B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

JAGMOHAN SINGH,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 323 of 1963.

1964

August, 31st.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 14 and 20—Displaced Persons (Compensation and Rehabilitation) Rules—Rules 56 and 62—Displaced persons allotted land in excess of what they were entitled to in lieu of the land left in Pakistan—Excess land offered to the allottees on market price—Allottees— Whether can insist on transfer of land to them at the price fixed in Rule 62.

Held, that in view of the provisions of section 14 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, all agricultural land in the Punjab forms part of the compensation pool and vests in the Central Government free from all encumberances and has to be utilised in accordance with the provisions of the Act and the Rules made thereunder. Section 20 confers power of transfer of property out of the compensation pool and one of the modes of transfer is by sale. The offer to sell is *ex-gratia* and not as a matter of law as is in the case of persons governed by Rule 62 of the Displaced Persons (Compensation and Rehabilitation) Rules. It is axiomatic that an owner of the property cannot be forced to sell property at any particular price, unless there is a statutory provision to that effect. Rules 56 and 62 of the Displaced Persons (Compensation and Rehabilitation) Rules do not apply to the allottees of lands in the States of Punjab and Patiala and East Punjab States' Union and so the allottees in these States cannot insist that the excess land

should be transferred to them at the price fixed in Rule 62. There is no provision in the Act or the rules where-under the Department is bound to make the offer and that too at a fixed price. Therefore, the offer to sell at the market price cannot be said to be discriminatory in as much as the allottees in the States of Punjab and the Patiala and East Punjab States Union, and the allottees outside these States do not fall in one category but belong to distinct categories. Such classification cannot be said to be in any manner unreasonable. It is now well-settled that different classes can be differently treated and such differential treatment will not be violative of Article 14 of the Constitution. So far as the Act and the Rules are concerned, the fact of the matter is that the petitioners have no right to demand the transfer of the excess allotment of land at a particular price. The land belongs to the Central Government and the Central Government has the right to sell it at the price it deems fit. So far as the petitioners are concerned, there is no vested right in them to get the transfer of excess land. If they want the land they can take it only if it is offered to them and at the price at which it is offered. They have no right to dictate terms to the Department.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan to a larger Bench on 28th October, 1963 for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice D. K. Mahajan on 31st August, 1964.

Petition under Articles 226 and 227 of the Consitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the orders of respondents Nos. 1 to 4, dated 12th February, 1963, 10th September, 1962, 30th July, 1962 and 29th June, 1962, respectively.

H. S. WASU AND B. S. WASU, ADVOCATES, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

Mahajan, J.

MAHAJAN, J.—This order will dispose of Civil Writs Nos. 323 of 1963, and 2413 of 1963. The basic facts in both the petitions are the same. The difference is only with regard to the parties and the area. In Civil Writ No. 323 of 1963, the petitioner (Jagmohan Singh) was allotted 30 standard Acres 8 Units of land on verification of his claim in lieu of the land left by him in Pakistan as follows:—

	Standard Acre	Units
(i) In Kachroli Garden Coloney	16	7½
(ii) In village Ratipur tehsil Panipat.	14	½

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In Civil Writ No. 2413, the petitioner (Rachhpal Kaur), was allotted 47 Standard Acres 8½ Units of land in lieu of the land left in Pakistan. The petitioners were found to have been allotted land in excess to the extent of 12 Standard Acres and 12¾ Units, and 9 Standard Acres 10¾ Units, respectively. Allotments of land made in excess were cancelled. The validity of the cancellation is not in dispute. The petitioners were offered that they could keep the cancelled area if they were willing to pay the market price of the same. The petitioners, however, took the stand that they were entitled to retain the excess area on payment of its price at the rate of Rs. 450 per Standard Acre. This stand was taken in view of Rules 56 and 62 of the Displaced Persons (Compensation and Rehabilitation) Rules. It is not disputed that these Rules do not apply to the petitioners. But it is maintained that with regard to the petitioners there should have been such Rules and in the absence of Rules, the petitioners should be treated similarly with other displaced persons to whom these rules apply. With regard to the area which was found to be in excess and was cancelled, a demand was also made by the Department for rent at the rate of 8 times the land revenue.

