State of Punjab

Vs

Suraj Parkash Kapur, Etc.

Civil Appeal No. 349 of 1959

(J. L. Kapur, M. Hidayatullah, J. C. Shah, K. Subha Rao, Raghuvar Dayal JJ)

04.05.1961

JUDGMENT

SUBBA RAO, J. -

This appeal by certificate is preferred against the order of the Punjab High Court dated November 9, 1956, setting aside the order of the Consolidation Officer and directing him to proceed with the matter in accordance with law.

The respondents are members of a joint Hindu family and are evacuees from Pakistan. On March 3, 1950, in lieu of the lands left by the family in Pakistan, the Custodian of Evacuee Property allotted to the said family 11 standard acres and 9 units of Grade 'A' land in Pati Kankra, Shahabad Estate in Tehsil Thanesar in Karnal District. The said units were valued as equal to 123 standard kanals and 18 standard marlas of 'A' Grade land. The family took possession of the said land, and, it is alleged, made improvements thereon. On July 28, 1954, the State Government issued a notification under s. 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act), declaring its intention to make a scheme for the consolidation of the holdings. On April 30, 1955, a draft scheme was proposed by the Consolidation Officer and published indicating, inter alia, that the respondents' family would be given 84 standard kanals consisting of 50 standard kanals and 7 standard marlas of 'A' Grade land, and 34 standard kanals and 1 standard marla of 'B' Grade land. The lands proposed to be substituted for the lands already allotted on quasi-permanent tenure to the respondents' family are admittedly of a lesser value than the land allotted to them earlier. The said consolidation was not made in strict compliance with the provisions of the Act, but pursuant to administrative directions given to the Consolidation Officer by the State Government. Broadly stated, under the said directions the Consolidation Officer was directed to take into consideration, for the purpose of consolidation, the number of acres held by the evacuee and not the actual valuation at sit of the land allotted to him. The objections filed by the respondents were rejected by the Consolidation Officer. By an order dated August 6, 1958, the Settlement Commissioner confirmed the scheme propounded by the Consolidation Officer. Meanwhile, the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954) became law; it came into force on October 9, 1954, i.e., after the Estate had been notified for consolidation of holdings. On March 24, 1955, the Central Government issued a notification under s. 12 of the Displace Persons Act (44 of 1954) acquiring all the evacuee properties to which that Act applied. This notification was issued before the scheme of consolidation was confirmed by the Settlement Commissioner. On February 23, 1956, the Central Government issued a sanad conferring proprietary rights on the respondents in respect of the lands allotted to them in 1950. This sanad was issued after the order of the Settlement Commissioner confirming the scheme of consolidation. On November 9, 1955, i.e., before the said sanad was issued to them, the respondents filed a petition in

the High Court of Punjab under Art. 226 of the Constitution praying for the issue of an appropriate writ to quash the said scheme of consolidation. The High Court by its final order dated February 1, 1957, allowed the said objection and issued a direction to the Consolidation Officer to proceed with the matter before him in accordance with law.

Mr. Khanna, learned counsel for the State, raised before us the following two points : (1) The respondents had no legal right to maintain the petition under Art. 226 of the Constitution. And (2) the directions issued by the State Government were validly issued and, therefore, the Consolidation Officer was within his rights to formulate the scheme on the basis of those instructions.

Re. (1). The existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the court under Art. 226 of the Constitution. The right that can be enforced under Art. 226 of the Constitution shall ordinarily be the personal or individual right of the applicant. It may be first considered whether the respondents had such a right on the date when they filed the petition under Art. 226 of the Constitution. They filed the petition on November 9, 1955, i.e., after the Central Government issued the notification acquiring all the evacuee properties and before it issued the sanad conferring proprietary rights on the respondents in respect of the lands allotted to them. The nature of interest of a displaced person in the properties allotted to him under the evacuee law has been authoritatively decided by this Court in Amar Singh v. Custodian, Evacuee Property, Punjab [[1957] S.C.R. 801, 836.]. There, Jagannadhadas, J., speaking for the Court, after an elaborate survey of the law on the subject, came to the conclusion that the interest of a quasi-permanent allottee was not property within the meaning of Art. 19(1)(f) and Art. 31(2) of the Constitution. But the learned Judge made it clear that, notwithstanding the said conclusion an allottee had a valuable right in the said interest. The learned Judge stated the legal position in the following words :

> "In holding that quasi-permanent allotment does not carry with it a fundamental right to property under the Constitution we are not to be supposed as denying or weakening the scope of the rights of the allottee. These rights as recognized in the statutory rules are important and constitute the essential basis of a satisfactory rehabilitation and settlement of displaced land-holders. Until such time as these land-holders obtain sanads to the lands, these rights are entitled to zealous protection of the constituted authorities according to administrative rules and instructions binding on them, and of the courts by appropriate proceedings where there is usurpation of jurisdiction or abuse of exercise of statutory powers."

