

Sri Lachhman Dass and Others

Vs

Municipal Committee, Jalalabad and Others

Union of India and Others

Vs

Municipal Committee, Jalalabad and Others

Civil Appeal Nos. 1407-1569 of 1968

(CJI M. Hidayatullah, R.S. Bachawat, G.K. Mitter, K.S. Hegde, S.M. Sikri JJ)

12.02.1969

JUDGMENT

SIKRI, J. -

1. The Municipal Committee, Jalalabad, respondent before us in these appeals, filed an application under Article 226 and 227 of the Constitution praying that Section 20-B of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 - hereinafter referred to as the Compensation Act - be declared ultra vires the Constitution and that the memorandum dated March 14, 1963, communicated by the District Rent and Managing Officer, Jalalabad, be quashed. The learned single Judge, following an earlier judgment of the Punjab and Haryana High Court in Kirpal Singh v. the Central Government ((1967) ILR 2 P & R 574), held that Section 20-B of the Compensation Act was ultra vires and quashed the impugned, order, dated March 14, 1963, and directed the restoration of the property in dispute to the Municipal Committee. An appeal was taken to the Letters Patent Bench but this was dismissed in limine. Two appeals have been filed against this judgment, one by the Union of India and its officer who are interested only in the question of the vires of the section, and the other by Lachhman Das and others to whom the shops in dispute have been transferred.

2. The relevant facts may be stated shortly. The Nawab of Mamdot became an evacuee in 1947 on the partition of the country and his property was taken over by the Custodian as evacuee property. In 1949, the District Rent and Managing Officer treated five shops, situated in Chowk Kalan, Jalalabad, as belonging to the Nawab of Mamdot and began to recover the rent of the shops from the tenants. The Municipal Committee protested and lengthy correspondence ensued between the Municipal Committee and the Custodian. Eventually the Municipal Committee filed a Civil Suit in 1958 against the Union of India for declaration that the said shops were their own property and not evacuee property. Ultimately, the Trial Court, by order dated January 8, 1962, made a reference to the Custodian General for determining the question whether the shops in dispute were evacuee property or not. The Deputy Custodian General, exercising his powers under Section 27 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Evacuee Act), held that the property in dispute had been wrongly taken over as evacuee property and ordered that the five shops be released in favour of the Municipal Committee, Jalalabad. On this, the Municipal Committee applied to the Regional Settlement Commissioner, under Rule 37 of the Administration

of Evacuee Property (Central) Rules, 1950 - for the restoration and possession of the five shops. On March 14, 1963, the District Rent and Managing Officer, Jalalabad, sent a memorandum to the Municipal Committee stating that the property in dispute had already been transferred to the occupants and disposed of under the Compensation Act and that its assessed price was Rs. 6,542. In the memorandum it was further stated :

"It is not, therefore, expedient or practicable to restore the above property to you and it has, therefore, been decided to transfer you any other immovable property in the compensation pool of the equal amount in lieu thereof under Section 20-B of the D. Ps. (CAR) Act, 1954."

The memorandum also listed some properties which were available for transfer to the Municipal Committee. This is the memorandum that has been quashed by the High Court.

3. The above proposal was not acceptable to the Municipal Committee. It was pointed out by the Municipal Committee in reply that it was incorrect that all the five shops had been transferred and that the assessment price was Rs. 6,452. According to the Municipal Committee only one shop out of these, in possession of Dogar Mal Ram Chand, had been auctioned for Rs. 10,000 although the sale had not matured.

4. It appears that one shop was released in favour of the Municipal Committee but the Department refused to release the other shops. After unsuccessfully approaching the Settlement Officer, with delegate powers of the Settlement Commissioner, the writ application under Article 226 was filed in the High Court.

