Joginder Singh and Others

Vs

The Deputy Custodian General of Evacuee Property

Civil Appeal No. 457/58

(K. Subha Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

04.05.1961

JUDGMENT

MUDHOLKAR, J. -

In this appeal under Art. 133(1)(c) of the Constitution the question which arises for consideration is whether after July 22, 1952 the Custodian of Evacuee Property in the State of Punjab or the Custodian General hearing an appeal from an order made by the Custodian after July 22, 1952 has the power to cancel an allotment of rural evacuee property on a quasi-permanent basis except upon the grounds set out in r. 14(6) of the Administration of Evacuee Property Rules, 1950 as amended by notification No. S.R.O. 1290 dated July 22, 1952.

The circumstances under which this question arises may now be briefly stated. The appellants and their father Nand Singh were displaced persons from West Pakistan and got allotment of some land in the village Raikot, District Ludhiana on a temporary basis. Later, each of the appellants 1 to 3 was allotted 8-1/3 standard acres of land on a quasi-permanent basis while Nand Singh, their father who was entitled to 41 standard acres and 7 units and to whom land to that extent had been temporarily allotted in the village Raikot was allotted the same acreage of land in the village Hambran which is situate at a distance of 25 or 30 miles from Raikot. Nand Singh made an application for revising the order under which this was done but he died in the year 1951, during the pendency of that application. The appellants as his legal representatives continued the application. That application was rejected and a revision application made against the order passed thereunder was also rejected on the ground that after July 22, 1952 the Additional Custodian was not competent to cancel an allotment made in favour of any person except upon the grounds set out in r. 14(6) of the Evacuee Property Rules.

Respondents 4 to 9 owned lands in Chak No. 127, G. B. Jaranwala, District Lyallpur and are also displaced persons. They were, therefore, allotted certain lands in the village Karodian as quasi-permanent allottees. Subsequently some revenue papers were received from Pakistan from which it appeared that they were entitled to urban allotment. They, therefore, brought this matter before the Deputy Commissioner exercising the powers of Deputy Custodian. Thereupon he cancelled the allotment in their favour sometime in the year 1952 and proposed to the Additional Custodian, who was also acting as Director of Relief and Rehabilitation, for the allotment of the lands which were originally allotted to the respondents to others.

Appellant No. 2, Gopal Singh, on behalf of his father Nand Singh applied to the Director of Relief and Rehabilitation that the allotment in the name of his father Nand Singh might be shifted from the village Hambran to the village Karodian. The Additional Custodian not only allowed the

Application of Gopal Singh and shifted the allotment of Nand Singh to the village Karodian but he also shifted the entire allotment of the appellants Nos. 1 to 3 from the village Raikot to the village Karodian with the result that the lands allotted to the family were consolidated in the same village. The appellants thereupon obtained possession of the Karodian lands.

Respondents 4 to 9 were allotted urban lands, which according to the appellants are more valuable and are of a superior quality. They did not prefer an application for review of the order of cancellation of their earlier allotment or of the order passed by the Additional Custodian allotting their lands to the appellants.

Six months later, however, respondents 4 to 9 preferred an application before the Additional Custodian stating therein that the land abandoned by them in West Pakistan was rural and that their allotment should be shifted back to the village Karodian. To this application they did not make the appellants parties. The Additional Custodian held that he could not cancel the allotment in favour of the appellants in view of r. 14(6) of the Evacuee Property Rules already referred to. He, however, recommended the case to the Custodian General of India by his memo, dated October 14, 1953, for taking appropriate action. The Deputy Custodian General who heard the case sent it back to the Additional Custodian observing therein that if the respondents 4 to 9 are restored to their original lands the persons to whom those lands had been allotted will have to be shifted elsewhere and this process may involve "an interminable chain of cancellation of allotments." He also observed that if the Additional Custodian could not cancel the allotment because of the coming into force of the amended r. 14(6), the Custodian General also would be incompetent to cancel it. Thereafter the Additional Custodian heard the application of the respondents 4 to 9 on merits and dismissed it. Against his order dismissing the application respondents 4 to 9 preferred a revision application before the Custodian General. Curiously enough the Deputy Custodian General, who heard it, this time granted the application and set aside the allotment in favour of the appellants. The appellants thereafter moved the High Court of Punjab under Art. 226 of the Constitution. The matter went up before a single Judge of the High Court who dismissed the petition observing as follows :

> "If the order of cancellation against the present opposite parties was made after the 22nd July, 1952, the order was inoperative in view of Rule 14(6) and if it be said that the order of allotment was after the date then Rule 14(6) is not bar to the cancellation of the order. In either case I am of the opinion that there is no error in the order of the Custodian General sufficient for the purpose of quashing his order."

The appellants thereupon preferred an appeal under the Letters Patent which was also dismissed by a Division Bench of the High Court. The substance of the reasoning of the learned Judges is that the allotment in favour of respondents 4 to 9 was wrongly cancelled and it was the duty of the Custodian to restore to them the lands from which they were ousted. They also said that the provisions of r. 14(6) did not preclude the Deputy Custodian General from exercising the powers conferred upon him by s. 27 of the Administration of Evacuee Property Act or prevented him from cancelling the allotment made after July 22, 1952.