In the present petitions only three matters are canvassed, namely,—

(1) that the excess land should be sold to the petitioners at the rate of Rs. 450 per Standard Acre;

(2) that the petitioners are liable only to pay rent at the rate of 6 times the land revenue and not 8 times the land revenue; and

(3) that the petitioners had made improvements on the areas which are being withdrawn from them and as such they are entitled to compensation.

With regard to compensation, the Chief Settlement Commissioner took the view that "the question of compensation can possibly be agitated at the time of actual withdrawal of the land because it can only at that time be determined if any improvement had been made on the land". The question of improvements has, therefore, been left open for determination by the department. In this view of the matter, this contention has not been pressed in the present petitions.

With regard to the first contention, the argument proceeds like this: Rule 56 of the Displaced Persons (Compensation and Rehabilitation) Rules-hereinafter referred to as the Rules—provides for the conversion of a standard acre of land into cash for purposes of payment of compensation and fixes the highest rate per standard acre at Rs. 450. Rule 62 on the other hand provides that in case of excess allotment of agricultural land an allottee who wishes to retain excess land shall be required to pay the value of the excess land in instalments to be determined by the Settlement Commissioner. The Explanation to Rule 56 provides that the value of the land shall be determined at the rate mentioned in Rule 56. Therefore, the petitioners should also be charged the price of excess land at Rs. 450 per Standard acre.

It is common ground that the petitioners are allottees from Punjab and that there is no similar provision with regard to allottees of agricultural land in the States of Punjab and Patiala and East Punjab States Union. Rule 69 excludes the application of Chapter VIII (in which rules 56 and 62 occur) to such allottees. In terms neither rule 56 nor rule 62 applies to the petitioners. The question that arises is: At what price the land has to be transferred ? The stand of the department is that the land can only be transferred at its market price whereas the stand taken up by the petitioners is that they are entitled to its transfer at the rate of Rs. 450 per standard acre. It is not disputed that there is no provision in the Displaced Persons (Compensation and Rehabilitation) Act, 1954 hereinafter called the Act—like rule 62, which would entitle the petitioners to the transfer of the excess lands to them. All agricultural land in the Punjab forms part of the compensation pool and vests in the Central Government free from all encumberances and has to be utilised in accordance with the provisions of the Act and the Rules made thereunder, see section 14 of the Act. Section 20 confers power of transfer of property out of the compensation pool and one of the modes of transfer is by sale. It follows, therefore, that the proper authorities under the Act have the power to transfer pool property by sale and it is in accordance with this provision that offer of transfer of the excess land was made by the Department. The

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offer is *ex-gratia*. It is not an offer as a matter of law as is in the case of persons governed by Rule 62. It is axiomatic that an owner of the property cannot be forced to sell property at any particular price, unless there is a statutory provision to that effect. In this situation the position is that an owner, i.e., the Department has offered to sell the excess land to the petitioners at the market price. There is no provision either in the Act or in the rules where-under the department is bound to make the offer and that too at a fixed price. Therefore, the offer to sell at the market price cannot be said to be discriminatory inasmuch as the allottees in the States of Punjab and the Patiala and East Punjab States Union, and the allottees outside these States do not fall in one category, but belong to distinct categories. Such classification cannot be said to be in any manner unreasonable. It is now well settled that different classes can be differently treated and such differential treatment will not be violative of Article 14 of the Constitution. It may be that the Legislature wanted to favour allottees, who were not allotted lands in the States of Punjab and Pepsu and formed a sperate and distinct class, and, therefore, made rules which are to be found in Chapter VIII, whereby a right has been conferred on them under rule 62. No such corresponding right has been conferred on allottees of land in the States of Punjab and Pepsu. That is a matter of legislative policy or at best it may be a case of lacuna, but it is not for this Court either to lay down the legislative policy or to fill up the lacuna. So far as the Act and the Rules are concerned, the fact of the matter is that the petitioners have no right to demand the transfer of excess allotment of land, at a particular price. The land belongs to Central Government and the Central Government has the right to sell it at the price it deems fit. So far as the petitioners are concerned, there is no vested right in them to get the transfer of excess land. If they want the land they can take it only if it is offered to them and at the price at which it is offered. They have no right to dictate terms to the Department.

