Indian Law Reports

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

BALWANT SINGH CHAUDHRY AND OTHERS,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 217-D of 1961.

1962

Dec., 6th

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 22 and 25—Property allotable under Rule 22—Whether can be taken out of that category—Rule 25—Whether applicable when property taken out of allotable category—Shop which is a part of a building and is not an independent unit—Whether can be considered as allotable.

Held, that the language of Rule 22 of the Displaced Persons (Compensation and Rehabiliation) Rules, 1955, gives considerable amount of discretion and admits of considerable flexibility. The necessary result is that in a proper case, the Government has the discretion to take out a property falling in any one of the categories mentioned in the Rule and may refuse to allot it. Discretion will, of course, not be exercised arbitrarily.

Held, that Rule 25 of the Displaced Persons (Compensation and Rehabilitation) Rules comes into play only if under Rule 22, the property is allotable; but once the Government exercises its discretion under Rule 22 and takes the property out of the category of allotable properties, Rule 25 will not be of any assistance.

Held, that a shop, which is only a part of the building and not an independent unit, cannot by itself be taken into

consideration for the purpose of finding out whether it is an acquired evacuee property which is allotable.

Petition under article 226 of the Constitution of India praying that Your Lordships may be pleased to accept this writ petition, to quash the orders of respondents 1, 2, 4 and 5, to restrain respondents No. 1 to 5, from transferring the shop in question to any one except to the petitioner, from selling the same by auction or by confirming the auction thereof in favour of respondent No. 6, and that Your Lordships may further be pleased to issue a writ in the nature of mandamus *or other appropriate writ, order or direction to respondents No. 1 to 5 to allot and transfer under Rule 22(1)(b) of the Central Rules the shop in question to the petitioner.*

R. S. NARULA, ADVOCATE, for the Petitioner.

JINDRA LAL, GURBACHAN SINGH, R. L. TANDON AND BAKSHI MAN SINGH, ADVOCATES, for the Respondent.

ORDER

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MAHAJAN, J.—This is a petition under Article 226 of the Constitution by one Balwant Singh Chaudhry impugning the order dated the 29th November, 1960, of Shri Parshotam Sarup, Deputy Chief Settlement Commissioner, New Delhi, rejecting his petition for revision. The orders, which culminated in the revision order, and the order under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, are also sought to be quashed. The basis of these orders is one, namely, that the property, which the petitioner claims to be an allotable property, is not an allotable property, it being a shop and only a part of a building. The building consists of ten shops, a factory on a part of the first-floor, and a residential flat on the second-floor. The building is situate in that part of Chandni Chowk which is known

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as Gandhi Cloth Market. The petitioner is an allottee of one out of these ten shops and is a displaced person holding a verified claim. The Department came to the conclusion that the building was not an allotable property and, therefore, decided to auction the same.

The petitioner's case, on the other hand, is that the Department could not consider the building as one unit and had to approach the matter from the point of view of what was in petitioner's possession. In other words, petitioner being an occupant of a shop and the same being an allotable property under rule 22(I)(b) of the Displaced Persons (Compensation and Rehabilitation) Rules 1955, (hereinafter called the Rules), he was entitled to its allotment under rule 25 irrespective of the fact that it only formed part of a larger building. The case of the Department is that the shop is not an independent unit and is a part of the building. Moreover, it cannot be conveniently separated from it. It is the building alone which is the unit and its value being more than Rs. 10,000, it is not an allotable property. According to the petitioner the shop in his possession is of the value of less than Rs. 10,000 though the indication on the evidence is that even that contention is not correct, but no finding has been given by the authorities who considered the matter on this part of the case. Therefore the question that requires determination is whether the petitioner is entitled to the allotment of the shop which is in his occupation or is the Department right in its contention that the shop cannot be allotted to the petitioner because it is not an independent unit and must necessarily be treated as a part of a larger unit, the value of which is more than Rs. 10,000 ?

