

Union of India
v.
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under a Republican form of Government on the same grounds as in the Bombay case. I am in respectful agreement with the pronouncements on the law in this matter and I accordingly hold that the learned Sub-Judge wrongly held that the old crown priority over other unsecured creditors had disappeared with the inauguration of the Republic of India, and that the Government is entitled to claim the sum in dispute on behalf of the Delhi Improvement Trust. Since nobody appeared on behalf of the respondents there is no order as to costs.

K.S.K.

CIVIL WRIT

Before Chopra, J.

THAKAR JAISHI RAM AND OTHERS,—*Petitioners.*

versus

THE CHIEF SETTLEMENT COMMISSIONER,
JAISALMER HOUSE, NEW DELHI, AND OTHERS,—

Respondents

Civil Writ No. 450 of 1956.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954) Sections 19, 24 and 33—Chief Settlement Commissioner—Whether competent to cancel allotments made under the Administration of Evacuee Property Act (XXXI of 1950), in exercise of appellate or revisional powers—Extent and scope of such powers—Powers of the Central Government under section 33—Whether exercisable by the Chief Settlement Commissioner—Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 72—Inquiry under—Scope of.

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Held, that having regard to the provisions of section 28 of the Administration of Evacuee Property Act, 1950, the Chief Settlement Commissioner cannot entertain any appeal against the order of allotment or exercise his appellate powers under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, to set aside the order of allotment made more than four years before.

Held, that the revisional powers conferred on the Chief Settlement Commissioner under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954) are confined to orders made or acts done by the subordinate officers under the Act. Under subsection (2) of section 24, he can set aside an allotment only if he is satisfied that the allotment was obtained "by means of fraud, false representation or concealment of any material fact." He cannot consider the merits of the respective claims of the parties, or that the allotment was made without notice to the other party.

Held further, that the Chief Settlement Commissioner cannot take action under section 33 of the Act because the powers exercisable by the Central Government are not shown to have been delegated to him by any notification in the official gazette, as provided by section 34 of the Act. Moreover the power could be exercised only if it was not inconsistent with any of the provisions contained in the Act or the Rules made thereunder.

Held also, that under Rule 72 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, the inquiry is to be made by the Settlement Officer and while making the inquiry he is only to find out whether the allottee secured his allotment in excess of that due to him or that he was not entitled to any allotment or that he obtained the allotment by means of fraud, false representation or concealment of material facts. After the inquiry is completed, he is to record his findings as to the correctness or otherwise of the allotment and submit the case for necessary orders to the Settlement Commissioner after furnishing a copy of his findings to the allottee.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or mandamus be issued quashing the order of respondent No. 1, dated 15th September, 1956, and prohibiting the respondents from interfering with the rights of petitioner to land allotted to him in village Bishanpura.

A. M. SURI, for Petitioners.

M. R. MAHAJAN and A. S. AMBALVI, for Respondents.

ORDER

Chopra, J.

CHOPRA, J.—This is a petition under Article 226 of the Constitution for a writ quashing an order of the Chief Settlement Commissioner, New Delhi.

The facts which are not disputed are these: Thakar Jaishi Ram, petitioner, was allotted 91 standard acres $2\frac{3}{4}$ units of land on quasi permanent basis in village Bishanpura, Tahsil Dasuya, District Hoshiarpur, on 8th September, 1949. On 30th April, 1951, the allotment was cancelled by Shri M. S. Randhawa, Additional Custodian, and by the same order the petitioner was selected for allotment of some other land in Wah Tea Estate in Palampur, District Kangra. In 1952, the Government decided that the evacuee area in Wah Tea Estate should not be allotted. In pursuance of this decision, it was directed that the allottees selected for the Wah Tea Estate should be restored to their original allotments. Consequently, the allotment made to respondents Nos. 2 to 13 in place of the petitioner were cancelled and the same land in Bishanpura was reallocated to the petitioner. This order was made by the then Additional Custodian on 14th June, 1952. A petition under Article 226 of the Constitution, preferred by the respondents against the order of the additional Custodian, was dismissed by this Court on 24th November, 1953. The respondents then approached the Custodian, Evacuee Property, Punjab, with an application praying that the Central Government be moved for issuing a special direction cancelling Jaishi Ram's allotment in Bishanpura. The application was dismissed on 19th January, 1955. Against this order of the Custodian, the respondents preferred a revision to the Custodian-General and also presented a

writ petition to this Court. The former was dismissed on 8th September, 1955, and the latter on 21st February, 1956.

