

(1969) 04 DEL CK 0009

In the Delhi High Court

Case No : Regular Second Appeal No. 182 of 1968

Washdev Singh Bigi

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 24-04-1969

Acts Referred:

Citation : AIR 1970 Delhi 85 : (1969) ILR Delhi 469

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Advocate : D.N. Nijhawan, B. Kirpal, S.N. Gupta and G.N. Aggarwal, for the Appellant;

Judgement

Inder Dev Dua, J.

(1) This second appeal arises out of a suit for a declaration instituted by the plaintiff-appellant on the allegations that he is a claimant and displaced person and lawful tenant of a Government-built property in question situated in Tilak Nagar, New Delhi. The said property is stated to be an allotable property, its value having been assessed at Rs. 3,200.00 The plaintiff pleaded that he was entitled to the transfer of this property at the assessed value under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act (hereafter called the Act). His claim was denied and the property in dispute was transferred by the Union of India in favor of Smt. Kundan Devi, defendant No. 2. This transfer was described by the plaintiff to have been effected as a result of fraud and misrepresentation practiced by the transferee's husband. The matter was taken by the plaintiff to the Settlement Commissioner on appeal, but the same was rejected on 14-3-1962. This order was described by the plaintiff to be without jurisdiction because the Assistant Commissioner, according to him, had not been delegated the powers of the Settlement Commissioner. The matter was further taken on revision to the Chief Settlement Commissioner, but that was also rejected on 11-6-1962. The approach to the Central Government u/s 33 of the Act was also unsuccessful. It was thereafter that the present suit was

instituted.

(2) The pleadings of the parties gave rise to several issues, but issue No. 4, which is concerned with the plaintiff's locus standi to institute the present suit, alone concerns me. The trial Court came to the conclusion that the plaintiff had no locus standi to sue. The other issues were also decided on the merits by the trial Court. Issue No. 6 dealing with the plea of res judicata was decided in favor of the plaintiff.

(3) On appeal, the learned Additional District Judge affirmed the judgment and decree of dismissal of the suit on 13-5-1968. According to the lower appellate Court, under Rule 42 of the Displaced Persons (Compensation and Rehabilitation) Rules, the authorities concerned had a discretion to transfer or not to transfer an allotable property to a displaced person who did not hold a verified claim and in view of this rule, the plaintiff-appellant had no locus standi to maintain the suit as he had no actionable claim against the Rehabilitation Department of the Government of India. From the judgment of the lower Appellate Court, it seems that no other ground was pressed before that Court. I have made this observation because Shri G. N. Aggarwal, learned counsel for one of the respondents, has tried to re-agitate the question of res judicata which was decided by the trial Court, but which was not the subject-matter of argument before the lower Appellate Court.

(4) In this Court, Shri Nijhawan, the learned counsel for the appellant, has in very elaborate arguments forcefully pressed the contention that although his client was not absolutely entitled to get the property in question, still as he was one of the persons who might have been given this property, he had a locus standi to institute the suit and that the lower Appellate Court was, for this reason, wrong in law in holding the suit to be incompetent. He has drawn my attention to various provisions of the Act and the Rules framed there under, but he has specifically referred to Rules 36, 41 and 42. Rule 36 reads as under :-

"36. Classes of Government built properties which may be allotted. The following classes of Government built properties shall ordinarily be allotable, namely :- (a) every Government built residential property valued at rupees fifteen thousand or less and occupied by a displaced person on a rental basis : Provided that the Central Government may in any particular case direct that any such property shall not be allotable : (b) every Government built shop valued at rupees fifteen thousand or less. Explanation.-No such property shall be allotable, if it is in the occupation of two or more persons, whether any or all of them be displaced persons or not."

(5) According to Shri Nijhawan, there is no distinction between the right of a displaced person who holds a verified claim and the one who does not hold such a claim, but this submission seems to me to be misconceived because of the difference in the language of Rules 41 and 42. Rule 41 lays down that a displaced person having a verified claim who is in occupation of a Government built

property which is an allotable property, shall be paid compensation by the transfer of the property to him :

(6) Rule 42 on the other hand provides that where a displaced person, who does not hold a verified claim, is in occupation of a Government built property, which is an allotable property, the property may be transferred to him if he makes the initial payment of:

(7) The use of the words "shall" and "may" in the two rules respectively, seems to me to bring out the distinction between the two, which also appears to be rational. No argument has been advanced before me on behalf of the appellant as to why the word "shall" in Rule 41 should be given a permissive colour or the word "may" in Rule 42 should be construed in a preemptory manner. The decisions on which the learned counsel for the appellant has placed reliance do not seem to be of much assistance to him. *Bhiru Mal v. The Finance Commissioner* (1), is a case of a writ petition in which it was held that if the petitioner had direct individual personal interest in a certain matter, which was being affected prejudicially by a quasi-judicial order in a proceeding to which he was a party, then it should not be said that he had no right to invoke the extraordinary jurisdiction of a High Court under Article 226 of the Constitution merely because no law conferred on him the absolute right to claim the very relief for which he had applied and which had been denied to him. In the reported case, where the impugned order by the Managing Officer showed on its very face that the said officer was prohibited by administrative instructions from exercising his discretion or even from bringing to bear upon the question before him his own independent mind by certain administrative instructions or a circular letter issued by a superior authority, then that order had to be held to be based on extraneous reasons liable to be set aside on that short ground. The ratio of this decision is clearly of no help to the appellant. *Ebrahim Aboohakar v. Custodian General of Evacuee property* (2), was a decision given on appeal from a decision of the Punjab High Court in writ proceedings and it was held that a person claiming to be interested in an enquiry as to whether a person was an evacuee and his property evacuee property, who had filed a written statement and adduced evidence, was a "person aggrieved" by an order that the latter was not an evacuee and had a locus standi to prefer an appeal from that order. *State of Punjab v. Suraj Parhash Kapur* (3) was an appeal from an order of the Punjab High Court in writ proceedings and it was held that the respondents' lands had been substituted by lands of less value without paying compensation and that, Therefore, the High Court was right in setting aside the order confirming the scheme under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. *The Management of Marina Hotel v. The Workmen*, a case dealing with an industrial dispute, is equally up helpful to the appellant. The ratio of the unreported decision of this Court in *Sohan Lal. v. Union of India*(5) decided on 5-5-1967 also does not support the appellant's submission that he has in the present case a right which can be enforced by way of suit. It is indisputable that the word "shall" does not always conclusively convey an

imperative mandate and similarly the word "may" is at times intended by the law-giver to mean "must". But to construe "shall" as "may" and , as "shall" there must be compelling reasons discernible from the context and the statutory aim, object and purpose. In the absence of such consideration, these words must be given their normal meanings in the English language.

(8) Shri Kirpal has drawn my attention to section 36 of the D.P. (C and R) Act which bars the jurisdiction of civil Courts in all matters which the Central Government or any officer of the authority appointed under the Act is empowered by the statute to determine except where this Act itself provides otherwise. It is obvious that prima face this section bars the present suit and on behalf of the appellant, precious little has been said for taking the present case out of this statutory bar. Our attention has also been invited to an unreported Bench decision of this Court in Hafiz-ud-Din v. Union of India (6), in which challenge by means of a civil suit on the ground of want of consideration to a transfer of property by the Central Government through the Managing Officer was held to be incompetent by virtue of section 36. In my opinion, the respondents are right in their reliance on section 36. A bare reading of this section shows how widely it is worded and how clearly it bars the jurisdiction of civil Courts in matters specified therein. The statute quite clearly provides a complete machinery for a person claiming compensation or rehabilitation under this Act and there are ample provisions for appeals and revisions if a party interested feels aggrieved. The bar renders the present suit incompetent and it binds the civil courts.

(9) Although the learned counsel for the appellant at one stage virtually conceded that he was not a claimant, nevertheless in the fag end of his arguments, he made a half-hearted attempt to urge that he was also a claimant, but this submission is unacceptable on second appeal on the facts and circumstances of this case. The trial Court had observed in express words that there was no evidence on behalf of the appellant to show that he held a verified claim in his favor. His bald submission that he was a claimant was not accepted. The lower Appellate Court also held that the appellant could not be considered to be a displaced person having a verified claim. These conclusions have not been shown to be tainted with any illegality, with the result that this submission must be repelled. As observed earlier, Shri G.N. Aggarwal tried to raise the question of res judicata but no attempt had apparently been made in the Lower Appellate Court to support the decree of the trial Court on this plea which had been negatived by the first Court. I, Therefore, did not consider it proper to allow him to raise this point on second appeal, more particularly as I was not persuaded to hold the suit to be competent.

(10) For the foregoing reasons, this appeal fails and is dismissed, but with no order as to costs.