Before determining this question it will be proper to set down the relevant provisions of the Act and the Rules made thereunder. Section 8 deals with the

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form and manner of payment of compensation and transfer of property by sale or allotment is one of the mode of payment of compensation. Rule 22, which is in these terms, defines the classes of acquired evacuee property which may be alloted :—

[His Lordship read Rule 22 and continued :]

Rule 23 contemplates that all acquired evacuee properties which are not allotable under rule 22 shall ordinarily be sold. Rule 24 provides the mode of the value of the allotable property to be fixed and is in these terms :—

[His Lordship read Rule 24 and continued :]

Rule 25 provides for the transfer of acquired evacuee property, which is allotable, to a displaced person holding a verified claim and is as follows :—

[His Lordship read Rule 25 and continued :]

Rule 26 provides for a similar transfer to a displaced person who does not hold a verified claim. Rule 30 provides for the payment of compensation where an acquired allotable evacuee property is in occupation of more persons than one. It is necessary to reproduce this rule which is in these terms :—

[His Lordship read Rule 30 and continued :]

Some of these rules were later amended. The amended rules have no application as they are not retrospective. On this both the parties are agreed.

The contention of Mr. Narula, learned counsel for the petitioner is that the premises in occupation of his client being a shop they are allotable by reason of

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rule 22(1)(b) as their value is less than Rs. 10,000. It does not matter that the shop is only a small part of a larger unit the building having not only shops but also residential and industrial premises. Therefore, he contends that under rule 25 the Department is bound to transfer the same to his client. The operative part of rule 25 is :—

> "(1) Where an applicant for payment of compensation of an acquired evacuee property which is an allotable property, such property may be transferred to him in lieu of the compensation payable to him under the Act :

The word "may" in this rule has been interpreted as "shall" by Shamsher Bahadur, J. in *Shri Ramji Dass* v. *The Ministry of Rehabilitation, Government of India and others* Civil Writ No. 40 of 1960, decided on 10th of November, 1960, and by Mehar Singh, J. in *S. Karam Singh* v. *The Chief Settlement Commissioner, Ministry of Rehabilitation and others* Civil Writ No. 683 of 1960, decided on 25th April, 1961, and their decisions are noticed by the Division Bench in *Sodhi Harbakhsh Singh* v. *The Central Government and others* (1). The Division Bench was interpreting rule 26 where again the same word "may" is used in the operative part but "may" was interpreted by the Division Bench as "may" and not as "shall" as in the case of rule 25. Therefore, Mr. Narula contends that no option was left to the Department in the matter by reason of the clear provisions of rule 22 and rule 26. The question that the shop is not an independent unit is wholly an extraneous matter, as otherwise in rule 22 shop would not have been mentioned separately.

(1) I.L.R. (1962) 2 Punj. 712=1962 P.L.R. 629.

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Therefore, the fact that the shop is a part of a larger building and is not divisible is not a material consideration in refusing to transfer this shop to the petitioner.

On the other hand it is contended by Mr. Gurbachan Singh and Mr. Jindra Lal, respective counsel for the auction-purchaser and the State, that rule 22 merely classifies all allotable property under three heads—(1) residential property, (2) shop and (3) industrial concern. While classifying the property into these categories sub-rule (1) provides that the property so classified shall *ordinarily* be allotable. In other words, the rule merely provides that if a property falls in any one of these categories it should be allotted, but it does not necessarily mean that in every case it must be allotted because word "shall" is followed by the word "ordinarily" and meaning must be given to the word "ordinarily" This rule came up for interpretation before Mr. Justice Tek Chand in *Girdhari Lal and another* v. *Shri L. J. Johson and others* (2), and the learned Judge at page 186 has observed as under :—

> "Rule 22 is worded in a language which gives considerable amount of discretion and is mandatory. The word 'ordinarily' in sub-rule (1) and 'unless Central Government otherwise directs' in sub-rule (2) admit of considerable flexibility."

Once this interpretation is held to be correct the necessary result would be that in a proper case the department has the discretion to take out a property falling in any one of these categories and may refuse

(2) 1961 P.L.R. 183.

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to allot it. It may be that this discretion cannot be arbitrarily exercised. Plausible reasons may have to be given for taking out a property from the category of the allotable properties. In the present case even if the argument urged by Mr. Narula is accepted at its face value, ample reasons have been given by the Department for taking out the present property from the category of allotable properties. These reasons are that the shop is a part of a bigger building and being one unit cannot be divided and if it is divided it will lead to a lot of complications and disputes. It is not disputed that if the shop is treated as a part of the bigger building and not an independent unit the value of the building is more than Rs. 10,000 and as such it is not an allotable property. Mr. Narula contends that in order to determine the value of the property the rest of the building should not be taken into account and only the shop in the possession of the petitioner should be taken into consideration. There seems to be no justification for this either in rule 22 or in rule 25. Rule 25 will only come into play if under rule 22 the property is allotable and once the Government exercises its discretion under rule 22 and takes out the property from the category of allotable properties then rule 25 will not be of any assistance.

