Dunichand Hakim and Others

Vs

Deputy Commissioner (Deputy Custodian Evacuee Property) Karnal, State of Punjab and Others

Petition No. 324 of 1953

(CJI M.Patanjali Sastri, S.R. Dass, Vivian Bose, Ghulam Hasan, B. Jagannath Das JJ)

18.12.1953

JUDGMENT

GHULAM HASAN J. -

This petition by twenty persons under article 32 of the Constitution prays for the issue of a writ of certiorari, mandamus and prohibition or other suitable order or directions, quashing the orders dated the 1st July, 1952, and the 14th October, 1953, passed by the Deputy Commissioner (Deputy Custodian Evacuee Property) Karnal, in the State of East Punjab, hereinafter referred to as the first respondent, whereby the petitioners are alleged to have been deprived of their fundamental right of property and are unable to hold the same within the meaning or article 19(1)(f) of the Constitution.

The petitioners are displaced persons from Pakistan who migrated to India after the partition of 1947. They owned certain agricultural land in Tehsil Chunian, District Lahore, which, according to them, was mostly canal irrigated land of the first grade, yielding on an average 16 to 20 maunds of wheat per acre. It appears that upon partition the East Punjab Government was confronted with the serious problem of settling agricultural lands abandoned by Muslim evacuees from the areas, now called East Punjab and Pepsu. Accordingly they decided on the 15th September, 1947, to allot evacuee lands for the current Kharif and the Rabi of 1947-48. This decision was obviously taken with a view to prevent famine and fall in agricultural production in the area, as also to provide means of livelihood for the agricultural refugees. In pursuance of this policy the petitioners were settled on land in village Dhakala - admittedly a first grade village, - Tehsil Thanesar, District Karnal, in the State of East Punjab. Their claims were verified under the provisions of the East Punjab Refugees (Registration of Land Claims) Act XII of 1948. They were allotted specific areas of land under the statement of conditions, contained in Notifications Nos. 4891/S and 4892/S, dated 8th July, 1949, on quasi-permanent basis in lieu of the lands left by them in Pakistan. Subsequently the petitioner's lands left in Pakistan are alleged to have been down-graded with the result that the lands allotted to them were re allotted on the 25th April, 1951, to Ishar Singh and others who appear as respondents to oppose the present petition. In July, 1951, the petitioners moved the East Punjab High Court under article 226 for a writ restraining their eviction from the lands but as no allotment had been canceled by that time they withdrew the petition some time in 1952. The original allotment was, however, canceled on the 1st July, 1952. This order was challenged by a revision under section 27 of the Administration of Evacuee Property Act, 1950. The Deputy Custodian General dismissed the revision petition on the 2nd December, 1953, holding that the order of the Deputy Custodian was not illegal or without jurisdiction on the ground that no notice of cancellation of allotment had been issued to them. It was observed in the course of the judgment that the petitioners had conceded before the Assistant Custodian on the 9th May, 1952, that the lands abandoned by them in Pakistan were second grade lands but had claimed that they should,

nevertheless be allotted first grade lands.

The order of the 1st July, 1952, is the first order which is challenged before us as being without jurisdiction and infringing the fundamental right of the petitioners.

It is alleged in the petition that notwithstanding the cancellation of the allotment, the petitioners remained in actual cultivating possession of the lands allotted to them but an order was passed by the first respondent on the 14th October, 1953, which is to the following effect :-

> "Government have decided that in the case of persons who were able to secure possession of part of land, the order should be deemed to have been implemented. In the case of M/s Ishar Singh, Rakha Singh and others of the village Dhokala, they were in possession of the part of the land before the 6th May, 1953. As such they should be given possession of the remaining area by ousting Duni Chand and others being II and III grade allottees, but wrongly allotted land in 1st grade village."

The aforesaid order is said to have been passed without the authority of law and deprives the petitioners of their right to hold the property allotted to them.

