

FULL BENCH

Before Mehar Singh, C. J., A. N. Grover and D. K. Mahajan, JJ.

TIRATH SINGH,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 287 of 1963

January 18, 1968

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 30—Applicability of—Allottee who has exhausted his verified claim—Whether can claim benefit of rule 30 for consideration of his gross compensation.

Held, that under rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, for a displaced person to qualify or to have the right to transfer of property he has to hold a verified claim, and when he fulfils that qualification or eligibility to be considered under the rule, then if there is another person also holding a verified claim, the question of preference or priority between the two arises. It is that question which is settled on the basis of gross compensation. So that rule 30 deals with (a) eligibility or qualification to claim property under it, and (b) priority or preference in case of two eligible or qualified displaced persons coming forward claiming the same property. It is when the first question of eligibility or qualification brings a person's claim under rule 30, that the second question can arise. But if a person does not fulfil the first condition of eligibility or qualification, that is to say, he does not or no longer holds a verified claim, the question of consideration of gross compensation in his case on the matter of priority or preference cannot possibly arise.

Held, that if a claim has been exhausted at a given time and nothing is due to the allottee under his verified claim, he no longer holds a verified claim and the question of his competing with another person on the basis of gross compensation does not arise.

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 orders, dated 27th November, 1962 and 31st October, 1962, passed by respondents Nos. 1 and 2, respectively.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan by order, dated the 9th December, 1963 to a Division Bench for decision of the important questions of

law involved in the case. The Division Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw, and the Hon'ble Mr. Justice D. K. Mahajan, by order, dated the 7th April, 1966, after considering the law point, referred the case to a Full Bench for decision of the important question of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice D. K. Mahajan, on 18th January, 1968.

H. S. WASU, SENIOR, ADVOCATE WITH B. S. WASU AND LAKHBIR SINGH WASU, ADVOCATES, for Petitioner.

H. S. GUJRAL AND B. S. BINDRA, ADVOCATES, for the Respondents.

ORDER

MEHAR SINGH, C.J.—There is an evacuee property consisting of portions Nos. 610/1, 611/1, and 612/1 in Katra Ghanyian at Amritsar. Of those three portions, No. 611/1 was in the allotment of Tirath Singh petitioner, and No. 612/1 was in the possession of Tara Singh, respondent 5. The petitioner held a verified compensation claim of Rs. 1,601. He was, therefore, holder of a verified claim. Respondent 5 has been a non-claimant.

The Settlement Officer on November 25, 1958, transferred portion No. 611/1 to the petitioner, who then filed an appeal against the order claiming also the other two portions. The petitioner was also allottee and occupant of another property No. 2009/7, of which the assessed value was Rs. 2,667. The appeal of the petitioner was decided by the Assistant Settlement Commissioner on March 30, 1959, copy of the order being Annexure 'A'. The Assistant Settlement Commissioner pointed out that although there were four tenants in the whole of the property bearing three portions Nos. 610/1, 611/1, and 612/1, the property was one, in other words, it was indivisible. He then pointed out that the petitioner was also the sole occupant of property No. 2009/7. Then he ordered that 'it is for the two processing officers to judge as to which of the two properties should be given to him (petitioner)'. This order the petitioner reads as the order of transfer of the whole property in his favour according to his statement in paragraph 4 of his petition, which obviously is not correct. But it is stated by him in paragraph 5 of the petition that sometime in 1960, the whole of this property was transferred to him by the District Rent and Managing Officer.

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In regard to property No. 2009/7, of which the assessed value was Rs. 2,667, the petitioner applied for its transfer but failed to deposit the initial amount by January 31, 1961; target date by which he was required to do so by a press-note of the Government of India. This property was sold by auction and the highest bid was of one Dial Chand, but before the sale could be completed in his favour, the petitioner approached the Chief Settlement Commissioner that he was willing to purchase that property, whereupon the Chief Settlement Commissioner by his D.O. No. 6985/Com-Prop/61; dated November, 16, 1961; ordered that the petitioner be allowed to pay the bid price in lump sum within a period of one month provided by the date of the letter the sale of the property had not been confirmed. The petitioner deposited the sale amount of Rs. 3,050 by December 16, 1961, and this property was then transferred to him.

It will be seen that the three portions of the property. Nos. 610/1, 611/1, and 612/1, were transferred to the petitioner some time in 1960, in regard to which the petitioner has said that his verified claim was adjusted, and property No. 2009/7 was transferred to him by December 16, 1961, on payment of the price of Rs. 3,050.

