

(1972) 12 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Appeal No. 31D of 1965

Viranwali etc.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-12-1972

Acts Referred:

Citation : (1973) RLR 165

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : G.L. Seth and R.L. Tandon, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The facts leading to this petition under Articles 226 and 227 of the Constitution are briefly as follows : Late Shiv Lal Malik had filed some claims in respect of certain immovable properties left by him in the territory which is now in Pakistan but died later, on "6.12.1954, when some of his claims had not been finally verified. His widow, Smt. Viran Wali and his adult sons (three) were substituted in his place on 3.S.1955 After such substitution ,Smt. Viran Wali was paid Rs. six thousand six hundred and seventeen in cash on 27.2.1956 by way of compensation; statements of account "were issued to her sons. In May, 4956, the sons purchased property worth about Rs. 12,000.00 After adjusting the value of the purchased property they had a credit balance of Rs. 3,75 2.1. For this amount a draft was issued by the Regional Settlement Authorities, Patna, and sent to the Regional Commissioner, Delhi, for disbursement as the sons were living at Delhi. The Regional Settlement Commissioner, Delhi, however, returned the draft to the Regional Settlement Commissioner patna. for amendment, taking the view that for the purpose of calculation of compensation, the entire claim put in by Shiv Lal Malik was to be treated as a single unit and the benefit of Rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, was not admissible.

(2) Against the said order, Smt. Viran Wali preferred, an appeal to the Settlement Commissioner (Shri Y.L.Taneja). who had the delegated powers of Chief Settlement Commissioner. He accepted the appeal and directed that the sons of Viran Wali should be paid the amount due to them calculated on the basis of Rule 19 as it was then. In other words, he held the view that the old rule, as it originally stood, before it was substituted by what was published in the Gazzette of India on 19-5-55 alone applied. Since Shiv Lal Malik was not living at the. time of the filing of the compensation application, the family had to be considered as consisting of the mother and her 3 sons: the case fell under clause B of Sub-rule 2 of rule 19. It was observed by Shri Taneja that the Patna Regional Settlement Commissioner .had made correct calculations on the above said basis and had rightly issued a demand draft for delivery of the sum to the sons of the petitioner.

(3) There was a departmental reference for setting aside the said order and the Government of India by means of its order, dated 5-9-1963, set aside the order of Shri Taneja in so far as it pertains to the sons only (but not with reference to Smt. Viran Wali the widow) and directed that -the compensation payable to the sons should be determined only in accordance with rule 19, as it was amended. Annexure "F" to the petition is a copy of the said order, which is sought to be quashed in the writ petition.

(4) Even in the return filed by Shri A.G, Varanasi, Settlement Commissioner and Ex Officio Under Secretary to the Government of India, Ministry of Labour, Employment and Rehabilitation, (Department of Rehabilitation), it was admitted that Smt. Wiran Wali had made the application bearing registration No. W/EP/ Calcutta/113/XII (W) but it was denied that the application was made on her own behalf and on behalf of her sons, petitioners 2 to 4. It was further stated that Smt. Viran Wali had not specified that she had filed it on her own behalf or on behalf of her sons; the sons not having filed any separate applications, it was urged, the share of compensation due to them was not worked out, even though it was admitted that they could utilise compensation admissible to them towards purchase of the properties forming part of the compensation pool. The contention of the respondents, in short, is that since the case pertaining to the 3 sons were never finalised before the amended rule 19 came into force, the benefit of the unamended rule was denied to them. After reproducing Rule i9 before and after amendment, judgment proceeds]

(5) It is settled law that when the statute itself does not empower any rules to be made with retrospective operation, the rules cannot be enacted in order to have retrospective effect. In *Hukum Chand etc. vs. Union of India and others* (C.As. 1031 etc. of 1967 decided by the Supreme Court on 22nd August, 1972) it was held that no rule with retrospective operation could be framed in exercise of the power conferred under section, 40 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. Khanna J., speaking for the Supreme Court observed as follows :

" PERUSAL of section 40 shows that although the power of making rules to carry

out the purposes of the Act has been conferred upon the Central Government, there is no provision in the section which may either expressly or by necessary implication show that the Central Government has been vested with power to make rules with retrospective effect. As it is section 40 of the Act which empowers the Central Government to make rules, the rules would have to conform to that section. The extent and amplitude of the rule making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section, the Central Government in such an event would have no power to make rule. Likewise if there was nothing in the language of section 40 to empower the Central Government either expressly or by necessary implication, to make a rule retrospectively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule."

(6) There is no dispute about the fact that Shiv Lal Malik, his widow and son's were members of the joint family and he was a Karta of that family. According to the Explanation I to rule 19 (even as it stood before it was amended with effect from 4-9-1956) the question whether the family was joint or separate should be determined with reference to the status of the family on" 14th August, 19"47. It is necessary to notice in some detail the various steps that had been "taken prior to the coming into operation of rule 19 (as amended) with of effect from 4.9 1952. Shiv Lal Malik had himself filed claims in respect of the properties left by him in the territory, which now forms Pakistan. He died before he could file an application" for payment of compensation in lieu of the verified claims. His widow and son were substituted by an order, dated 3-8-1955, passed by the Additional Settlement Commissioner, Delhi, on 3-8-1955 (Annexure "A" to the petition is a copy of that order)" The statement of Shiv Lal Malik had been recorded by Shri H.C. Hans on 9.12.1954; Thereafter, on his death, his legal representatives, his widow, and the three, adult sons applied to be substituted as legal representatives and Shri Hans had directed that their names be substituted in the place of Shiv Lal Malik in the relevant column of the file. Thus, in the absence of other documents, which were burnt, Shri Hans relied upon the affidavits "filed" before him and held that the property in respect of which claim was so made was an urban plot, meant for a bungalow site.