Before dealing with the validity of the impugned orders it will be necessary to refer to a compilation known as the Land Resettlement Manual for displaced persons in Punjab and Pepsu upon which great reliance was placed by Mr. Bindra on behalf of the petitioners in the course of his arguments. This book was prepared by Mr. Tirlok Singh, I.C.S., who was Director General of Relief and Rehabilitation in East Punjab and contains the policy decisions of that Government arrived at in respect of the settlement of land upon the refugees soon after partition. It appears from this book that originally there was a temporary settlement but shortly afterwards an elaborate organization was set up to make allotment of lands on a quasi-permanent basis. The displaced persons put in their claims in regard to the agricultural lands they had abandoned in West Punjab and they were verified with the help of Revenue records which were exchanged with the West Punjab Government. The book has evidently the stamp of authority, as the foreword is written by Mr. P. N. Thapar, I.C.S., Financial Commissioner, Department of Relief and Rehabilitation, and Secretary to the Punjab Government, Relied and Rehabilitation Department. The Manual shows that in the end of 1947, the displaced persons had been allotted lands on a temporary basis but there was an insistent demand for settlement on permanent basis. In a communique of the 7th February, 1948, a new system of quasi-permanent allotment was device, the object underlying being to allow the displaced persons to remain in quiet and undisturbed enjoyment of the lands allotted to them. They were not to get proprietary rights or right of permanent occupation and the very fact that the settlement was quasi-permanent shows that it was not intended to be irrevocable. Paragraph 19 of the Manual says : "Until issues relating to evacuee property are resolved between India and Pakistan, ownership in each country of property abandoned by evacuees continues to rest with them. This led to the use of the expression quasi-permanent as the keyword for the scheme of resettlement introduced in East Punjab and Pepsu." The various Evacuee Property Ordinances passed by the Central or the State Governments from time to time which were eventually replaced by the Central Act No. XXXI of 1950, further confirm that the policy underlying the legislation was to provide for the administration of evacuee property for the time being and to manage it until such time as a final decision was reached by the Government of India as to its ultimate destination. Paragraph 21 of the Manual contains the statement of conditions which Mr. Bindra characterised as the charter of the petitioners' rights. This paragraph says that the rights of persons to whom land is given in the scheme of quasi-permanent resettlement are defined in East Punjab in two statements of conditions, dated the 8th

July, 1949, issued with Notifications Nos. 4891/S and 4891/S. This statement is to be found at page 193 of the Manual. Paragraph 3 of the statement says that the allotment shall be in favour of displaced persons and for a period for which the land remained vested in the Custodian subject to the provisions of the Act. Paragraph 8 says : "The allottee paying the rent hereby reserved and observing and performing the several covenants, conditions and stipulations herein on his part contained, shall peacefully hold and enjoy the allotted land during the said term without any interruption by the Custodian or the Rehabilitation Authority." It is contended by Mr. Bindra on the strength of these provisions that so long as the land remains vested in the Custodian, the petitioners cannot be deprived of these lands which have been granted to them on a quasi-permanent basis and that the allotment could not be canceled without notice to the petitioners.

We now proceed to dispose of this contention. It is agreed that the Act in force at the time of the allotment was the East Punjab Evacuees' (Administration of Property) Act, XIV of 1947. It defines "allotment" as the grant by the Custodian or a Rehabilitation Authority or any other person duly authorised by the Custodian in this behalf, of a temporary right of use and occupation of evacuee property to any person otherwise than by way of lease. Section 9 confers powers upon the Custodian in regard to management of property and section 9(A), sub-section (2), empowers the Custodian to cancel any allotment or terminate or amend the conditions of any lease. Section 22, sub-section (2)(ff) confers upon the Provincial Government the power to make rules providing for the circumstances under which leases and allotment may be terminated or the terms thereof be varied. This Act was in due course replaced by the Central Act XXXI of 1950 (The Administration of Evacuee Property Act, 1950). The definition of allotment in this Act is substantially the same [section 2(a)]. Section 12(1) and section 56(2)(h) are in substance the counterpart of section 9(A) and section 22(ff) of the East Punjab Act of 1947. That the Deputy Custodian had the jurisdiction to cancel the allotment both under the State and the Central Acts referred to above cannot be seriously contested. It was in pursuance of the powers conferred by the rules made by the Provincial Government that the Custodian issued the notification of 8th July, 1949. Rule 14(2) which is one of the rules framed under section 56, specifies the circumstances under which leases and allotments can be canceled or varied. Sub-rule (3) says that the Custodian may evict a person who has secured an allotment by misrepresentation or by fraud or if he is found to be in possession of more than one evacuee property or in occupation of accommodation in excess of his requirements. Sub-rule (4) requires the Custodian before passing any order of cancellation or variation of the terms of a lease, to serve the person or persons concerned with a notice to show cause against the order proposed to be made and to afford him a reasonable opportunity of being heard. No notice is provided for cancellation of an allotment under the rules. The obvious answer to this differentiation appears to be that a lease is granted for a definite period and it is only fair to give the lessee a notice before his lease is terminated before the expiry of the stipulated period, whereas the allottee of land under the quasi-permanent settlement stands on a different footing. Be that as it may, the question seems to be academical in the present case, as the petitioners were given full opportunity to put forward their case before the allotment was canceled.