5. In Kirpal Singh v. The Central Government (supra) the High Court had held that Section 20-B of the Compensation Act was unconstitutional being ultra vires Article 14 and 19(1) (f) of the Constitution. The High Court was, however, of the opinion that this section did not violate Article 31(2) of the Constitution. As we have come to the conclusion that Section 20-B violates Article 31(2) of the Constitution, we need not consider whether the reasoning of the High Court is correct regarding the section being ultra vires Article 14 or 19(1)(f). Section 20-B is in the following terms :

"20-B. (1) Where any person is entitled to the restoration of any property by virtue of an order made by the Custodian-General under Section 27 of the Administration of Evacuee Property Act, 1950, or by the competent officer or the appellate officer under the Evacuee interest Separation Act, 1951, and the Central Government is of opinion that it is not expedient or practicable to restore the whole or any part of such property to that person by reason of the property or part thereof being in occupation of a displaced person or otherwise, then, notwithstanding anything contained in the said Act or this Act, it shall be lawful for the Central Government -

(a) to transfer to that person in lieu of the property to be restored or any part thereof, any part thereof, being in the compensation pool or any part thereof, being in the opinion of the Central Government as nearly as may be of the same value as the property to be restored or, as the case may be, any part thereof, or

(b) to pay to that person such amount in cash from the compensation pool in lieu of the property to be restored or part thereof, as the Central Government having regard to the value of the property to be restored or part thereof, may in the circumstances deem fit.

(2) Where in pursuance of sub-section (1) any person has been granted any immovable property from the compensation pool or had been paid any amount in cash from the compensation pool, his right, title and interest in the property to be restored shall be deemed to have been extinguished.

6. Before we deal with the constitutionality of this section, we may briefly refer to its background. This is set out in detail by this Court in *Amar Singh v. Custodian Evacuee Property, Punjab* ((1957) SCR 801). In brief, a number of steps were taken by Government to rehabilitate the displaced persons coming from West Pakistan. The first legislative measure enacted to achieve this purpose was the *East Punjab Evacuee' (Administration of Property) Ordinance, 1947*. Various other acts were passed which are set out at page 809 of the above judgment. It is enough for the purpose of this case to consider the effect of the provision of the Compensation Act and the Evacuee Act. Under Section 7 of the Evacuee Act, property was notified as being evacuee property, and under Section 8 the property declared to be evacuee property vested in the Custodian. Under Section 9, the Custodian was empowered to take possession of the property vested in him, the Custodian was entitled under Section 10 to administer, preserve and manage any evacuee property. In exercise of the powers he granted leases and made allotments out of the evacuee property, in favour of displaced persons.

7. By 1954 it was decided that displaced persons should be paid compensation in respect of the property left by them in the territories now forming part of West Pakistan. With that end in view the Compensation Act was passed. Section 12 enabled the Central Government to acquire property which had been declared evacuee property and vested in the Custodian. After acquisition the title of the evacuee was extinguished and the evacuee property vested absolutely in the Central Government free from all encumbrances. All the property acquired under this section formed part of the compensation pool. Cash balance lying with the Custodian and certain other contributions and assets were also thrown in the compensation pool. Elaborate rules were framed under the Compensation Act for the purpose of paying compensation to displaced persons out of the compensation pool. One of the ways of paying compensation was transfer of property.

8. It is not disputed that Lachhman Dass and others were granted Sanads under the Compensation Act and thus purported to acquire ownership rights in the shops.

9. The objects and reasons for enacting Section 20-B were given as follows :

"Instances have come to notice where some properties were wrongly declared to be evacuee property and they were also acquired. In such cases, the Custodian-General is empowered under Section 27 of the Administration of Evacuee Property Act, 1950, to restore such property to the non-evacuee owner. Similarly, a competent officer has also power under the Evacuee Interest Separation Act, 1951, to declared a share in a property to be non-evacuee after the whole of it has been declared to be evacuee property and has been acquired. It is not sometimes possible to restore the original property to the non-evacuee owner because of its transfer to a displaced person. To overcome this difficulty, it is proposed to insert a new Section 20-B on the lines of Section 20-A."

10. We may first analyse the provisions of Section 20-B. It proceeds on the basis that the property to be restored had in fact not properly vested in the displaced person or the Central Government.