When the petitioner attempted to eject respondent 5 from the portion in his possession, this respondent filed an appeal against the order, dated March 30, 1959, of the Assistant Settlement Commissioner, to which reference has already been made above, and that appeal was dismissed by the Settlement Commissioner by his order made sometime in 1962, of which copy is Annexure 'C'. There was a revision application by respondent 5 to the Chief Settlement Commissioner which was disposed of on October 31, 1962, and a copy of that order is Annexure 'D'. The learned Chief Settlement Commissioner came to a finding of fact that the appeal of respondent 5 was not barred by time because he had no knowledge of the proceedings before the Assistant Settlement Commissioner culminating in his order, copy Annexure 'A', of March 30, 1959. This being a finding of fact there is no question of any interference in a petition under Articles 226 and 227 of the Constitution. The learned Chief Settlement Commissioner in regard to property No. 2009/7 says in his order—"I may also mention here that as reported by the District Rent and Managing Officer,—*vide* his letter No. NC/Jan-61/14925, dated 27th September, 1961, the correct facts of the case were not reported to the Chief Settlement Commissioner and in case the position as explained above had been

brought to the notice of the Chief Settlement Commissioner, he would not have passed orders for accepting the bid price from Tirath Singh respondent (the present petitioner)." The learned Chief Settlement Commissioner, earlier to this part of his order, pointed out that the petitioner was the sole occupant of property No. 2009/7 and under rule 25 of the Displaced Persons (Compensation and Rehabilitation) Rules of 1955 the property was to be transferred to him and his verified claim adjusted towards it. These matters, so it appears, were not brought before the Chief Settlement Commissioner on the earlier occasion. The learned Chief Settlement Commissioner then in his order, Annexure 'D', proceeded to cancel that transfer of property No. 2009/7 in favour of the petitioner for the bid consideration of Rs. 3,050 and directed that it be transferred to him under rule 25, adjusting his verified claim towards its price. It has not been denied at the hearing that once that is done, the total compensation claim, as verified claim of the petitioner, would be exhausted by adjustment towards the price of property No. 2009/7. Once that is the result, the petitioner becomes non-claimant. So that in regard to the portions of the property in dispute, Nos. 610/1, 611/1, and 612/1, both the petitioner and respondent 5 are non-claimants, in which case the rule applicable is rule 31 of the 1955 Rules and not rule 30. The learned Chief Settlement Commissioner then gave direction that the compensation claim of the petitioner be adjusted towards transfer of property No. 2009/7 to him and thereafter the eligibility for transfer of the property, portions Nos. 610/1, 611/1, and 612/1, in so far as non-claimant occupant allottee (respondent 5) is concerned, be determined.

This order of the Chief Settlement Commissioner has been challenged by the petitioner in this petition under Articles 226 and 227 of the Constitution. It first came for hearing before my learned brother, Mahajan, J., who on December 9, 1963, referred it to a larger Bench, and when it came for hearing before him and my learned predecessor Falshaw, C.J., on April 7, 1966, there was a further reference to a larger Bench and this is how the petition comes before this Bench of three Judges. In brief, the reason that led to the reference was the question whether, when a verified claim of an allottee has been exhausted, he can still claim benefit of rule 30 of the 1955 Rules as holder of a verified claim for the matter of consideration of his gross compensation according to amendment of that rule from March 1, 1958? So what requires consideration is rule 30 of the 1955 Rules,

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which rule, as applicable to the facts of this case, in the amended form, reads—

“If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allottable property, the property shall be offered to the person whose gross compensation is the highest and other persons may be allotted such other acquired evacuee property which is allottable as may be available.”

There is a proviso to this rule, which is not material here, but the Explanation is, and that runs thus—“The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allottable property hold verified claims and some do not hold such claims.” In the present case the petitioner's claim is that he holds a verified claim whereas respondent 5 is a non-claimant. So, if that position is correct, the explanation would attract rule 30 to the case. However, the position on the side of respondent 5 is that the claim of the petitioner, on adjustment towards the price of property No. 2009/7, having been exhausted, he ceases to hold any verified claim, with the result that both are then non-claimants, in which case the rule attracted is rule 31.

Under rule 30, for a displaced person to qualify or to have the right to transfer of property he has to hold a verified claim, and when he fulfils that qualification or eligibility to be considered under the rule, then if there is another person also holding a verified claim, the question of preference or priority between the two arises. It is that question which is settled on the basis of gross compensation. So that rule 30 deals with (a) eligibility or qualification to claim property under it, and (b) priority or preference in case of two eligible or qualified displaced persons coming forward claiming the same property. It is when the first question of eligibility or qualification brings a person's claim under rule 30, that the second question can arise. But if a person does not fulfil the first condition of eligibility or qualification, that is to say, he does not or no longer holds a verified claim the question of consideration of gross compensation in his case on the matter of priority or preference cannot possibly arise. These, it is evident from the language of the rule; are separate matters. The first brings in right to claim the property, and the second preference where such a right is urged by more persons than one. So the

first condition must be fulfilled before a displaced person can have the benefit of rule 30. The petitioner's verified claim having been exhausted towards the payment of the price of property No. 2009/7, given to him according to rule 25, he no longer holds a verified claim. So he is for the matter of property in question in a no better position than respondent 5 as non-claimant.

