

CIVIL MISCELLANEOUS

Before J. S. Bedi and Shamsheer Bahadur, JJ.

HARNAM SINGH NIRAS,—Petitioner.

Versus

D. K. PURI AND OTHERS,—Respondents.

Civil Writ No. 1662 of 1963.

1964
Feb., 13th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 7, 8, 9 and 15—Compensation payable to a displaced person who has become insolvent—Whether can be paid to the receiver of the estate—Authorities under the Act—Whether can order payment of compensation to the Receiver.

Held, that a conjoint reading of section 7 and 8 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, makes it clear that the amount of compensation having once been ascertained, the Central Government at once becomes liable for its payment. The right to be paid net compensation under these sections is thus absolute and mandatory.

Held, that the estate of an insolvent vests in the Receiver who has to distribute the assets *pro rata* among his creditors. The amount of compensation payable to a displaced person will, by operation of law, vest in the Official Receiver, the moment he is declared an insolvent since the compensation determined under the said Act is his property.

Held, that sections 9 and 15 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, when read together, mean that the dispute as to the person or persons who are entitled to compensation has to be settled by the authorities under the Act and no process can be issued by any Court of law to enforce payment from the compensation pool. Section 15 places an interdict on any Court to determine such disputes but it does not preclude the Deputy Chief Settlement Commissioner or the authorities under

the Act to say that the Receiver is entitled to the compensation which has become payable in respect of the verified claim of the displaced person.

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari or any other appropriate Writ, Order or Direction be issued to the respondents ordaining them to treat the order of respondent No. 3, dated 27th May, 1963, passed in Case No. 38 (200)/63-Imp. (A) as void and of no legal consequence, and Respondent No. 3 be directed to rescind and cancel the same order.

A. S. SARHADI AND S. S. BINDRA, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, BEHARI LAL & M. R. AGNIHOTRI, ADVOCATES, for the Respondents.

ORDER.

SHAMSHER BAHADUR, J.—What has been questioned in this petition under Article 226 of the Constitution of India is the right of the Settlement authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (hereinafter referred to as the Act) to transfer the compensation payable to a displaced person who has become an insolvent to the receiver of his estate?

Harnam Singh, petitioner, is a displaced person and settled in Nabha after the partition. In partnership with some other persons the petitioner started an ice factory but the business having failed, the firm, of which he was a partner, was declared an insolvent on 5th of July, 1954, and the Official Receiver, Patiala, who is the first respondent, was appointed a Receiver of the estate on 7th May, 1954. The petitioner had made a claim in respect of the property which he had left in Pakistan, and it was verified for Rs. 41,912. The net compensation admissible on the petitioner's claim was computed at Rs. 9,551. At first the petitioner filed an application for adjustment of his claim with the Settlement Officer, Patiala, on 28th May, 1954. Subsequently, he made a similar claim at Ludhiana without disclosing that he had

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already made an application at Patiala. The first respondent had in the meantime applied for being substituted in place of the petitioner and it is submitted on his behalf that this is the reason which impelled the petitioner to file another claim at Ludhiana. A statement of account was issued to the petitioner on 15th August, 1958, and when the Official Receiver moved for payment of compensation due to the petitioner he was informed on 19th October, 1962, by the Regional Settlement Commissioner, Jullundur, that payment had already been made to the claimant. The Official Receiver then filed an appeal before the Chief Settlement Commissioner who set aside the statement of account which had formed the basis of the right of the petitioner to receive payment and directed that the amount should be made available to the Receiver. This order of the Chief Settlement Commissioner passed on 23rd February, 1963, was affirmed in revision by Shri N. P. Dube, Joint Secretary to the Government of India under section 24(4) read with section 33 of the Act on 27th May, 1963. The petitioner feeling aggrieved by these orders has moved this Court for a writ of *certiorari* to direct respondents 2 to 4 to make the payment of the compensation to him.

The Settlement authorities were influenced mainly by the consideration that the petitioner had practised a fraud inasmuch as he failed to disclose that two separate applications had been filed and registered in respect of the same claim. It has been pointed out by the Deputy Chief Settlement Commissioner that the statement of account had been furnished to the petitioner as a result of suppression of this material detail. In the form of affidavit which has to be filed with the claim under the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. (Appendix I) it has to be mentioned that the claimant has not "submitted

an application in this form to any other authority". The conclusion drawn by the Settlement authorities that the object of the petitioner in preferring a second claim at Ludhiana was to put off the Official Receiver at Patiala does not appear to be unreasonable. At Patiala, the Official Receiver had already applied for substitution in place of the petitioner. It is idle to contend that the petitioner referred a second claim at Ludhiana because he wanted to settle there. If that was so, the petitioner could have made a disclosure of the fact that a claim had also been preferred at Patiala. The Official Receiver was actually substituted in place of the Petitioner on 15th of December, 1958. The order for adjustment of account having been made on the second application made at Ludhiana was, therefore, cancelled by the Chief Settlement Commissioner. The assertion of the petitioner that he had informed the Ludhiana authorities about the first application at Patiala has not been borne out on the record as stated by the Chief Settlement Commissioner. The findings of fact reached by the Chief Settlement Commissioner and the Central Government that the petitioner obtained the statement of account as a result of fraud and concealment of fact cannot be agitated in these proceedings. It may be pointed out that in the appeal preferred by the petitioner to the Central Government the finding of fact with regard to fraud and misrepresentation was not questioned and the only matter which was raised there was the legality of the Receiver's right to be substituted in place of the insolvent.

