clearly means that any petition filed under that section must be treated as a regular revision petition. On the other hand section 33 is headed "Certain residuary powers of Central Government" Some of the words of the two sections are undoubtedly similar but I do not regard any representation made to the Central Government with a view to causing it to exercise its residuary powers u/s 33 as a revision petition or governed by rule 105. Our attention was drawn to a decision of D. K. Mahajan, J. in *Dewan Jhangi Ram v. Union of India*, in which the view has been expressed that the petitioner should be heard before a decision is made by the Central Government u/s 33, but in that case it appears that the person who moved this Court under Article 226 was one against whom some previous order in his favor had been reversed

by the Central Government purporting to act u/s 33 without giving him any opportunity to be heard : I would certainly agree that although the words which occur in sub-section (3) of section 24 of the Act "No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard" do not occur in section 33, they embody a principle which should be applied by the Central Government when acting u/s 33 and that before any previous decision is reversed under this section the person likely to be prejudicially affected by it should be given an opportunity to be heard. This, however, does not mean that any person who chooses to make a request to the Central Government for the purpose 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. The dictum laid down above was followed in *Sobha Ram Sethi v. Union of India and others*"), *Darshun Kumur v. Union of India and others*, decided on 1/09/1967, and *Hazara Singh another v. Union of India and others* (6), decided on 3/02/1968"

(11) It may be observed that the absence of oral hearing does not per se offend against the principles of natural justice and that oral hearing is not a necessary concomitant of all quasijudicial proceedings. It would always depend upon the circumstances of each case whether oral hearing should be granted or not. Dealing with the question of oral hearing, Viscount Haldane L. C. observed in a case, decided by the House of Lords, *Local Government Board v. Arlidge*, :

"WHAT appears to me to have been the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of justice, instead of the other standard which was laid down for such cases in *Board of Education v. Rice*. I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had."

(12) The above case was referred to with approval by their Lordships of the Supreme Court in *Board of High School and Intermediate Education, J. P. Allahabad v. Ghanshyam Das Gupta*. In the case of *Messrs Serajuddin Company v. Union of India and others*"), while dealing with an application under Rules 54 and 55 of the Mineral Concession Rules, it was held that though the proceedings were of a quasi-judicial nature, it was not imperative for the Central Government to give an oral hearing to the petitioner.

(13) In the result the appeal fails and is dismissed. The amount paid by Subash Chander should be refunded to him forthwith. The parties, in the circumstances of the case, shall bear their own costs.