CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

KEWAL KRISHAN AND OTHERS,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 69 of 1963.

1966.

January, 31st

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 18, 95 and 98-A—Compensation in respect of claim regarding urban house property paid—Application for rehabilitation grant in respect of urban agricultural land verified thereafter—Claim and rehabilitation grant—Whether can be clubbed together for determination of compensation payable—Amendment made in Rule 18 in 1960—Whether retrospective.

Held, that the rehabilitation grant applications are made under rule 95 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, Rule 98-A of the said Rules, which appears in Chapter XVI, says that the provisions of the Rules in the other Chapters shall, so far as may be, apply to the displaced persons entitled to the payment of rehabilitation grant under Rule 95 or Rule 96 in the same manner as if they had verified claim of the same value. From this it is quite clear that the provisions of Rule 18 would also apply to rehabilitation grant applications made under Rule 95. In other words, the rehabilitation grant applications are to be treated at par with the claims mentioned in Rule 18. The manner in which the total compensation of a particular displaced person, having a number of claims, is to be assessed is provided in Rule 18. Therefore, the question as to whether a particular claim has been paid off or not is not relevant for the purposes of Rule 18.

Held, that the amendment made in Rule 18 on 20th February, 1960, by which the words "agricultural land situated in rural area" were substituted in place of the words "agricultural land" in Rule 18 is retrospective as it has been specifically mentioned that these words shall be deemed always to have been substituted.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari *or any other appropriate writ, order or direction be issued quashing the order of respondent No. 2, dated 4th December, 1962 and connected order of Respondent No. 4, dated 16th March, 1962.*

A. S. SARHADI, AND S. S. DHINGRA, ADVOCATES, for the Petitioners.

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

ORDER

Pandit, J.

PANDIT, J.—This petition under Articles 226 and 227 of the Constitution has been filed by Kewal Krishan for self and as guardian of his minor brothers and is directed against the order, dated 4th December, 1962 passed by Shri N. P. Dube, Joint Secretary to Government of India, Ministry of Works and Housing (Department of Rehabilitation), Jaiselmere House, New Delhi, respondent No. 2.

According to the allegations of the petitioners, they were displaced persons from Pakistan and were claimants for urban house property left there by them. These claims were verified and paid to them on 19th March, 1956. They also left urban agricultural land in Pakistan, but they did not make any claims for that, expecting that land would be allotted to them in India in lieu thereof. The Union of India, respondent No. 1, invited rehabilitation grant applications from non-claimants for urban agricultural lands and in pursuance thereof the petitioners filed them, which were duly verified on 14th July, 1956. The Processing Officer, however, clubbed these rehabilitation grant applications with the original claims of the petitioners regarding the urban house property, which had already been paid to them and which, consequently, no longer existed. The petitioners, therefore, filed an appeal to the Settlement Officer with delegated powers of the Settlement Commissioner, respondent No. 4, saying that (1) the rehabilitation grants being distinct entity could not in law be clubbed with the "claims" and (2) there could be no clubbing, when as a matter of fact no claims existed, they having been paid off and discharged. The appeal was dismissed on 16th March, 1962 and it was held that the Processing Officer had rightly clubbed the rehabilitation grant applications with the claims of the petitioners. Thereafter, the petitioners

filed a revision before the Deputy Chief Settlement Commissioner, respondent No. 3, who on 30th June, 1962 accepted the same and held that the verification of the rehabilitation grant applications was done on 14th July, 1956 and the claims having been paid off on 19th March, 1956, there remained nothing which could be clubbed with them. Thereafter, respondent No. 2, took up the matter *suo motu* in revision under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) and he by the impugned order set aside the order of respondent No. 3, holding that the rehabilitation grant applications had to be treated at par with the verified claims and in law both of them could be clubbed together for the payment of compensation to displaced persons. The questions as to whether the verified claims, payment in respect of which had been made, had become extinct or not was, according to him, not relevant. The question for determination was as to what would be the mode of payment of compensation after the rehabilitation grant applications had been verified. The mode would be as provided by Rule 18 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules). The two amounts, that is, the one due on the verified claims and the other due on the rehabilitation grant applications would have to be added and compensation calculated on the total of the two amounts. Whatever compensation had been paid on the verified claims would, therefore, have to be deducted and the balance paid to the petitioners. He, consequently, restored the order of respondent No. 4. That led to the filing of the present writ petition.

Learned counsel for the petitioners raised the following contentions:—

(1) That the verified claims of the petitioners regarding the urban house property having been paid to the petitioners on 19th March, 1956, ceased to exist and the same could, therefore, not be clubbed with the rehabilitation grant applications in respect of their urban agricultural land, which were verified on 14th July, 1956. In this connection, reliance was placed on a Bench decision of this Court in *Charanji Lal and another* v. *Smt. Inder Devi* alias *Inder Kaur* (1) where it

(1) 1961 P.L.R. 479.

