
(1970) 01 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 528 of 1969

Virsa Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 102

Citation : AIR 1970 P&H 525

Hon'ble Judges : Mehar Singh, C.J; R.S. Narula, J

Bench : Division Bench

Advocate : B.S. Jawanda and B.S. Wasu, for the Appellant; Sukhdev Khanna, General (Punjab) and P.S. Mann, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—3 Standard Acres and 13 1/3 Units of agricultural land was allotted to Buta Singh, a displaced person, in village Begumpur. Hadbast No. 129 (sic), tahsil Phillaur, district Jullundur, according to his entitlement. Shri S.P. Katyal Assistant Registrar-cum-Managing Officer, Rehabilitation Deptt., Punjab, found that the valuation of the area actually allotted to Buta Singh against his abovementioned entitlement came to 6-8 Standard Acres against 3-13 1/2 Standard Acres worked out by the field staff. This mistake was found to have occurred because of some action of the Consolidation Department and not on account of any error on the part of the Rehabilitation Department. Shri S.D. Katyal thought that the allottee had received allotment in excess of his entitlement to the extent of 2-10 1/2 Standard Acres. A show-cause notice is therefore, stated to have been issued to Buta Singh who had admittedly died before the issue of the notice. The notice issued to Buta Singh is stated to have been received by his son Milkha Singh. Whether Milkha Singh actually received the notice or not, the fact remains that even he did not appear in response to the notice, which was addressed to his dead father. Admittedly no notice was ever issued to any of the appellants and none was served on appellants Nos. 1 and 2,

the other sons of Buta Singh. By an ex parte order, dated March 29, 1963 (copy Annexure "A" to the writ petition), the Managing Officer cancelled the allotment of Buta Singh to the extent of 2-10 1/2 Standard Acres in the abovementioned village. It may be remembered that the order was passed in ignorance of the factum of death of Buta Singh and had been passed against a dead person. When the appellants came to know of the order, they preferred an appeal against the same which was rejected by the order of Shri Gurdial Singh, Assistant Settlement Commissioner with powers of Settlement Commissioner, dated December 16, 1964.

A further petition for revision of that order filed by the appellants was dealt with by Shri J.M. Tandon, Chief Settlement Commissioner, Punjab, Jullundur, on September 1, 1965. The area which had been retrieved from the appellants in pursuance of the order of the Managing Officer having been found by the Chief Settlement Commissioner to be more than what could be taken away from them under the impugned order, the case was remanded to the Naib Tahsildar (Sales)-cum-Managing Officer, Nakodar, with a direction to find out the quantum of land which was to be retrieved in implementation of the cancellation order. Respondents Nos. 5 and 6 who had in the meantime bid for the retrieved area at an auction were given the option to treat the entire auction in their favour as cancelled or to retain the balance of the area along with the proportionate price of the land which had to be restored in the name of Buta Singh. It was in the abovementioned circumstances that the three sons of Buta Singh, the appellants before us, filed Civil Writ 2917 of 1965, in this Court,

2. The first contention advanced on behalf of the appellants before the learned Single Judge at the hearing of the writ petition was to the effect that the cancellation of the allotment without giving the allottee a reasonable opportunity of being heard, as provided in Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, was illegal and all the impugned orders were, therefore liable to be set aside. It was not disputed at any stage that the notice of the proposed cancellation was issued to a dead person, that the same was not served on appellants Nos. 1 and 2, and that no notice was issued to any of the appellants and none of them appeared before the Managing Officer. The contention of the appellants was rejected by the learned Single Judge on two grounds, viz.:--

(i) that there was no merit in the contention of the appellants as they had been heard at the appellate and the revisional stages: and

(ii) that the point of non-service of notice had not been raised by the appellants before the departmental authorities.

3. The only other argument addressed to the learned Single Judge on behalf of the appellants was that even if the impugned orders of cancellation were upheld, the petitioners were entitled to purchase the excess area and the department was bound to give them an option to do so. The learned Judge held that this

matter had to be dealt with according to the rules and instructions of the department and all that could be done by this Court was to direct the authorities concerned to consider the application of the writ petitioners for purchase of their land after keeping in view the rights of the auction-purchasers. It is against the judgment of the learned Single Judge dismissing the writ petition of the appellants on the abovesaid two grounds that the present appeal has been filed by the unsuccessful writ petitioners under Clause 10 of the Letters Patent of this Court.

