
(1971) 07 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Second Appeal No. 78 of 1968

Union of India (UOI)

APPELLANT

Vs

Rana Himal Chand

RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 36

Citation : AIR 1971 HP 20

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : B. Sitaram, for the Appellant; H.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This is defendant's second appeal and has been directed against the decision dated 5th March, 1968 of the District Judge, Kangra, whereby, after confirming the decision of the Senior Sub-Judge, Kangra, he has decreed the suit of the plaintiff Rana Himal Chand for declaration to the effect that he is in cultivatory possession as owner of disputed land situate in Tikas Gankhetar and Kasba of mauza Baijnath in the tehshil of Palampur.

2. The plaintiff came to Court with the allegations, that the disputed Khasra numbers situate in the respective Tikas were allotted to him by the Custodian in, lieu of certain land which belonged to him and which he had to leave in Pakistan. The quasi-allotment was made on 14-8-49 while permanent allotment was made on 18-2-57. The plaintiff came in actual possession and started cultivating the disputed land. However, in the revenue papers the entry, "Gair Mumkin Abadi" was made which, according to the plaintiff, was a wrong entry. Subsequently on 24-6-1969, upon a report of Naib-Tehsildar (Rehabilitation), the Chief Settlement Commissioner, while exercising powers u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter to be referred as the Act) cancelled the allotment that existed in favour of the plaintiff. Thereafter the defendant Union of India acting through its officers, ordered for re-auction of the

disputed land. Hence the suit was brought for declaration that the plaintiff is owner in possession and that the defendant be restrained from auctioning the disputed land.

3. The defendant contested, *inter alia*, on the allegation that Section 36 of the Act barred the jurisdiction of the Civil Court. According to the defendant, the suit related to a matter which the Central Government or any officer or authority appointed under the Act was empowered by or under the Act to determine. As such it was pleaded that no relief could be granted to the plaintiff. This contention was repelled by the learned Senior Sub-Judge and it was held that the Chief Settlement Commissioner could not cancel the allotment as there was no finding to the effect that the allotment was obtained by the plaintiff as a result of fraud, false representation or concealment of any material fact on his part. The suit was accordingly decreed for a declaration. The defendant came in appeal before the learned District Judge and the first appellate Court confirmed the findings of the learned Senior Sub-Judge. The defendant has thus come up in second appeal before this Court.

4. It is abundantly clear from a perusal of Section 36 of the Act that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under the Act, is empowered by or under the Act to determine. It is, therefore, to be made known if the order for cancellation of allotment could be considered a matter which the Chief Settlement Commissioner was empowered by or under the Act to determine. A necessary reference, then, shall have to be made to Section 24 of the Act under which the Chief Settlement Commissioner had acted. Clause (2) of this section clearly enjoins that the Chief Settlement Commissioner could not cancel the allotment unless there was a finding that the allotment was obtained by means of fraud, false representation or concealment of any material fact. Neither the Chief Settlement Commissioner gave that finding, nor it appears such fraud, false representation or concealment of any material fact was pleaded before him. The "Sanad" granted to the respondent also indicated that the grant was resumable only after fraud, false representation or concealment of any material fact was proved against the grantee. In the absence of such a finding from the Chief Settlement Commissioner, it is difficult to hold that Section 24 of the Act at all empowered him to cancel the allotment. It is fairly well settled proposition that the Chief Settlement Commissioner has got to comply with the conditions laid down in Cl. (2) of S. 24 of the Act before he makes an interference and cancels allotment as a result of revision filed before him (see *Shauqin Singh and Others Vs. Desa Singh and Others*, and *The Estates Development Ltd. (in Liquidation) through its Official Liquidator Vs. The Union of India (UOI) and Others*, The order of the Chief Settlement Commissioner cancelling the allotment in the absence of a finding that the allotment was obtained by a false representation or fraud or concealment of material fact was not upheld by their Lordships.

4A. In this view of the matter, it is abundantly clear that the Civil Court had jurisdiction and Section 36 of the Act was not a bar to the proceedings. No other point is urged in the appeal before me.

5. In these circumstances, I do not find any ground to interfere with the decision of the two lower Courts and this appeal is dismissed.

6. In the special circumstances of the case, no order is made as to costs.