The Chief Settlement Commissioner exercised his powers under sub-section (2) of section 24 of the Act which provides that on being satisfied that an order for payment of compensation has been obtained by fraud, false representation or concealment of any material fact, he may pass an order directing that no compensation shall be paid

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to such person. The petitioner did not rest content with the order of the Chief Settlement Commissioner and preferred a petition for revision under sub-section (4) of section 24 to the Central Government which has exercised its powers through Shri Dube, its Joint Secretary and all questions of fact must be deemed to have been finally determined.

Though this finding in respect of fraud being one of fact would be sufficient to defeat the petitioner, we would like to advert briefly also to the legal issue raised by him. Mr. Ajit Singh Sarhadi has argued that the verified claim being unattachable, and non-transferable, cannot vest in the Receiver. It may be pointed that the question of transference of a verified claim hardly arises in this case. It is the right to receive compensation for a verified claim which has been assigned by the Settlement authorities to the Receiver. A conjoint reading of sections 7 and 8 of the Act makes it clear that the amount of compensation having once been ascertained the Central Government at once becomes liable for its payment, Section 7 speaks of the method of determination of the amount of compensation and when this is ascertained the Settlement Commissioner under sub-section (2) has to make deductions from it in respect of the dues recoverable from the applicant. After deducting such dues the Settlement Commissioner has to make an order determining the net amount of compensation, if any, payable to the applicant under sub-section (3). The amount of net compensation payable to the petitioner having been determined at Rs. 9,551, the mandatory direction of section 8 becomes operative that "a displaced person shall be paid out of the compensation pool the amount of net compensation determined under sub-section (3) of section 7....."

- (a) in cash;
- (b) in Government bonds;
- (c) by sale to the displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him;
- (d) by any other mode of transfer to the displaced person of any property from the compensation pool and setting off the valuation of the property against the compensation payable to him;
- (e) by transfer of shares or debentures in any company or corporation;
- (f) in such other form as may be prescribed."

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As I said in *Uttam Chand v. Chief Settlement Commissioner and another* (1) the right to be paid net compensation under sections 7 and 8 of the Act appears to be absolute and mandatory. The contention of Mr. Sarhadi that net compensation being still unascertainable it becomes exempt from attachment, cannot be accepted. Reliance has been placed by Mr. Sarhadi on the decision of Gosain, J., in *Tirath Ram-Lal Chand v. M/s. Mehar Chand Jagan Nath* (2), where it was said that the Government at that stage could not be deemed to have become the debtor. The view of Gosain, J., was dissented from in a Judgment of Patel, J., of the Bombay High Court in *The Khudabadi Bhaibund Co-operative Credit Bank Ltd., v. N. S. Verma, Regional Settlement Commissioner and another* (3).

(1) A.I.R. 1961 Punj. 163

(2) I.L.R. 1958 Punj. 1099=A.I.R. 1958 Punj. 436:

(3) A.I.R. 1962 Bom. 121.

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Section 9 of the Act says clearly that:—

“Where there is any dispute as to the person or persons who are entitled to the compensation.....such dispute shall, after such enquiry as may be prescribed, be settled”.

by prescribed authorities. Mr. Sarhadi relies on section 15 of the Act which says that:—

“No property which forms part of the compensation pool and which is vested in the Central Government under the provisions of this Act shall be liable to be proceeded against for any claim in any manner whatsoever in execution of any decree or order or by other process of any court or other authority.”

These two sections, when read together, mean that the dispute as to the person or persons who are entitled to compensation has to be settled by the authorities under the Act, and no process could be issued by any Court of law to enforce payment from the compensation pool. What has been done in the present instance is that the official Receiver has been substituted a party in place of the claimant under section 9 and it has further been determined that the Receiver is entitled to receive the compensation and not the petitioner. No process of the Court has been utilised or pressed into service by the Receiver who has approached the authorities under the Act for a determination of his dispute with the claimant. Section 15 places an interdict on any Court to determine such disputes but it does not preclude the Deputy Chief Settlement Commissioner or the authorities under the Act to say that the Receiver is entitled to the compensation which has become payable in respect of the verified claim of the petitioner. The authorities under the Act have passed the order presumably in recognition

of the right of the Receiver to represent a bankrupt during insolvency proceedings. It is too well-established a principle to need any elaboration that the estate of an insolvent vests in a Receiver who has to distribute the assets *pro rata* among his creditors. If the petitioner can claim the compensation for himself it would infringe the rights of the general body of creditors.

It remains to mention a Single Bench Judgment of this Court in *Shri Thakar Dass v. The Chief Regional Settlement Commissioner, New Delhi, and others* (4), in which Mahajan J. rejected the contention that the right in land so far as quasi-permanent allotments are concerned is not property. Mahajan, J., held that a displaced person has a right to be paid the compensation out of the compensation pool and once it is determined, the manner how that compensation has to be paid is left to the discretion of the authority concerned. The amount of compensation determined under the Act is not only property but will by operation of law vest in the Official Receiver the moment the displaced person is declared as insolvent. According to the Judgment of Mahajan, J., with which we are in complete agreement, the adjustment having been made in favour of the petitioner and it having been determined that he was entitled to be paid Rs. 9,551, there came into being the property which could by process of law vest in the Receiver. Such a vesting has taken place not by process of a civil Court but by an order of the appropriate authorities under Act.

In this view of the matter, there is no force in this petition in which fails and would stand and dismissed. In the circumstances, we would make no order as to costs.

J. S. BEDI, J.—I agree.

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