
(1964) 02 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 802 of 1962

Vir Bhan and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-02-1964

Acts Referred:

Constitution of India, 1950 — Article 221, 226

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 22, 24, 33

Citation : AIR 1965 P&H 21

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : H.S. Wasu, for the Appellant; M.M. Punchhi with R.N. Narula, for the Respondent

Judgement

P.C. Pandit, J.—This is a petition tiled by Vir Bhan and his son, Chanan Dass, under Articles 226 and 221 of the Constitution, challenging the legality of the order dated 27-3-196 passed by the Chief Settlement Commissioner respondent No. 3.

2. According to the allegations of the petitioners, they were displaced persons from West Pakistan They constituted a joint Hindu family and prior to the partition of the country were carrying on business jointly in West Pakistan On migration to India, they settled in Rohtak, where also they carried on a joint business House No. B-II/777 situated in Rohtak was allotted in the name of Rup Chand, another son of Vir Bhan petitioner No. 1. A shop which was part of property No. B-VI/71 and also situate in Rohtak, was allotted in the name of Chanan Dass, petitioner No. 2, but the same was being used for the benefit of both the petitioners, who were carrying on a joint business of selling ghee. At the time of filing the compensation application petitioner No. 1 mentioned the fact hat this shop was allotted in the name of his son, petitioner No. 2. Property No. B-VI/71 consisted of three shops and a residential portion on the first floor of the same. This residential portion was in occupation of Kishan Dass, respondent No.

4. One shop out of these three, was allotted in the name of petitioner No. 2 and the remaining two shops were allotted in the names of Chander Bhan and Gobind Ram.

Petitioner No. 1 (sic) respondent No. 4 held verified claims, while petitioner No. 2 did not hold any such claim. At the time of permanent transfer of this property No. B-VI/71, the value of the same was assessed at Rs. 6,943/-. The compensation payable to petitioner No. 1 was Rs. 4,828/- while that to respondent No. 4 was Rs. 3,907/-. The compensation due to petitioner No. 1 being nearer to the value of this property, the same was permanently transferred to him by the Assistant Settlement Officer vide his order dated 8-9-1959. Respondent No. 4 filed revision petition against this order and the same was heard by Shri T.C. Aggarwal Deputy Chief Settlement Commissioner, who vide his order (sic) remanded the case for holding an enquiry as to whether the petitioners were joint and were living together.

On remand, the case was taken up by Shri S.S. Uppal Assistant Settlement Officer, who after making a thorough enquiry into the matter held that both the petitioners constituted a joint Hindu family. I may be mentioned that, in the order, he had signed for the Assistant Settlement Commissioner, Rohtak. As a result, he upheld the previous order of the Assistant Settlement Officer dated 8-9-1959. Against this, respondent No. 4 filed an appeal, which was heard by respondent No. 3, who by his impugned order dated 27-3-1961 held that Shri S.S. Uppal was an Assistant Settlement Officer and had not been delegated with the powers of an Assistant Settlement Commissioner. He was, therefore, not competent to pass any order on his behalf and, consequently his order was prima facie bad in law. Respondent No. 3, however, himself went into the merits of the case and came to the conclusion that it had not been established that the petitioners were running a joint business in the said shop as alleged by them. He further found that petitioner No. 1 was not living jointly with his son petitioner No. 2. Petitioner No. 1 was living in house No. B-II/777 with his other son, Roop Chand, whereas petitioner No. 2 was living in House No. B-II/694.

As a result, he accepted the appeal and ordered that the property No. B-VI/71 be transferred in favour of respondent No. 4. Against this order, the petitioners filed a revision petition under S. 33 of the Displaced Persons (Compensation and Rehabilitation) Act 1954 (hereinafter referred to as the Act), but the same was rejected on 22-6-1961. Thereafter, the petitioners filed an application for review of the order dated 27-3-1961 passed by respondent No. 3, but the same was rejected by the Deputy Chief Settlement Commissioner, respondent No. 2, on 19-4-1962. This led to the filing of the present writ petition in June, 1962.

