

CIVIL MISCELLANEOUS

Before S. B. Kapoor, J.

GURBACHAN SINGH,—Petitioner.

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No. 1569 of 1960

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 24—Chief Settlement Commissioner—Whether can vary his order passed under S. 24 on a subsequent occasion.

1962

August, 21st.

Held, that under sub-section (1) of section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which any subordinate authority has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit. This does not mean that after the Chief Settlement Commissioner has once passed an order confirming the order of the subordinate authority, he can on a subsequent occasion and without any fresh material being before him, make an entirely different order setting aside the order of the subordinate authority.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order of respondent No. 2 dated the 18th April, 1960, cancelling the conveyance deed from the name of the petitioner and of respondent No. 1, dated 3rd September, 1960, dismissing the petitioner's appeal against the aforesaid order and further praying that the respondents be directed to complete and execute the deed in petitioner's favour.

H. S. GUJRAL, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, K. S. THAPAR, AND L. K. SUD, ADVOCATES, for the Respondents.

ORDER

Capoor, J.

CAPOOR, J.—In this writ petition under Article 226 of the Constitution of India, Gurbachan Singh has challenged the order, dated the 18th April, 1960, of Shri C. P. Sapra, Settlement Commissioner, with delegated powers of the Chief Settlement Commissioner (respondent No. 2) whereby the transfer to the petitioner of house No. 48-A, Railway Road, Bhatinda, was set aside. The petitioner went up to the Central Government under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954), hereinafter to be referred to as the Act, and his application was rejected by the Union of India (respondent No. 1 to the petition),—*vide* its letter No. 38(888)/60-IMP(A), dated the 3rd September, 1960 (copy Annexure 'A').

The facts stated in the petition are as follows:

The petitioner, who is a displaced person from West Pakistan, was an occupant of house No. 48-A and it was allotted to him on *quasi* permanent basis on the 9th September, 1955, by the Assistant Custodian, Bhatinda District (*vide* his communication, dated the 9th September, 1955, copy Annexure 'H'). The petitioner continued in possession as allottee ever since. The Managing Officer under rules 22 and 25 of the Rules made under the Act offered the house to the petitioner for Rs. 3,797 (*vide* copy Annexure 'F'). The petitioner got Rs. 2,565 of the compensation due to him in respect of his verified claim adjusted on the 28th November, 1958, and the balance of Rs. 1,232 was paid by him on the 26th January, 1959. The conveyance deed relating to this house was duly executed and completed on the 14th March, 1960, and the petitioner, therefore, claimed that he became absolute owner of this house.

It appears that across the street is house No. 48 which had been previously occupied by the District Judge, Bhatinda, and was thereafter allotted to Bibi Amtus Salam, Secretary, Kasturba Sewa Mandir, Rajpura, as representing Khadi Gram Udyog Bhandar (respondent No. 3). Subsequently, this respondent made some applications to the Regional Settlement Commissioner, who *vide* his letter No. 36293, dated the 6th August, 1959, recommended to the Chief Settlement Commissioner that the transfer of house No. 48-A in favour of the petitioner be cancelled and the same be sold to respondent No. 3. This recommendation was turned down by the Chief Settlement Commissioner *vide* his order, dated the 9th September, 1959, intimation of which was sent by his letter No. III (1089-576) PROF Camp saying that the property had already been transferred to the petitioner as a displaced person. A second representation was made by respondent No. 3 in this connection to the Chief Settlement Commissioner alleging that she had spent some money on the property. That officer again called for the report but,—*vide* his order, dated the 20th February, 1960, he again turned down respondent No. 3's request for transfer of house No. 48-A. Then a third similar representation was made by respondent No. 3, upon which the Chief Settlement Commissioner issued a notice, dated the 17th March, 1960, to the petitioner to show cause as to why the transfer relating to house No. 48-A be not cancelled, and it was then that the Chief Settlement Commissioner passed the impugned order, dated the 18th April, 1960.

The fourth respondent is the District Rent-cum-Managing Officer, Faridkot, in charge of Bhatinda District. Respondents Nos. 1, 2 and 4 have filed a written statement opposing the petition and were represented at the hearing by Mr. H. S.

