

Chief Settlement Commissioner, Rehabilitation Department, Punjab & Others, Etc.

Vs

Om Prakash & Others, Etc.

Civil Appeal No. 937 of 1965

(J. C. Shah, V. Ramaswami – I JJ)

05.04.1968

JUDGMENT

RAMASWAMI, J. -

This appeal is brought, by certificate, from the judgment of the Punjab High Court dated September 13, 1963 in Civil Writ No. 841 of 1962.

Nanak Chand owned agricultural lands in Bahawalpur State now forming part of West Pakistan. He also owned some property at Kot Kapura, Tehsil Faridkot, District Bhatinda now located in India. Nanak Chand had in normal course of business come to Bhatinda where he died in June, 1947 leaving behind three sons, Om Parkash, Sat Narain and Ram Parshotam who are the respondents in this appeal. As a result of the partition of India the land originally owned by Nanak Chand and after his death by his sons in Bahawalpur State had to be abandoned. After the partition of India the three respondents migrated to India and filed separate claims in accordance with law and obtained allotment of certain area in village Kot Kapura, district Bhatinda in lieu of the land abandoned by them in Pakistan. The Revenue Authorities allotted an area measuring 206.8 1/2 standard acres in village Kot Kapura, District Bhatinda. After the allotment was made one Rur Singh filed a complaint before the Managing Officer that these respondents had received double allotments in village Kot Kapura. The complaint was examined by Shri Shankar Das Katyal, Managing Officer who held that Shri Rur Singh failed to substantiate the allegation of double allotment. But the Managing Officer came to the conclusion that Nanak Chand although he had died long before the partition of the country must be treated as a displaced land-holder for the purpose of allotment of land. The reason given was that his name continued to be shown in the Jamabandi as the owner of the abandoned land in Pakistan. In consequence of this finding a large portion of the land allotted to the three respondents was cancelled by the Managing Officer by his order dated September 18, 1961. The three respondents preferred an appeal before the Assistant Settlement Commissioner and a revision petition before the Chief Settlement Commissioner Punjab but the appeal and the revision petition were both dismissed. In dismissing the revision petition the Chief Settlement Commissioner relied upon paragraph 17 of Tarlok Singh's Land Resettlement Manual, 1952 Edition, page 180 which was to the following effect :

"Even where a displaced land holder in whose name the land stands in the records received from West Punjab has died, the allotment is made in the name of the deceased. In the fard taqsim, therefore, the entry will be in the name of the deceased land holder. Possession is ordinarily given to the heirs but there must be regular mutation proceedings before the entry in column 3 of the fard taqsim is altered in favour of the heirs."

It was held by the Chief Settlement Commissioner that this paragraph related to all persons who continued to be shown as owners in the revenue records, irrespective of the fact whether they had died before or after migration. In other words, the Chief Settlement Commissioner took the view that the land could only be allotted in the name of Nanak Chand even assuming that he had died in June, 1947. Against the order of the Chief Settlement Commissioner the respondents filed a Writ Petition (Civil Writ No. 841 of 1961) before the Punjab High Court. The Writ Petition was allowed by the High Court by its order dated September 13, 1963 and the orders of the Chief Settlement Commissioner dated June 8, 1962, of the Assistant Settlement Commissioner dated December 26, 1961 and of the Managing Officer dated September 18, 1961 were all quashed by the grant of a writ in the nature of certiorari.

It is necessary at this stage to set out the provisions of the relevant statutes. Section 2(b) of the East Punjab Evacuees' (Administration of Property) Act, 1947 (East Punjab Act No. XIV of 1947) defines an "evacuee" as meaning "a person ordinarily resident in or owning property or carrying on business within the territories comprised in the Province of the East Punjab, who on account of civil disturbances, or the fear of such disturbances, or the partition of the country : (i) leaves or has since the first day of March 1947, left the said territories for a place outside India, or (ii) cannot personally occupy or supervise his property or business." Section 4 of that Act provided that "All evacuee property situated within the Province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs." In pursuance of the powers conferred by the rules made by the State Government under cls. (f) and (ff) of s. 22(2) of the East Punjab Evacuees, (Administration of Property) Act, 1947, the Custodian issued a notification no. 4892/S on July 8, 1947 regarding the conditions on which he was prepared to grant allotment of land vested in him under the provisions of the said Act to displaced persons. Para 2(e) of this notification states :

"Displaced person" means a land holder in the territories now comprised in the province of West Punjab or a person of Punjabi extraction who holds land in the Provinces of North-Western Frontier Province, Sind or Baluchistan or any State adjacent to any of the aforesaid Provinces and acceding to the Dominion of Pakistan, and who has since the 1st day of March, 1947, abandoned or been made to abandon his land in the said territories on account of civil disturbances, or the fear of such disturbances, or the partition of the country."

