Basant Ram

Vs

Union of India

Civil Appeal No. 766 of 1957

(P. B. Gajendragadkar, K. N. Wanchoo JJ)

24.01.1962

JUDGMENT

WANCHOO, J. -

This is an appeal by special leave against the order of the Punjab High Court summarily rejecting a petition filed by the appellants under Art. 226 of the Constitution. The brief facts necessary for present purposes are these. The appellants migrated in 1947 from what is now West Pakistan and settled in two villages, viz., Sheikhapind and Kotla. They were given temporary allotment of agricultural land in the two villages under the East Punjab Evacuees' (Administration of Property) Act, (No. XIV of 1947) then in force. Thereafter a scheme was formulated in 1948 for quasi-permanent allotment of agricultural land to owners of land in West Pakistan after the East Punjab Refugees (Registration of Claims) Act, (No. VIII of 1948) was enacted. In July 1949, a notification was issued stating the condition under which allotment of agricultural land would be made to displaced persons from East Pakistan. This allotment was quasi permanent in the sense that it was to remain in force so long as the land was to remain vested in the Custodian of Evacuee Property. In pursuance of this notification, land was allotted in the two villages to the appellants on quasi-permanent basis in 1949 and the appellants have remained in possession thereof eversince. Originally land was classified into two kinds, namely, (i) urban and (ii) agricultural land. Later in 1949, however, a third classification, namely sub-urban was also introduced in practice with respect to agricultural land in the neighbourhood of certain towns and a notification seems to have been issued with respect to that specifying the villages land in which was considered to be a sub-urban (vide Chap. V of Land Settlement Manual by Tarlok Singh). But the two villages in which land was allotted to the appellants were not included in the notification with respect to sub-urban land.

In August 1950 after the quasi-permanent allotment in favour of the appellants had been made, the Revenue Assistant (Rehabilitation) Jullundur proposed that these two villages should also be classified as sub-urban, the consequence of which would have been to reduce the area of land given to the allottees therein. The appellants objected before the Director General of Rehabilitation to the villages being graded as sub-urban. The Director General called for a report from the Revenue Assistant (Rehabilitation) and eventually passed an order on January 12, 1951 that it was not desirable at that stage to cause any disturbance to the allotments made in these two villages by declaring them sub-urban and that the status quo should continue. This however did not end the matter and in February, 1952 the Director of Rehabilitation passed an order in effect declaring these villages as sub-urban with the result that the allotment made to the appellants would have to be reduced. It also appears that some order was passed in April, 1952 on paper allotting the extra land which would be released from the allotment of the appellants to other persons who have appeared as interveners in this appeals. But this order remained merely on paper and has not been carried out so

far. When the appellants came to know of the order of February 29, 1952, they filed a revision before the Custodian General for setting aside that order. The revision came up before the Deputy Custodian General for hearing in January 1956. By then however certain changes in the law and the Rules had been made. Firstly, there was an amendment in r. 14(6) of the Administration of Evacuee property (Central) Rules framed under the Administration of Evacuee property Act, (Central Act XXXI of 1950). Further, the Displaced persons (Compensation and Rehabilitation) Act, Central Act XLIV of 1954, (hereinafter referred to as the Act) had been passed. Under the amendment to r. 14(6) power was given for cancellation or variation of any allotment of rural evacuee property on a quasi-permanent basis, where the allotment was to be cancelled or varied in accordance with the general or special order of the Central Government. It appears that in the meantime correspondence passed between the Punjab Government and the Central Government and an order under the amended r. 14(6)(iii)(d) was obtained on October 11, 1955. Therefore, when the revision came up before the Deputy Custodian General he held that in view of r. 14(6)(iii)(d) of the Rules it was open to the Central Government by special order to direct cancellation or variation of the allotment made in this case in favour of the appellants and that the Central Government had on the representation of the Punjab Government agreed to declare these two villages as sub-urban by its order dated October 11, 1955; therefore he held that whatever was being done after October 11, 1955 was in pursuance of the order of the Central Government. He therefore held that the impugned order of February 29, 1952, even if it was revisable, no longer held the field and action was to be taken in future under the order of the Central Government passed on October 11, 1955. Therefore, the revisions had become infructuous and he dismissed them.