3. It may be mentioned that during the pendency of the writ petition in this Court. Vir Bhan, petitioner No. 1 died on 3-7-1962 as a result, his legal representatives namely, his two sons, Chanan Dass, petitioner No. 2, and Roop Chand, and his widow. Smt. Kishni Devi, were brought on the record.

4. Learned counsel for the petitioners submitted that after respondent No. 3 had found that the order of Shri S.S. Uppal, Assistant Settlement Officer, was without jurisdiction, he should have remanded the case to the officer competent to transfer the property in accordance with law. Respondent No. 3 was not authorised to convert himself into an original Court and determine the merits of the case. He had no jurisdiction to order the transfer of the property to respondent No. 4 on the original side by the impugned order of respondent No. 3 the petitioners had been deprived of their valuable right to file an appeal and later on a revision under Ss. 22 and 24 of the Act against the order of the Managing Officer/Assistant Settlement Officer who alone were competent to transfer the property forming part of compensation pool. Learned counsel further submitted that respondent No. 3 was not justified in holding that the petitioners did not constitute a joint Hindu Family. They had produced as many as 12 documents list of which had been given in Annexure D to the writ petition, to prove that the petitioners formed a joint Hindu family and were carrying on their business jointly. Respondent No. 3 completely ignored these documents and gave a finding in favour of respondent No. 4 on mere conjectures.

5. It may be mentioned that respondent No. 3 was deciding this case on the revision side under S. 24 of the Act. From the perusal of his order, annexure C to the petition, it would be apparent that he was of the view that Shri S.S. Uppal, who was an Assistant Settlement Officer, could not sign the order on behalf of the Assistant Settlement Commissioner, as he had not been delegated with the powers of an Assistant Settlement Commissioner. On this ground, respondent No. 3 held that his order was prima facie bad in law. Respondent No. 3 had further observed that since the case was before him on the revision side, it would be appropriate for him to pass a proper order rather than remand the same again. After that, he went into the merits of the case and came to the conclusion that petitioner No. 1 was not living jointly with his son, petitioner No. 2. He was himself living in House No. B-II/777, whereas his son, Chanan Dass, petitioner No. 2, was living in house No. B-II/694. He further found that the petitioners were not running a joint business in the shop in dispute, and petitioner No. 1 could not be treated as an "occupant" on this ground.

After giving these findings, he accepted the revision of respondent No. 4 and ordered that the property be transferred to him. Under S. 24 of the Act, the powers of a Chief Settlement Commissioner are very wide and he can interfere with (sic) order passed by any of his subordinates mentioned in this section and then pass such order in relation thereto as he thinks fit. In the present case, the order under revision before him having been passed by the Assistant Settlement Officer, could have been revised under the provisions of this section. It was not obligatory on respondent No. 3 to have remanded the case, as contended by the learned counsel for the petitioners, because under the statute, he possessed all the powers, which his subordinate officers had got. It was not necessary to respondent No. 3 to refer to each and every document that had been placed on the file by the parties. Respondent No. 3 was deciding certain questions of fact

and, while doing so, he could take into consideration those documents, which he considered to be relevant for that purpose. A simple question of fact has been determined by him and this Court cannot interfere with the same in writ proceedings.

6. Learned counsel for the petitioners in the alternative argued that during the pendency of the writ petition in this Court. Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, on the basis of which the property was being transferred in favour of respondent No. 4, had been omitted on 3-8-1963 by the Displaced Persons (Compensation and Rehabilitation) 6th Amendment Rules, 1963. Under these circumstances, the property in dispute could not be transferred to respondent No. 4, but the same had to be auctioned.

7. There is no force in this submission as well. The last order passed in this case is by the Deputy Chief Settlement Commissioner on the review application filed by the petitioner and the same is dated 19-4-1962. Even this order was passed before Rule 30 was abolished. In writ proceedings, this Court has only to see whether the Impugned order passed by the Rehabilitation Authorities was in accordance with law or not on the date when it was actually passed. There is no manner of doubt that the order in question was not contrary to law, when it was made. The change in law during the pendency of the writ petition in this Court is, in my opinion, of no consequence and cannot be taken into consideration in deciding this petition.

8. The result is that this writ petition which has also been filed after considerable delay, fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in these proceedings.