Section 2(d) of the East Punjab Refugees (Registration of Land Claims) Act. 1948 (East Punjab Act No. XII of 1948) states :

"2. Interpretation. - In this Act unless there is anything repugnant in the subject or context, -

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(d) 'refugee' means a landholder in the territories now comprised in the Province of West Punjab, or who or whose ancestor migrated as a colonist from the Punjab since 1901 to the Provinces of North-West Frontier Province, Sind or Baluchistan or to any State adjacent to any of the aforesaid Provinces and acceding to the Dominion of Pakistan, and who has since the 1st day of March, 1947, abandoned or been made to abandon his land in the said territories on account of civil disturbances, or the fear of such disturbances, or the partition of the country;"

Section 2(c) defines a "landholder" to mean "an owner of land or a tenant having a right of occupancy under the Punjab Tenancy Act, 1887 (XVI of 1887) or a tenant as defined in section 3 of the Colonization of Government Lands Act, 1912 (Punjab Act V of 1912) and such other holder or grantee of land as may be specified by the Provincial Government;". Section 2(c) of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (East Punjab Act No. XXXVI of 1949) defines a "displaced person" as follows :

"displaced person' means a land-holder in the territories now comprised in the Province of West Punjab or a person of Punjabi extraction who holds land in the Provinces of North-West Frontier Province, Sind or Baluchistan or any State adjacent to any of the aforesaid Provinces and acceding to the Dominion of Pakistan, and who has since the 1st day of March 1947, abandoned or been made to abandon his land in the said territories on account of civil disturbances, or the fear of such disturbances, or the partition of the country".

Section 2(b) of this Act defines an "allottee" as follows :

"allottee' means a displaced person to whom land is allotted by the Custodian under the conditions published with East Punjab Government notification no. 4892/S, dated the 8th July, 1949, and includes his heirs, legal representatives and sub-lessees".

The main question to be considered in this appeal is whether Nanak Chand was a 'displaced person' as defined in para 2(e) of the notification dated July 8, 1949 or a "refugee" as defined under s. 2(d) of Act No. XII of 1948 and whether he was entitled for allotment of land. It is manifest that the expression "displaced person" or the word "refugee" has been used in the relevant enactments with reference to a person who has migrated to India as a result of disturbances or fear of disturbances or the partition of the country. Therefore if a person had died before the disturbances took place or he had never migrated to India as a result of the disturbances and he dies before such migration, he could not come within the meaning of the expression "displaced person" or the word "refugee" under the relevant statutory enactments. It is manifest in the present case that Nanak Chand died in June, 1947 long before the partition of the country and he did not abandon or was not made to abandon his land in Bahawalpur on account of the civil disturbances or the fear of such disturbances or the partition of the country.

It was, however, contended by Mr. D. R. Prem on behalf of the appellants that even though Nanak Chand never became a refugee or a displaced land-holder, the allotment had to be made in his name because he was shown in the revenue records received from West Punjab as the owner of the land and there had been no mutation of the names of the respondents in the revenue records. Reference was made in this connection to paragraph 17 of Tarlok Singh's Land Resettlement Manual which has already been quoted. It was contended by Mr. Prem that the instructions contained in this paragraph would apply even though Nanak Chand had never become a refugee or a displaced land-holder and the allotment has to be made in his name by the revenue authorities because his name still stands in the revenue records received from West Punjab. We are unable to accept this argument as correct. It is not disputed that paragraph 17 of Tarlok Singh's Manual has no statutory authority but it merely embodies executive or administrative instructions for general guidance. If there is a conflict between the provisions contained in this paragraph and the statutory enactments already referred to it is manifest that the statutory provisions must take precedence and must prevail over the directions contained in para 17 of Tarlok Singh's Manual.

In this context it is essential to emphasise that under our constitutional system the authority to make the law is vested in the Parliament and the State Legislatures and other law making bodies and whatever legislative power the executive administration possesses must be derived directly from the delegation of the legislature and exercised validly only within the limits prescribed. The notion of inherent or autonomous law-making power in the executive administration is a notion that must be emphatically rejected. As observed by Jackson, J. in a recent American case - *Youngstown Sheet & Tube Co. v. Sawyer* [343 U.S. S. 579, 655] - "With all its defects delays and inconveniences men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The rule of law rejects the conception of the Dual State [This term is derived from Fraenkel, *The Dual State* (1941)] in which governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional concept.

In our opinion, however, it is possible to give a restricted interpretation to paragraph 17 of Tarlok Singh's Manual so as to make it consistent the requirements of the statutory enactments. The intention of para 17 is that it is applicable only to such persons who are land-holders at the time of their becoming displaced persons or refugees who died afterwards before allotment could be made in their favour. In other words, the paragraph applies to a displaced land-holder who dies after having become a "displaced person" within the meaning of the relevant statutory enactments referred to above. The paragraph does not apply to a case of a person who was not a displaced land-holder at the time of his death. In the present case it is admitted that Nanak Chand never become a displaced land-holder. On the other hand, Nanak Chand died before he became a displaced land-holder and therefore para 17 of Tarlok Singh's Manual has no application to the facts of the present case.

For these reasons we hold that this appeal has no merit and it must be dismissed with costs.

Civil Appeals Nos. 938 of 1965 & 1195 of 1967

The question arising in these two appeals is identical with the question of law in Civil Appeal No. 937 of 1965. For the reasons given in that judgment we hold that the decision of the High Court challenged in these appeals is correct and these appeals must be dismissed with costs.

# Appeals dismissed.##

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