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was held that a claim which had been satisfied wholly or partially by the allotment of any evacuee land under the relevant notifications specified in Section 10 of the Act would not be included in the definition of "verified claim".

(2) That Rule 18 only governed claims of all kinds of properties other than agricultural land and as such it did not apply to the rehabilitation grant applications, which related to agricultural land in urban areas. The subsequent change in Rule 18, which excepted only the *agricultural lands in a rural area* was made on 20th February, 1960, and this change could not have a retrospective effect on the rights of the petitioners.

(3) That Rule 95 related only to rehabilitation grant applications, which could not be termed as "claims". Therefore, the provisions of Rule 18 could not apply to them.

(4) That the provisions of Rule 98-A could not be used against the petitioners as they did not apply to the instant case. This Rule contemplates a "claim" having been filed by the person concerned, while the petitioners had merely made an "application" under Rule 95 for the rehabilitation grant.

As regards the first contention, the relevant Rule under which the various claims of a displaced person are clubbed together for determining the amount of compensation payable to him is Rule 18, which runs thus:—

"R. 18. *Compensation to be determined on the total value of all claims.*—For the purpose of determining the compensation payable to an applicant, the Regional Settlement Commissioner shall, except as otherwise provided in these rules, add up the assesed value of all claims of the applicant in respect of all kinds of properties, other than agricultural land, situated in a rural area, left by him in West Pakistan and the compensation shall be assessed on the total value of all such claims."

The rehabilitation grant applications are made under Rule 95. Rule 98-A which appears in Chapter XVI, says that the provisions of the Rules in the other Chapters shall, so far as may be, apply to the displaced persons entitled to the payment of rehabilitation grant under Rule 95 or Rule 96 in the same manner as if they had verified claim of the same value. From this it would be clear that the provisions of Rule 18 would also apply to rehabilitation grant applications made under Rule 95. In other words, the rehabilitation grant applications are to be treated at par with the claims mentioned in Rule 18. The manner in which the total compensation of a particular displaced person, having a number of claims, is to be assessed is provided in Rule 18. Therefore, the question as to whether a particular claim has been paid off or not is not relevant for the purposes of Rule 18. It is undisputed that if the petitioner had not received the amount of compensation relating to the urban house property, the same would have been clubbed with his rehabilitation grant application. The mere fact that he has received that compensation cannot change the mode of assessment of the total compensation payable to him as provided in Rule 18. Obviously, there cannot be two modes for determining the total compensation with regard to the same individual in different contingencies, firstly, when he has taken the compensation under head "claim" and, secondly, when both of his claims are pending and have not been paid off. *Charanji Lal and another's case,* relied upon by the learned counsel for the petitioners, has no application to the facts of the present case because there the point in dispute related to the jurisdiction of the civil Courts *vis-a-vis* the authorities under the Displaced Persons (Compensation and Rehabilitation) Act. In that case the claims had been satisfied and *sanads* issued to the displaced persons. One member of the family, who had not been given any compensation, claimed a share in the same. The question was as to whether this matter was to be tried by the civil Court or the authorities under the Act. It was in this context that the observations relied upon by the petitioners were made, giving them as one of the reasons for holding that the civil Courts had jurisdiction to try the matter.

Coming to the second contention, there is no force in the same as well, because the amendment in Rule 18 was

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made retrospectively. By the amendment, the words "agricultural land situated in a rural area" were substituted in place of the words "agricultural land" in Rule 18 and it was specifically mentioned that these words shall be deemed always to have been substituted.

With regard to the third contention, the same is also without any merit. In the return filed by the State, it has been mentioned that Rule 95 was really a concession, inasmuch as it extended the period of submission of claims in respect of the urban agricultural lands beyond the expiry of the Displaced Persons (Claims) Act, 1950. The displaced persons could have filed their claims under the Act, but since due to some misunderstanding they did not do so, the Government gave them the concession of filing the claims under the name of rehabilitation grant applications under Rule 95. Under Rule 98-A, as already observed above, these applications are treated at par with the 'verified claims'.

Regarding the fourth and the last contention, the same is also without any substance. Rule 98-A clearly mentions that the provisions of the Rules in the other Chapters shall apply to the displaced persons entitled to the payment of rehabilitation grant under Rule 95 in the same manner as if they had verified claim of the same value. Therefore, Rule 98-A clearly applies to the case of the petitioners.

In view of what I have said above, this petition fails and is dismissed, but with no order as to costs.

B. R. T.

APPELLATE CIVIL

Before H. R. Khanna, J.

MOHAMMED IBRAHIM FEROZI,—*Appellant*

versus

MST. SHAFIQAN, AND OTHERS,—*Respondents.*

Regular Second Appeal No. 146-D of 1964.

1966

January, 31st

Code of Civil Procedure (Act V of 1908)—Ss. 151 and 152—Decree amended—Whether gives a fresh right of appeal when appeal against original decree dismissed as barred by time—Limitation Act (ix of 1908)—Art. 152—Effect of.