Mr. Wasu, learned counsel for the petitioners, raised the contention that under executive directions the department could not fix the price of the land. In support of this contention he relies upon the decision of this Court

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in *Bishan Singh* v. *Central Government and others* (1). This decision has no application to the facts of the present case. In *Bishan Singh's case*, the holders of urban agricultural land were entitled to purchase that land under the Act and the matter of such sales was settled by the executive directions. In this situation this Court held that Executive instructions could not take the place of rules and the rights of the parties could not be settled with reference to those instructions. So far as the present case is concerned, the petitioners have no right to the land and as such they can make no grievance, if it is not offered to them. If it is offered to them they have to take it in terms of the offer or leave it.

Mr. Wasu then relied on rule 72 of the Rules for his contention that the petitioners were entitled to the transfer of the excess land. This contention is wholly fallacious because rule 72 does not confer any right on the petitioner to acquire the land in excess of his allotment.

For the reasons given above, the first contention has no merit and must fail.

With regard to the second contention, it will be proper to advert to the provisions of section 19(4) of the Act, which is in these terms:—

> "19(4) Where a managing officer or a managing corporation is satisfied that any person whether by way of allotment or of lease is, or has at any time been, in possession of any evacuee property acquired under this Act to which he was not entitled, or which was in excess of that to which he was entitled, under the law under which such allotment or lease was made or granted, then, without prejudice to any other action which may be taken against that person, the managing officer or the managing corporation may, having regard to such principles of assessment of rent as may be specified in this behalf by the Central Government, by order, assess the rent payable in respect of such property and that person shall be liable to pay

(1) I.L.R. (1961) 1 Punj. 415=(1961) 63 P.L.R. 75.

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the rent so assessed for the period for which the property remains or has remained in his possession:"

In exercise of the powers conferred by section 19(4) Government passed the following order which is annexure R-I to the written statement:—

"In exercise of the powers conferred by sub-section (4) of section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby specifies the following principles of assessment of rent for purposes of charging the same from a person who is, has at any time been, in possession of such evacuee property as is specified below in the State of Punjab, and acquired under the said Act, to which he was not entitled, under the law under which the allotment or lease thereof was made or granted to him, for the period for which the property remains or has remained in his possession.

(1) In case of allotments or leases of evacuee agricultural lands which have been obtained by fraud or concealment of material facts by the allottees or lessees; 8 times the land revenue shall be charged as rent.

(2) In any other case of allotment or lease of evacuee agricultural lands as aforesaid; 6 times the land revenue shall be charged as rent."

It is in pursuance of annexure R-1 to the written statement that the rent at 8 times the land revenue has been demanded. All that the petitioner was entitled to is a hearing and it is patent from the record that he was afforded a hearing before the rent at 8 times the land revenue was demanded from him. As a matter of fact he contested the demand of rent at 8 times the land revenue and persisted that only rent at 6 times the land revenue could be demanded from him, but this contention was rejected on the merits by the Department. We see no reason to interfere with the order of the department on this part of

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the case. The order is neither illegal nor without jurisdiction.

No other contention has been advanced.

For the reasons given above, these petitions fail and are dismissed with costs which are assessed at Rs. 50 in each petition.

Dua, J.

INDER DEV DUA, J.—I agree.

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