It may be mentioned that the learned Judge in coming to the conclusion noticed all the relevant Acts on the subject, including the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) and particularly s. 12 thereof. The observations of this Court indicate that notwithstanding such notification an evacuee has a valuable right in the property allotted to him, and that the said right is entitled to the protection of the constituted authorities and the courts. A perusal of the relevant provisions of Act 44 of 1954 demonstrates the correctness of the said observations.

Section 10. Where any immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published -

> (a) by the notification of the Government of Punjab in the Department of Rehabilitation No. 4891-S or 4892-S, dated the 8th July, 1949; or

(b) by the notification of the Government of Patiala and East Punjab States Union in the Department of Rehabilitation No. 8R or 9R, dated the 23rd July, 1949, and published in the Official Gazette of that State, dated the 7th August, 1949,

and such property is acquired under the provisions of this Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition, and the Central Government may, for the purpose of payment of compensation to such displaced person, transfer to him such property on such terms and conditions as may be prescribed.

Section 12. (1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government had decided to acquire such evacuee property in pursuance of this section.

A reference to r. 14(6) of the rules made under the Administration of Evacuee Property Act, 1950, will also be useful in this context. Under that rule, the Custodian has no power to make any order after July 22, 1952, cancelling or varying the allotments made, subject to certain exceptions with which we are not concerned here. The result of these provisions is that under the Administration of Evacuee Property Act, the respondents became quasi-permanent allottees in respect of the land allotted to them in 1950. After July 22, 1952, the Custodian ceased to have any authority to cancel or modify the said allotment. After the notification issued by the Government under s. 12 of the Act, so long as the property remained vested in the Central Government, the respondents continued to be in possession of the property on the same conditions on which they held the property immediately before the date of acquisition, that is, under a quasi-permanent tenure. The contention that on the issue of the said notification, the respondents ceased to have any interest in the said land is without any foundation. It is, therefore, clear that on the date when the respondents filed the petition in the High Court they had a very valuable right in the properties allotted to them which entitled them to ask the High Court to give them relief under Art. 226 of the Constitution.

That apart, on February 23, 1956, the Central Government issued a sanad to the respondents conferring an absolute right on them in respect of the said properties. Though the sanad was issued subsequent to the filing of the petition, it was before the petition came to be disposed of by the High Court. At the time the High Court disposed of the petition, the limited right of the respondents had blossomed into a full-fledged property right. In the circumstances of the case, the High Court was fully justified in taking note of that fact. From whatever perspective this case is looked at, it is obvious that the respondents have sufficient interest in the property to sustain their petition under Art. 226 of the Constitution.

Re. (2). The second point has absolutely no legs to stand upon. The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, was enacted, in the words of the long title annexed to the Act, to provide for compulsory consolidation of agricultural holdings and for the prevention of fragmentation of agricultural holdings in the State of Punjab. Under s. 15 of the said Act, the scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of grater

market value than that of his original holding. There is no provision in the Act empowering the Consolidation Officer to deprive a person of any part of his property without allotting to him property of equal value or paying him compensation if he is allotted a holding of less market value than that of his original holding. In the present case it is not disputed that while the respondents were allotted 123 kanals and 18 marlas of 'A' Grade land on a quasi-permanent basis by the Custodian and later confirmed by the Central Government, the consolidation proceedings gave him only 50 kanals and 7 marlas of 'A' Grade land, and 34 kanals and 1 marla of 'B' Grade land. The area given under the consolidation proceedings is admittedly of less value than that of the holding allotted to the respondents by the Custodian, and the Consolidation Officer has not paid any compensation for the deficiency. This unjust situation in which the respondents have been placed is sought to be supported by learned counsel for the State on the basis of the instructions given to the Consolidation Officer by the State Government. There is no provision in the Act empowering the State Government to give any such instructions to the Consolidation Officer; nor does any provision of the Act confer on the State Government any power to make rules or issue notifications to deprive owners of land of any part thereof or to direct the Consolidation Officer as to how he should exercise his statutory duties. Any such rule would be repugnant to the provisions of the Act. That apart, no such statutory rule empowering the State Government to issue such instructions has been placed before us. Both here as well as in the High Court, learned counsel appearing for the State has not been able to sustain the validity of such instructions on any legal basis. The order of the appropriate officers confirming the scheme on the basis of the said instructions was obviously illegal and, therefore, was rightly set aside by the High Court.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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