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Gurbachan Singh Doabia, Respondent No. 3 has also opposed the
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 of petition, the counsel being Mr. K. S. Thapar,
 Advocate.

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In the impugned order it is stated that on the 28th December, 1954, respondent No. 3 secured the allotment of house No. 48-A for the Khadi and Gram Udyog Bhandar. At that time one room of this property was in possession of a displaced person, that is, Gurbachan Singh petitioner. It was further mentioned in the order that Gurbachan Singh was an unauthorised occupant and the proper course to be adopted at that time was to evict Gurbachan Singh and hand over the possession of that room also to respondent No. 3, but instead of doing that the property as allotted by the Assistant Custodian to Gurbachan Singh. It was further mentioned that at that time the Kasturba Sewa Mandir had invested something like Rs. 2,500 to Rs. 3,000 on the industries set up by them in that building and this amount had not been included in the valuation amounting to Rs. 3,797 and that this was again a vital mistake in dealing with the property. The conclusion was that since the initial allotment was wrong, the subsequent transfer to Gurbachan Singh could not be justified.

The main reliance by the petitioner is on the allotment letter (copy Annexure 'H'), dated the 9th September, 1955, and reference is particularly made to paragraph 4 in which it is mentioned that all previous allotment orders passed in respect of the said premises were cancelled. In the return submitted by respondent No. 3 it is mentioned that the allotment made in favour of this respondent could not have been cancelled without notice and the respondent was not aware of the allotment in favour of the petitioner. The records have been sent for. The order, dated the 9th September, 1955, by the Assistant Custodian of Evacuee

Property (at pages 70 to 71 of the file) shows that when it was passed only the petitioner was present and that the allotment of house No. 48-A to respondent No. 3 was cancelled without notice to that respondent. The petitioner in the course of his petition has alleged that the property No. 48-A has never been allotted to respondent No. 3 but this is belied by the letter of the Assistant Custodian, Faridkot, to the District and Sessions Judge, Bhatinda, dated the 29th December, 1954 (copy Annexure R-II), according to which both the properties were allotted to respondent No. 3, under the orders of the Custodian of Evacuee Properties, Pepsu, Patiala. It is clear that the petitioner was in possession of only one room while the rest of the property was in possession of respondent No. 3, which had at some subsequent date set up certain industries in those premises. In the return on behalf of respondents Nos. 1, 2 and 4 it is pointed out that the allotment to the petitioner was *ab initio* void because under sub-section (1) of section 12 of the Act this property like other evacuee properties was acquired by the Central Government by general notification, with effect from the 3rd June, 1955. This aspect of the matter was, however, not adverted to at all in the impugned order and it would not be fair to take notice of it at this stage.

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Mr. Gujral then contended that the conveyance deed in respect of the disputed property having been executed in the petitioner's favour, the Chief Settlement Commissioner was not competent to set aside the transfer in exercise of his revisional powers under section 24 of the Act. A Division Bench of this Court in *Bara Singh v. Joginder Singh and others* (1) has held that in

(1) (1959) 61 P.L.R. 127.

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exercise of the revisional powers, the Chief Settlement Commissioner can reverse the order transferring proprietary rights to a claimant in respect of any property and thereby annul the transfer. These powers can be exercised even if some of the proprietary rights had been granted to the claimant because the Sanad or its grant being founded solely on the decision to transfer permanent ownership, that Sanad must necessarily fall with the reversal of the decision on which it is based. Mr. Harbans Singh Gujral, petitioner's learned counsel, has attempted to canvass before me that this case has not been correctly decided and in this connection he has referred to *Partumal and another v. Managing Officer, Jaipur, and others* (2), in which the judgment of a Division Bench of this Court has been dissented. Sitting singly, I am bound to follow a decision of the Division Bench of this Court. Mr. Gujral also referred to certain Single Bench judgments of this Court in which according to him a view contrary to that of the Division Bench has been taken. One such case is *Dewan Jhangi Ram v. Union of India and others* (3). In this case D. K. Mahajan, J., held that once an evacuee property is sold it no longer forms part of compensation pool and no order cancelling the sale can be passed once sale of the evacuee property has been effected without having resort to rule 92 of the Displaced Persons (Compensation and Rehabilitation) Rules. The attention of the learned Judge was not apparently drawn to *Bara Singh v. Joginder Singh and others* (1). In *Didar Singh v. The Chief Settlement Commissioner* (Civil Writ No. 785 of 1961 decided by Gurdev Singh, J., on the 30th March, 1962) which is another case referred to by Mr. Gujral, *Bara Singh v. Joginder Singh* was referred to and distinguished on the facts.