Then followed the writ petition by the appellants in the Punjab High Court, which was dismissed summarily. As leave was refused by the High Court, the appellants applied for special leave to this Court, which was granted; and that is how the matter has come up before us.

The main contention on behalf of the appellants before us is that after the coming into force of the Act and the notification made thereunder on March 24, 1955 under s. 12, the land allotted to the appellants in the two villages ceased to be evacuee property and became part of the compensation pool created thereunder and therefore the Central Government had no power left to act under the Central Act XXXI of 1950 and the Rules framed thereunder. In consequence the order passed, by the Central Government on October 11, 1955 on the basis of which the Deputy Custodian General rejected the revision petitions filed on behalf of the appellants was not within the competence of the Central Government and no action could be taken by virtue of that order declaring the two villages as sub-urban. Therefore it was not open to the authorities under the Central Act XXXI of 1950 to take any action under that order with the object of varying the allotment made in favour of the appellants by reducing the area allotted to them. It is further urged that whatever further action has to be taken after the notification dated March 24, 1955 can only be taken under the act and that no such action has in fact been taken.

We are of opinion that there is force in this contention of the appellants and it must prevail. Section 12(1) of the act provides that "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 has decided to acquire such evacuee property in pursuance of this section". Sub-section (2) then provides that "on the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall.....be extinguished and the evacuee property shall vest absolutely in the

Central Government fee from all encumbrances." Sub-section (4) provides that all evacuee property acquired under this section shall form part of the compensation pool. Section 14 provides for the constitution of a compensation pool. Section 16 gives powers to the Central Government for the management of the compensation pool, including the appointment of such officers as it may deem fit (referred to as managing officers) or constitution of such authority or corporation, as it may deem fit (referred to as managing corporations). Section 17 provides for functions of managing officers and managing corporations. Section 19, which is important, provides that "notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held of occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act." Rules have been framed under the Act specifying the circumstances under which a managing officer or a managing corporation may cancel an allotment or terminate a lease or vary the terms of any such lease or allotment (see r. 102). It is not in dispute that the evacuee property in these two villages was notified under s. 12(1) of the Act on March 24, 1955. The consequence of that notification is that all rights, title and interest of the evacuee in the property ceased with the result that the property no longer remained evacuee property. Once therefore the property ceased to be evacuee property it cannot be dealt with under the Central Act No. XXXI of 1950 or the Rules framed thereunder. The property in these two villages became part of the compensation pool after the notification of March 24, 1955 and could be dealt with under the provisions of the Act and any variation or cancellation of any lease or allotment thereafter could only be made under s. 19 of the Act. This is the position which emerges on a consideration of section 12, 14, 16 and 19 of the Act after the notification under s. 12(1) was made with respect to the evacuee property in these two villages on March 24, 1955. This view has been taken by the Punjab High Court in Balmukand v. The Punjab State [I.L.R. 1957 Punj. 712]. The same view has also been expressed by this Court in Major Gopal Singh v. Custodian, Evacuee Property, [[1962] 1 S.C.R. 328], where it was held that from the date of the notification under s. 12, the Custodian by reason of the divesting of the property becomes functus officio with respect to it and cannot rectify any error made by him in the past in the matter of cancellation of allotment. It follows therefore that when the notification of March 24, 1955 was made and the evacuee property in these two villages ceased to be evacuee property and became part of the compensation pool it could only be dealt with under the Act and if any variation or cancellation of allotment was to be made it could only be done under the provisions of s. 19 of the Act and there was no power left in the Central Government to act under r. 14(6)(iii)(d) of the Rules framed under the Central Act XXXI of 1950 with respect to this land after the notification of March 24, 1955. The order of the Deputy Custodian General of January 1956 shows that further proceedings with respect to this land are contemplated under the order of October 11, 1955 passed by the Central Government under r. 14(6)(iii)(d). As however that order was passed after March 24, 1955, when the power of the Central Government to act under the Central Act XXXI of 1950 had ceased on the evacuee property in these two villages becoming part of the compensation pool, that order must be set aside and no further proceedings can be taking under that order. We order accordingly. The appellants will get their costs.

We should however like to make it clear that we express no opinion on the controversy between the appellants and the interveners who are left to such remedies as may be available to them under the law.

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