There is another way of looking at the matter. Rule 22 classifies acquired evacuee property as residential shop and industrial concern. It obviously does so on the basis that they are independent units as such and not that all of them are so intermixed that strictly speaking the unit cannot be said to be strictly either a residential property or a shop or an industrial concern. That is why it was necessary to enact rule 30. This rule provides that if an acquired evacuee property, which is an allotable property, is in occupation of more than one person holding a verified claim then it shall be offered to the person whose

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net compensation is nearest to the value of the property and the other persons may be allotted such other acquired evacuee property which is allotable and is otherwise available unless it can be suitably partitioned. In that case it shall be so partitioned. It is conceded by the learned counsel for the petitioner that the question whether a certain property can or cannot be partitioned is a matter resting entirely with in the discretion of the authorities and their decision on the question will not be questionable under Article 226 of the Constitution. All that he contends is that rule 30 will have no application because here the acquired evacuee property which is allotable is the shop and not the building. But this argument begs the question. The shop when it is only a part of the building and not an independent unit cannot by itself be taken into consideration for the purpose of finding out whether it is an acquired evacuee property which is allotable.

Only two other matters remain to be noticed. Both these matters were argued by the State Counsel Mr. Jindra Lal and one of the contentions raised by him was that a displaced person has no right to get a particular property. His right under section 8 of the Act is merely to get compensation. The mode and manner as to the payment of compensation is governed by the Rules and the Rules give considerable discretion to the authorities in the matter. The learned counsel relies on a decision of Supreme Court in *The State of Orissa* v. *Madan Gopal Rungta* (3) to the effect that the petitioner who moves the High Court under Article 226 of the Constitution must possess a right which he is seeking to enforce. As the petitioner has no right to get a particular property allotted to himself he cannot move this

(3) A.I.R. 1962 S.C. 12.

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Court under Article 226 of the Constitution of India. In view of my decision on the main question it is not necessary to probe further into this matter.

The other contention advanced is that there is no error on the face of the record which can be corrected by recourse to proceedings under Article 226 of the Constitution. The question whether the shop is by itself an allotable property is a question which on the peculiar facts of this case is at best capable of two opinions. Therefore the rule laid down by the Supreme Court in *Satyanarayan* v. *Mallikarjun* (4), will apply. Their Lordships in *Satyanarayan's* case held as follows :—

> "An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of *certiorari* according to the rule governing the powers of the superior court to issue such a writ."

This argument of the learned counsel certainly has force. In order to point out the error in the impugned order Mr. Narula had to labour hard for almost a day and had to address elaborate arguments. Such an error if it be an error cannot in the words of their Lordships of the Supreme Court be said to be an error apparent on the face of the record so as to justify interference under Article 226 of the Constitution.

(4) A.I.R. 1960 S.C. 137.

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For the reasons given above this petition fails and is dismissed. There will, however, be no order as to costs.

K.S.K.

APPELLATE CIVIL

Before A. N. Grover, J.

ALLEN BERRY & Co PVT. LTD.,—*Appellant*

versus

THE UNION OF INDIA,—*Respondent*

F.A.O. 123-D of 1961.

1963

Feb., 19th

Arbitration Act (X of 1940)—*Sections 16 and 30—Failure to consider the terms of contract—Whether amounts to error of law—Decision given on evidence—Whether can be interfered with by Court—Objections to the award—Whether should be specific—Remission of award—Whether in the discretion of the Court—Error of law—Documents from which to be determined—Schedule I, para 8—Costs of reference and award to be in the discretion of the arbitrator—Whether costs can be awarded in excess of what a Court can award—Jurisdiction of the arbitrator to decide disputes—How to be determined—Section 2(a)—Arbitration agreement—Whether can be inferred from pleadings—Section 35—Scope of—Suit in respect of some of the matters filed—Whether bars the jurisdiction of the arbitrator.*

Held, that if an arbitrator or umpire gives a decision on a point referred to arbitration by ignoring the express terms of the contract, he commits an error of law. But the mere fact that he makes no express mention of it, cannot justify the conclusion that he did not apply his mind to its terms, as the arbitrator or umpire need not refer to each piece of evidence.

Held, that if the decision of the arbitrator or umpire is given on the evidence on the record, the Court cannot decide whether the decision given by him on that evidence was right or wrong.