Still, the respondents did not remain content. On 2nd May, 1956, they presented an application to the Minister for Rehabilitation, which was forwarded for disposal to the Chief Settlement Commissioner, New Delhi. This time the respondents happened to have a better luck. The Chief Settlement Commissioner,—*vide* his order dated 15th September, 1956, cancelled the allotment in favour of Jaishi Ram and directed Sanads to be granted to the respondents. It is against this order that the present petition is directed.

On behalf of the petitioner it is submitted that the order of allotment dated 14th June, 1952, in favour of Jaishi Ram had become final and that it could not be revised, reviewed or varied by the Chief Settlement Commissioner in 1956. It is pointed out that the Chief Settlement Commissioner had no such authority or jurisdiction under the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954 (hereinafter to be referred as the Act), which came into force on 11th October, 1954. It appears, the learned Chief Settlement Commissioner himself was not sure as to the provision of law under which he could take action and cancel the allotment. To start with, he described the application before him as a petition for revision. In the penultimate para and the operative part of his decision he treated the application as an appeal. The allotment to the petitioner was made under the provisions of the Administration of Evacuee Property Act, No. XXXI of 1950. Chapter V of that Act lays down the mode and procedure according to which an order of allotment can be challenged and set aside

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Thakar Jaishi or modified by the higher authorities. Section 28
 Ram of the Act says—
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“Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, District Judge, Custodian, Additional Custodian, Authorised Deputy, Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceedings.”

Obviously, the Chief Settlement Commissioner could not entertain any appeal against the order of allotment or exercise his Appellate Powers under the Act to set aside the order, more than four years after it was passed. Mr. M. R. Mahajan, learned counsel for the respondents, further concedes that it was not a case where the Chief Settlement Commissioner could exercise the revisional powers conferred on him by section 24 of the Act. The revisional powers are confined to orders made or acts done by the subordinate officers under the Act. In any case, under subsection (2) of section 24, the Chief Settlement Commissioner can set aside an allotment only if he is satisfied that the allotment was obtained “by means of fraud, false representation or concealment of any material fact.” Nothing of the kind was either alleged or found to exist by the Chief Settlement Commissioner in this case. On the other hand, he considered the merits of the respective claims and arrived at the conclusion that the respondents’ claims to the allotment were superior to those of the petitioner, as the former were small and sitting allottees. In the opinion

of the Chief Settlement Commissioner, the allotment in favour of the petitioner on quasi-permanent basis was defective also because it was made without notice to the respondents. The Chief Settlement Commissioner lost sight of the fact that the allotment in favour of the petitioner was not found to suffer from any such defect by this Court in the writ petition (Civil Writ No. 208 of 1952, decided on 24th November, 1953), and by the Deputy Custodian-General in his order dated 8th September, 1955. The Deputy Custodian-General had further found that on merits there was nothing wrong in the order and also that it had already become final and unassailable. In any case, the Chief Settlement Commissioner had no authority under section 24(2) of the Act to cancel the order of allotment on the grounds mentioned by him.

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Mr. Mahajan places his reliance on the residuary powers of the Central Government under section 33 of the Act, which says—

“The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as it is not inconsistent with any of the provisions contained in this Act or the rules made thereunder.”

In the first instance, it is not for the Chief Settlement Commissioner to take action under the section; the powers exercisable by the Central Government are not shown to have been delegated to him by any notification in the Official Gazette, as provided by section 34 of the Act. Secondly, the power could be exercised only if it was not inconsistent with any of the provisions

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contained in the Act or the Rules made thereunder. To the Rules, I shall presently refer. Section 10 of the Act lays down *inter alia* that where any immovable property has been allotted to a displaced person by the Custodian under the conditions published by the notification of the Government of Punjab in the Department of Rehabilitation No. 4891-S or 4892-S, dated the 8th July, 1949, and such property is acquired under the provisions of the Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition. Admittedly, the land in question had been allotted to the petitioner as required by the section and on coming into force of the Act, the land was acquired by the Central Government. In the circumstances, the petitioner was entitled to continue in possession on the same conditions on which he held the land immediately before the date of the acquisition. The mere fact that the respondents had succeeded in keeping the petitioner out of possession by getting interim stay orders from different authorities would be of no material consequence. So long as the order of allotment was not set aside by any competent authority, the petitioner was entitled to the land and its possession.