(7) The sons having, relinquished all their right and interest in the claims of their father in favor of their mother, the mother filed a compensation application on 253 1955, as noticed above ;this seems to have been on her own behalf and on behalf of her three sons. This claim was processed and finalised on 21.12.55 under rule 19 as it then stood. The mother being a widow was given a cheque for Rs, 6,617.00 being her 1/4th share of the compensation due to all the heirs of Shiv Lal Malik in spite, of the fact that the sons had relinquished their interest in the verified claims of their father and compensation due against the said claims in favor of their mother. It is important to notice that the payment, made to the mother, was only in respect of her 1/4th share. This was made as a preferential payment to a widow. It is also important to notice that without actually working

out the amount of compensation due in respect of the totality of the claim, payment of 1/4th could not have. been made to the mother. By virtue of the said finalisation, the sons also, each of them, become eligible to receive Rs. 6,617.00 towards their share of the compensation, which was equal to that of their mother. No amount was actually paid to the sons because they did not like their mother, belong to the priority category this amount, however, could be utilised by them by way of adjustment against the price of evacuee acquired or government built acquired properties.

(8) On 4.5.1956, the mother, acting on behalf of her son, purchased a government built acquired property in Ramesh Nager, New Delhi, in open action for Rs. 16,100.00. Intimation was sent to the Regional Settlement Commissioner, Delhi, to deduct the said sum of Rs. 61,007.00 from the compensation due to petitioners and adjust the same towards the purchase price of the said property. An intimation to this effect was sent by the Office of the Regional Settlement Commissioner, New Delhi, to the Regional Settlement Commissioner, West Bengal, on 13.7.1956 (copy of the same is annexure "A.-1" to the writ petition). It was specifically stated therein that Ved Parkash Malik (one of the three sons) had requested that the amount of purchase price may be adjusted against the compensation payable to him as per the above said claim Similar letters were also addressed (copies of which are Annexure A-2 and A-3 to the writ petition) in respect of the adjustment to be made against the compensation due to the other two sons. It was in these circumstances, that the Assistant Settlement Officer, Patna, had requested the Settlement Officer, Delhi, to disburse the Bank Draft for Rs. 3,752.00 to Smt Viran Wali after making the said adjustment.

(9) The assessed value of the total claim was Rs. 792.50 paise (vide Annexure ""C" , certificate of compensation dated 27.2.1956). Smt. Viran Wali was the holder of a certificate showing that compensation was paid towards satisfaction of claims for immovable property left in West Pakistan and verified under the Displaced Persons (Claims) Act, 1950. The scale of compensation is, according to rule 16, payable as per appendix 8 or 9, as the case may be appendix 8 applies to the present case. The above calculation of the compensation amount payable to Smt. Viran Wali and her three adult sons, was made in accordance with the above said provision. Thus, this compensation was finally processed. The question is whether there is any thing in the rule 19, as amended, which will help to reopen the above said finalisation concerning the payment of compensation. The first aspect to notice is that rule 19, as it came into effect on 4.9.1956, does not even purport to be of retrospective operation ; even if it did it would, according to the supreme court's decision, noticed above, be invalid. The rule cannot be so construed as to make it invalid, either. It is not disputed that old rule 19, as it stood prior to the above said amendment, would apply to the case. According to the same, in addition to adjusting the price of the above said property against the compensation due to the three adult sons, a sum of Rs. 3,752.00 had to be paid to the" widow and that the order passed by Shri Taneja in this respect would be a correct order. According to the old rule, -when four or

more members are entitled to claim partition, the compensation payable to such family, shall be computed by dividing the verified claim into three equal shares and calculating the compensation separately on each Share. share : according to sub rule (3) of Rule 19(3), compensation in the case of a joint family is ordinarily to be payable to the Karta except when .the members of the family did not agree. Not only rule 19, as amended with effect from 4.9.1956, does not have any retrospective operation but the compensation in this case was calculated in the manner provided by rule 19(2) (b), as it stood prior to the amendment, I have not been shown how the same could be reopened by reason of the rule having been amended with effect from 195.56, at a later point of time. At the stags of payment of balance of the compensation to the mother, after the entire sale price was adjusted from out of the said compensation, the government felt constrained by the impugned order to re-determine the said compensation only so far as the adult sons are concerned ; even then the 1/4th share of compensation having been paid to the mother was not re-determined. This was not re-determined on the ground that the compensation had been paid before the rules came into force and could not be "redetermined" under the amended rule 19. It seems to me that the same principle will apply in respect of the entire compensation which was calculated as due, on which basis alone the said 1/4th share due to the mother was paid. If the payment to the mother could not be reopened, by the same token, the compensation calculated as payable to the three adult sons also could not be reopened.

(10) In the result this writ petition succeeds the impugned order passed by the Government on 5.9.1964 (copy of which is Annexure "F" to the petitions) is quashed; as a necessary consequence of the said order being quashed, the order of Shri Taneja, dated 15.4.1959 (copy of which is Annexure "D" to the petition) will stand." The petitioners would also be entitled to the costs of this writ petition. Counsel fee Rs. 250.00