(2) A.I.R. 1962 Raj. 112 (F.B.).

(3) (1961) 63 P.L.R. 610.

Following the decision of the Division Bench of this Court it must be held that the Chief Settlement Commissioner was competent in revision to set aside the transfer of the property in dispute in favour of the petitioner.

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The last point urged by Mr. Gujral was that when the representations made by respondent No. 3 had been twice rejected by the Chief Settlement Commissioner, it would not be open to him on a third representation by respondent No. 3 to decide in favour of that respondent. It has been conceded in the return filed by respondents Nos. 1, 2 and 4 that the Chief Settlement Commissioner had on the two previous occasions rejected the representations made on behalf of respondent No. 3 for transfer of the property and the record also shows that the circumstance, as to respondent No. 3 having invested some money in the property, was taken into consideration when the representations made by that respondent were rejected. Under sub-section (1) of section 24 of the Act, which is relevant to the matter in hand, the Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which any subordinate authority has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit. This does not mean that after the Chief Settlement Commissioner has once passed an order confirming the order of the subordinate authority, he can, on a subsequent occasion and without any fresh material being before him, make an entirely different order setting aside the order of the subordinate authority. A somewhat similar point under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Act No. 50 of 1948) came up before a Division Bench of this Court in *Jamadar Uttam Singh Masada*

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Singh v. Punjab State through Director of Consolidation of Holdings, Punjab and others (4), and it was held that a Tribunal constituted by this Act has not been invested with the power to vacate an order passed by it and to replace it by another order. It was further observed that even if an administrative tribunal has inherent power to review its own order, it cannot exercise this power arbitrarily and without reason. Section 42 of East Punjab Act No. 50 of 1948 was in almost the same terms as sub-section (1) of section 24 of Act No. 44 of 1954. In a recent judgment of this Court *Satnam Singh v. Union of India and others* (5), it was held that under section 33 of the Act 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, yet on the same facts and circumstances there cannot be repeated exercise of these residuary powers for reopening questions of fact which have already been decided. The same principle should, to my mind, be applied so far as the powers of revision of the Chief Settlement Commissioner under section 24 of the Act are concerned. The second representation made on behalf of respondent No. 3 against the transfer of the property in dispute to the petitioner was turned down by the Chief Settlement Commissioner in February, 1960, and there was no fresh material to justify the issue to the petitioner of the notice (copy Annexure 'D'), dated the 17th March, 1960, to show cause why the transfer in his favour be not cancelled.

I am, therefore, of the view that the impugned order is without jurisdiction. The writ petition is

(4) A.I.R. 1960 Punjab 230.

(5) (1962) 64 P.L.R. 714.

allowed and that order quashed. The petitioner will have his costs from respondents Nos. 1, 2 and 4. Counsel fee Rs. 100.

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Nothing in this order is to be taken as expressing any opinion on the question whether the price of the property paid by the petitioner includes the value of the investment made by respondent No. 3 to which reference has been made by the Chief Settlement Commissioner in the impugned order.

B.R.T.

REVISIONAL CIVIL

Before Mehar Singh and Shamsher Bahadur, JJ.

SIRI KISHAN AND OTHERS,—Petitioners

versus

GHANESHAM DASS,—Respondent.

Civil Revision No. 347 of 1960

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(3)(a)(i)—Juristic person—Whether can have residential building vacated on the ground of requirement for own occupation—S. 15(5)—Powers of revision by High Court—When to be exercised.

1962
August, 27th.

Held, that a juristic person like an association, a trust or a limited company, can have its tenant ejected from a residential building on the ground that it is required for its own occupation. The word 'occupation' does not necessarily mean residence nor does it involve a continual personal living in the house. The words "own occupation" used in conjunction with 'his' may well include either a human being or a notional entity like an association or a trust or a limited company.

Held, that the power of the High Court to interfere under section 15(5) of the East Punjab Urban Rent Restriction Act will not be justified unless it is found that the