Section 19 relates to the powers to vary or cancel leases or allotment of any property acquired under the Act. Subsection (1) of section 19, which alone is relevant, says—

“Notwithstanding anything contain in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the

managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act."

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Action under this section could only be taken, in the first instance, by the Managing Officer or Managing Corporation. Even if the Chief Settlement Commissioner could and did act under the provisions of this section, as suggested by Mr. Mahajan, he could do so only "subject to any rules that may be made under this Act." Section 40 of the Act gives the rule-making power to the Central Government. In exercise of the powers so conferred the Central Government framed the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. Rule 71 requires an allottee to file a declaration in the specified form at the time and place to be notified by the Government. Then follows Rule 72 which says:—

- "(1) Where the allottee has no verified claim in respect of property other than agricultural land, the Settlement Officer shall, on receipt of a declaration under Rule 71, verify the particulars specified therein in the presence of the allottee or his authorised agent, and determine the public dues outstanding against such allottee.
- (2) * * * * *
- (3) If the Settlement Officer, finds from the inquiry referred to in sub-rule (1) that

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the allotment has secured an allotment in excess of that due to him or that he was not entitled to any allotment or that the allotment was obtained by means of fraud, false representation or concealment of material facts, he shall after due inquiry and after giving the allottee reasonable opportunity of meeting the objections record his findings as to the correctness or otherwise of the allotment.

- (4) A copy of the findings under sub-rule (3) shall be supplied free of cost to the allottee and the case along with the relevant record of evidence and documents shall then be sent with the recommendations of the Settlement Officer to the Settlement Commissioner who may pass such orders thereon as he may deem fit."

Here again, it is the Settlement Officer who is to make an enquiry into the matter and record his finding as to the correctness or otherwise of the allotment. He is then to furnish a copy of his findings free of cost to the allottee and to submit the case for necessary orders to the Settlement Commissioner. Moreover, all that the Settlement Officer may enquire into and determine is: Did the allottee secure the allotment in excess of that due to him, was the allottee not entitled to any allotment or was the allotment obtained by means of fraud, false representation or concealment of material facts? It is abundantly clear that none of the provisions of this Rule was complied with. Viewed from whatever angle, the order of the Chief Settlement Commissioner was in excess of his authority and shall have to be set aside.

On behalf of Subedar Kirpa Singh son of Jota Singh, respondent No. 14, it is contended that he has already been granted a Pacca Sanad under the Act with respect to a part of the land in question and the same cannot now be cancelled. Sanad of the entire land is also said to have been granted to the petitioner. Effect of the one or the other or that of the Sanad, if any has been granted to the respondents, on the allotment in favour of the petitioner are matters which are to be decided by the Rehabilitation authorities at the proper stage; no opinion thereon need be expressed in these proceedings.

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In the result, the petition is accepted and the order of the Chief Settlement Commissioner dated 15th September, 1956, quashed. The respondents Nos. 2—13 shall pay costs of the petition. Counsels' fee shall be Rs 50.

B.R.T.

APPELLATE CIVIL.

Before Chopra, J.

M. G. DUA (MADHO LAL DUA),—*Defendant-Appellant.*

versus

M/s. BALLI MAL-NAWAL KISHORE,—*Plaintiff-Respondents.*

First Appeal from Order No. 128 of 1956.

Code of Civil Procedure (V of 1908)—Order 9, Rule 6—Ex parte proceedings—When to be taken—Order 5, Rules 2 and 10—Due service—When can be deemed to have been effected—Summons served without copy of the plaint—Whether due service—Summons by registered post not sent in the first instance—Whether this mode of service can be resorted to later on—Punjab Proviso to Rule 10—Effect of—Order 9, Rule 13—Sufficient cause—Defendant acting on solicitors' advice—Whether sufficient cause.

Held, that *ex parte* proceedings under Order 9, Rule 6 of the Code of Civil Procedure can only be taken where

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