In *Maya Devi v. Inder Sain* (1), Falshaw, C.J., and myself held that where a displaced person had exhausted his compensation claim by adjustment towards one property, he became a non-claimant in regard to other property claimed by him under rule 30 on the basis of his exhausted verified claim. So to him rule 30 did not apply. *Kewal Krishan v. Government of India* (2), was heard by a Division Bench consisting of Falshaw, C.J., and Harbans Singh, J., and that was a case in which Mela Ram's verified compensation claim had not totally exhausted as appears from paragraph 6 of the judgment, but the learned Chief Justice did observe this—"It was in these circumstances that Mela Ram had filed an affidavit to the effect that he was a non-claimant because his net compensation at that time was nil. However, if the matter had to be decided on the basis of gross compensation, he was obviously a claimant and this is how the Deputy Secretary looked at the matter when he dealt with the case." The learned Chief Justice, however, as is apparent from the decision in *Maya Devi's case*, did not adhere to that view. As already been pointed out, the question of gross compensation under rule 30 only comes in for the matter of settlement of priority or preference between two claimants to a property, but first the two claimants must, to attract the rule, satisfy that either or one of them holds a verified claim. If his claim has been exhausted at a given time and nothing is due to him under his verified claim; he no longer holds a verified claim, and the second question of his competing with another person on the basis of gross compensation does not arise. It was this aspect of the matter which led my learned brother, Mahajan, J., to refer this matter for reconsideration. The learned Chief Justice in his order of reference made on April 7, 1966; points out that there was a review application in *Kewal Krishan's case* in which it was pointed out that the successful claimant had amounts still standing to his credit, however

(1) L.P.A. 10-D of 1962 decided on February, 10, 1965.

(2) 1963 P.L.R. 288.

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small; and that that review application was rejected on the ground that that was immaterial as the Bench had held that a person whose compensation is exhausted is a holder of verified claim. In the first place, this view conflicts with *Maya Devi's case*; and secondly; there is no discussion in *Kewal Krishan's case* on what basis a person; whose claim is a verified claim but it has been exhausted by the payment of compensation in one form or another, still continues to hold what has in fact been fully satisfied. A person can only hold something substantial which has meaning and pursuance to which he can urge his rights, but; where a verified claim has been satisfied; the person who held the verified claim cannot then urge any claim or right pursuance to such a satisfied claim. So, with respect to the learned Judges, I am unable to agree with the approach that the person whose verified claim has been fully satisfied is a person who still holds a verified claim under rule 30 and is, therefore, eligible to the benefit of that rule. In my opinion, *Maya Devi's case* was correctly decided. I would, therefore; answer the question that a person whose verified claim has been exhausted or satisfied does not hold a verified claim as that expression is used in rule 30 and cannot have the benefit of that rule.

Of the other two grounds taken in the petition by the petitioner one is that the appeal of respondent 5 was barred by time, but the Chief Settlement Commissioner has found it as a fact, as has already been stated that respondent 5 had no knowledge of the proceedings before the Settlement Commissioner in which order, Annexure 'A', was made on March 30; 1959. There can be no interference with such a finding of fact in a petition like the present. The second ground taken in the petition is that the order of the Chief Settlement Commissioner adjusting the compensation claim of the petitioner towards the price of property No. 2009/7 is patently illegal, but the Chief Settlement Commissioner has pointed out in his order, of which details are already given above, that true facts were not placed before his predecessor when the petitioner obtained transfer of property in question by payment of cash. The learned Chief Settlement Commissioner obviously is of the opinion that if true facts were available to his predecessor he would have first transferred that property under rule 25 to the petitioner adjusting his verified compensation claim towards that property and not permitted the petitioner to purchase the same for cash after cancelling the auction bid. In the circumstances, the transfer of this property

having been obtained under mistake of fact, the Chief Settlement Commissioner was justified in cancelling that transfer and then transferring property No. 2009/7 to the petitioner under rule 25 adjusting his verified compensation claim towards its price.

No other ground is taken in the petition. This petition fails and is dismissed, but there is no order in regard to costs.

A. N. GROVER, J.—I agree.

D. K. MAHAJAN, J.—So do I.

B.R.T.