4-6. Mr. Baldev Singh Jawanda, learned Advocate for the appellants, submitted that both the grounds on which the main contention of the appellants on the merits of the controversy was rejected by the learned Single Judge are erroneous in law. The cancellation of the allotment was admittedly made under Rule 102. The order could be deemed to have been passed only under Clause (d) of that rule. It is only Rule 102 which authorised the Managing Officer to cancel the allotment in the circumstances enumerated in Clauses (a) to (d) of that rule. The exercise of jurisdiction under that rule is, however, subject to the statutory proviso to that rule which is in the following terms:--

"Provided that no action shall be taken under this rule unless the allottee or the lessee, as the case may be, has been given a reasonable opportunity of being heard."

The requirements of the proviso are mandatory. Any order passed under Rule 102 without satisfying the requirements of the proviso would be without jurisdiction. The first contention of Mr. Jawanda, the learned counsel for the appellants, is that the hearing afforded to the appellants at the appellate and revisional stages was no substitute for the hearing required to be afforded by the Managing Officer before passing an order under Rule 102. Counsel is no doubt supported in this submission by an authoritative pronouncement of their Lordships of the Federal Court in *Suraj Narain Anand v. North-West Frontier Province* AIR 1942 FC 3. In that case it was held as follows:--

"In theory as well as in practice, there is a well-marked difference between a decision given by an officer who acts in the consciousness that he is primarily responsible for the investigation and decision of the case and the act of one who is expected only to satisfy himself that another officer who had the primary responsibility has properly dealt with the case. The distinction seems to us one of substance and is not merely formal or technical"

6. With the greatest respect to the learned Single Judge, we are unable to agree in the face of the abovementioned pronouncement of the Federal Court that the mandatory requirements of the proviso to Rule 102 could be said to have been satisfied by the hearing afforded to the appellants at the appellate and revisional stages. Moreover, in my opinion, the original order of the Managing Officer which had been passed against a dead person was, in the nature of things, a nullity: and a nullity could not be made valid by its being upheld by the appellate or

revisional authorities.

7. We also find great force in the second submission of the learned counsel for the appellants. He has argued that the non-raising of a fundamental and jurisdictional point of this nature before the departmental authorities is not an absolute bar to the matter being urged for the first time in writ proceedings. A point of law not raised before the Industrial Tribunal was allowed to be raised by their Lordships of the Supreme Court in an appeal by special leave against the award of the Tribunal in *Alembic Chemical Works Co. Ltd. Vs. The Workmen*, , on the ground that it arose on admitted facts. In *Seth Badri Prasad and Others Vs. Seth Nagarmal and Others*, , their Lordships of the Supreme Court held that no Court can enforce as valid that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a Court can be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the outset. Each case depends on its own facts in this respect. On the admitted facts of this case, we are unable to hold that a patently invalid order should be allowed to hold the field merely because a fatal defect therein was not pleaded by the appellants in the departmental proceedings.

8. Both the grounds on which relief was refused to the appellants by the learned Single Judge having thus been found by us to be not sustainable on the facts of this case, the impugned order of the Managing Officer, dated March 29, 1963 (Annexure "A"), and the orders of the appellate and revisional authorities upholding the same have to be set aside as being violative of the statutory proviso to R. 102 and we accordingly quash the same.

9. In the view we have taken of the main point canvassed before us on behalf of the appellants, it is really not necessary to go into the second point relating to the right claimed by the appellants to purchase any area which may ultimately be found to be with them in excess of their entitlement. In fairness to the learned counsel for the appellants, it may be noticed that he wanted to argue on the basis of a Single Bench judgment of this Court in *Ram Singh v. The Chief Settlement Commr. (Rural) Punjab* ILR (1969) P&H 554 that his clients have a legal right to acquire such land by purchase. As observed by the learned Single Judge these matters have to be raised before the appropriate departmental authorities to whom the appellants shall have to apply for permission to purchase the excess area, if any. which may ultimately be found to be with them.

10. For the foregoing reasons this appeal is allowed though without any order as to costs; the orders of the Managing Officer, the appellate authority and the Chief Settlement Commissioner, are set aside, and it is left open to the appropriate Managing Officer to take up, if necessary, the question of determination and cancellation of any area allotted to the appellants in excess of their entitlement after giving due notice and adequate opportunity to the appellants to show cause against the proposed action in accordance with law.

Mehar Singh, C.J.

11. I agree.