The order of the Deputy Custodian General, dated the 2nd December, 1953, rejecting the petitioners' revision supports this. That order shows that the Assistant Custodian issued a notice to the petitioners to show cause why the allotment of first grade land, while they were all second grade claimants, should not be canceled. The petitioners appeared before him on the 9th May, 1952. Their statements were recorded and they admitted that their land was second grade, whereupon the Assistant Custodian made a report to the Deputy Custodian recommending that the allotment be canceled. The Deputy Custodian acting upon this report cancelled the petitioners' allotment in village, Dhakala, on the 1st July, 1952. This point was raised before the Deputy Custodian General

also but he held that section 12 of the Central Act did not require notice of cancellation to be issued to the petitioners and in any case the order in question was not without jurisdiction, as there had been substantial compliance with the provisions of rule 14. It was contended, however, that the order of cancellation was made by the Deputy Custodian and that order was bad as he did not give the petitioners any notice before passing the order. The Assistant Custodian who was already under the order of the Deputy Custodian had already heard the petitioners and recorded their statements, and there was no point in hearing the petitioners again when they had already been heard. The Deputy Custodian has filed an affidavit to the effect that a notice was given to the petitioners to explain on the 9th May, 1952, as to why their allotment should not be canceled, that they appeared on the 9th May, 1952, that their statements were recorded and that their allotments were canceled on the 1st July, 1952.

We hold, therefore, that there is no merit in the contention that the order of the Deputy Custodian was without jurisdiction as it was passed in the absence of the petitioners and without hearing them. Even if the order of cancellation was passed during the operation of a stay order, the order of cancellation cannot be challenged on that ground.

The next contention urged is that the order of cancellation is opposed to the order of the Ministry of Rehabilitation, dated the 14th May, 1953, whereby the authorities were prohibited from canceling allotments if the orders in respect of them had not been implemented by the 22nd July, 1952. We think this contention is also devoid of merit. It appears that the question of amendment of sub-rule (6) of rule 14 of the Central Rules was the subject of correspondence between the Central Government and the East Punjab Government. Reference is made in the letter of the 14th May, 1953, to notification issued by the Central Government on the 22nd July, 1952, according to which orders canceling allotments based after a specified date were to be implemented only if they fall under the category of undeserved and excessive allotments. It is stated that the object of this notification was to stabilize quasi-permanent allotments, but upon a representation by the State Government the provision restricting the implementation of orders passed before the specified date was relaxed and the State Government was given powers to implement their orders by the 22nd July, 1952. The Central Government after further consideration decided that all orders passed before the 22nd July, 1952, but not implemented until the 6th May, 1953, shall be kept it a abeyance except in the following cases :-

(A) Undeserved allotment,

(b) Excessive allotment,

(c) ....

It was further decided that no other order hereafter be implemented until a decision to the contrary is issued by the Central Government. The letter added that the Ministry of Law was being consulted with view to making the necessary amendments in the rules. In pursuance of this decision the East Punjab Government issued instructions to the Deputy Commissioners. There was some dispute about the meaning of the word "implementation" but before a further reference was made to the Central Government, the Punjab Government decided that among allottees of land the status quo should be maintained and that if as a result of an order of cancellation based before the 22nd July, 1952, the possession of an allottee had not been given over by the 6th May, to the new allottee, it shall remain with the original allottee. This correspondence merely shows that the Central Government enunciated a certain policy on the subject of amending sub-rule (6) of rule 14, pending

the advice of the Law Ministry, but apparently the policy was not given effect to and no rule was framed in pursuance of the decision. It is clear, therefore, that the Central Government merely issued interim instructions pending the amendment of the rule but no rule was framed to give effect to those instructions which in consequence did not acquire any statutory force. Mere stay of implementation of the orders contained in the statement of policy did not wipe out the effect of the cancellation. Sub-rule (6) to rule 14 was subsequently added by not as it was intended to be with the result that the old orders of cancellation stood such as orders based on grounds other than undereserved or excessive allotments. Once the order of cancellation was passed by the Deputy Custodian, the petitioners lost their right to possession and even if the letter of the 14th May, 1953, is treated as direction by the Central Government under section 54, it cannot have the effect of restoring what had been lost.

We hold, therefore, that the petitioners have not made out a case for breach of any fundamental right. Both the orders passed by respondent No. 1 as perfectly valid and within jurisdiction. We accordingly dismiss the petition with costs to the first respondent.

Petition dismissed.

Agent for the petitioners : Harbans Singh.

Agent for respondent No. 1 : G. H. Rajadhyaksha.

Agent for respondents Nos. 2 to 14 : R. K. Kuba.

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