The view taken by the Division Bench to the effect that r. 14(6) did not stand in the way of the Custodian General or the Custodian from restoring the lands to the respondents the allotment with respect to which was wrongly cancelled by the Custodian cannot be sustained. No doubt it is one of the highest duties of all courts to take care that the act of the court does not do injury to suitors; but the court must have power to rectify the wrong. Such power may either inhere in the Court or may be expressly conferred by statute. The law does not confer any express power on the Custodian to

make restitution. But we will assume that he had inherent power to do so. Just as power can be conferred expressly by statute it can also be taken away or restricted and where it is taken away or restricted then, whether the power was statutory in its origin or was inherent in the court, it will be either wholly unexercisable or exercisable only subject to the conditions laid down in the statute, as the case may be. Here we have the notification dated July 22, 1952 which substituted the present sub-r. 6 of r. 14 for the original sub-r. 6. The amended sub-rule has placed a limitation on the powers of the Custodian to cancel allotment of rural evacuee property on a quasi-permanent basis. The result is that an allotment of such land can be cancelled only in the circumstances specified in that sub-rule. Therefore, subsequent to July 22, 1952 the Custodian of Evacuee Property would have the power to cancel an allotment only upon a ground which falls within the exceptions enumerated in sub-r. 6. Making of restitution is not within the exceptions and, therefore, it will have to be said that the inherent power of the Custodian to cancel an allotment for making restitution has been abrogated by the amended sub-rule.

The other argument of the Division Bench is to the effect that the powers of the Custodian General under s. 27 are untouched by sub-r. 6 of r. 14 and that despite the making of this rule the Custodian General was not prevented from cancelling an allotment made after July 22, 1952. Now s. 27 of the Act provides that the Custodian General may call for the record of any proceeding in which a District Judge or a Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit. The District Judge or the Custodian can in any matter before him do only that which the act or the rules made thereunder permit or require him to do. If he fails to do what he is required to do or if he does something which he is not permitted to do or if he commits an error in doing an act which he is permitted to do, the Custodian General has the power to order that to be done which the law requires the Custodian or the District Judge to do or to quash that which has illegally been done or to rectify the error which the Custodian or the District Judge has committed. He has no power to do something which the Custodian or District Judge could not have done or was prohibited from doing. Clearly, therefore, the High Court was in error in holding that the limitations placed by the present sub-r. 6 or r. 14 did not affect the power of the Custodian General.

The learned single Judge as well as the Division Bench have taken the view that where an allotment is made in favour of a displaced person subsequent to July 22, 1952, the provisions of sub-r. 6 of r. 14 did not preclude the Custodian from cancelling that allotment. This view is sought to be supported by Mr. Nanak Chand on behalf of respondents 4 to 9 on, what he says, the language of sub-r. 6 of r. 14. He says that according to this sub-rule what the Custodian is precluded from doing is to cancel an allotment which had already been made, that is, made before the coming into force of the sub-rule except upon certain grounds and does not place any further restrictions. We do not find any justification for placing such a restricted interpretation upon the plain language of the Sub-rule. Learned counsel then referred to the second proviso to the sub-rule and contended that it supported the interpretation which he was placing. The proviso reads thus :

> "Provided that where an allotment is cancelled or varied under clause (ii) the allottee shall be entitled to retain such portion of the land to which he would have been entitled under the scheme of quasi-permanent allotment of land :
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> Provided further that nothing in this sub-rule shall apply to any application for revision, made under s. 26 or s. 27 of the Act, within the prescribed time, against an order passed by a lower authority on or before 22nd July, 1952."

How this proviso supports the argument of the learned counsel is difficult to appreciate. The proviso was not originally there when sub-r. 6 was amended on July 22, 1952. It is possible that a doubt was entertained after the making of this sub-rule on the question whether the Custodian General or the Custodian before whom a revision application had been made against an order passed before July 22, 1952, could make an order cancelling the allotment. Apparently to remove the doubt such as may have existed this proviso had been added.

Then learned counsel contended that this sub-rule can not take away the wide powers conferred upon the Custodian by s. 10 of the Act. No doubt s. 10 confers wide powers on the Custodian but the opening words of the section show that the powers conferred thereby are subject to the provisions of rules made under the Act and s. 56(2)(i) enables the Central Government to make rules to provide for "circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease, or agreement varied." We have, therefore, no doubt that the High Court was in error in holding that sub-r. 6 of r. 14 was not a bar to the exercise by the Custodian General of the power to cancel an allotment after July 22, 1952.

Having failed on the point which alone finds a place in the statement of the cases of both the parties, Mr. Nanak Chand raised a contention that the allotment in favour of the appellants was itself bad because the cancellation of the allotment in favour of the respondents 4 to 9 was in contravention of r. 14(6) and that, therefore, the appellants were not entitled to the relief from the High Court under Art. 226 of the Constitution and accordingly are not entitled to any relief in this Court. Since the respondents have not relied upon this ground in the statement of their case we are not prepared to consider it. There may be more than one answer to the point urged by the respondents and had they specifically raised it in their statement of case, the appellants would have been in a position to give an appropriate answer.

Accordingly we allow the appeal with costs and quash the orders of the High Court as well as of the Deputy Custodian General.

There is one more matter to which we must refer. It is this. During the hearing of the appeal learned counsel for the appellant brought to our notice the fact that on the records of the proceedings before the Deputy Custodian General there was a slip of paper from which it would appear that Deputy Custodian General had been approached by the then Speaker of the Punjab Assembly apparently on behalf of the respondents. We, therefore, asked for a report from the High Court. That report has come and it exonerates both the ex-Deputy Custodian General as well as the ex-Speaker. We are not satisfied with the report. However, considering the fact that the matter has become quite stale and we have allowed the appeal we do not propose to examine the matter further.

Appeal allowed.

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