Ordinarily, the rightful owner would be entitled to have the property restored to him. But the section enables the Central Government to deprive him of that property if it is of the opinion that it is not expedient or practicable to restore the whole or part of the property. The section mentions one reason why it may not be expedient or practicable, and that is that the property is in the occupation of a displaced person. Even if this is assumed to be an adequate reason, it makes it almost non-controlling by saying that any other reason will be good enough. This is the only meaning we can give to the word "otherwise". In other words, this means that if the Central Government likes the property or its lessee or licensee or transfer and it finds it irksome or does not want to annoy that person it could deprive the rightful owner of his property. The Central Government is not concerned with justness but whether it would be politic to restore the property. If the Central Government has decided to deprive the rightful owner of the property it may transfer to that person any property being, again in the opinion of the Central Government, as nearly as may be, of the same value as the property to be restored, by the section does not say value at what point of time; whether at the time the property was taken possession of by the Custodian, the Central Government or the displaced person, or at the time the title of the rightful owner is extinguished. The Section further gives an alternative to the Central Government to offer cash from the compensation pool, having regard to the value of the property. Here again no indication is given whether the cash has to be equivalent to the full value of the property and no indication as to the point of time at which value is to be ascertained. Under the sub-section (2) after the rightful owner has been granted any immovable property from the compensation pool or has been paid any cash then his title is extinguished.

11. It seems to us that the High Court was not right in holding that the Section did not violate Article 31(2) of the Constitution. Article 31(2) provides for two things; (1) the acquisition or requisition should be for a public purpose; and (2) the law should provide for compensation and either it should fix the amount of compensation or specify the principles on which and the manner in which the compensation has to be determined or given.

12. In our view, Section 20-B violates both these provisions of the article. There is no doubt that to provide for rehabilitation of displaced persons was a public purpose but it does not serve any public purpose to provide that if a displaced person is in occupation of somebody's property he should not be given other property because it will not be expedient or practicable to do so. A public purpose may be served if it had been provided that a displaced person may not be ousted because his business would be ruined or that he would be completely thrown on the street, but to provide in the section that if the Central Government does not think it expedient or practicable for its own convenience or for the convenience of lessee or licensee who is not a displaced person it may not restore property serves no public purpose. In our view, under the Section the Central Government is entitled not to restore property to serve a purpose other than a public purpose and consequently the section is ultra vires Article 31 (2).

13. Further, in our opinion, the section does not fix any compensation or lay down any principles for compensation. Sub-Section (1)(a) of Section 20-B may perhaps be taken as laying down some principle, namely, that the value should be the same but it does not prescribe the point of time at which the value is to be ascertained. In sub-clause (b) nothing is said about the cash being equivalent to the value of the property which is sought not to be restored. The Central Government might, having regard to the value of the property, decide that cash to the extent of 50% of its value should be paid. In doing this it would be having regard to the value of the property but it would be following another rule, namely, that the cash should be half of the value of the property which is laid down in the Section.

We are quite aware that the Central Government was faced with the problem mentioned in the "object and reasons" set out above, and this problem had to be tackled, but the problem should and can be tackled in accordance with law and the Constitution.

14. It was sought to be argued before us that Article 31 (2-A) applied in this case, but it seems to us that in so far as the property was still part of the compensation pool the effect of the extinguishment of the title of the rightful owner would be to vest the property in the Central Government. It may be that in so far as the title vested in the displaced person the case would come within Article 31 (2-A), but then the section is not severable and it has to be declared void as a whole. We need not consider the point that even if the section is severable, it would be void under Article 19(1)(f). The points we have mentioned above would also be relevant in considering the reasonableness of the restrictions.

15. We may mention that the learned counsel on behalf of Lachhman Das and others, the displaced persons to whom the shops had been purported to have been transferred under the sanads, tried to attack the validity of the order of the Custodian-General under Section 27 of the Evacuee Act on the ground that they were not heard. This point was not taken in the High Court and we cannot allow it to be raised before us at this stage.

In the result the appeals fail and are dismissed with costs; one hearing fee.

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