Om Prakash and Others

Vs

Union of India and Others

Civil Appeal No. 264 of 1967

(J. M. Shelat, C. A. Vaidialingam, P. Jagmahan Raddy JJ)

02.12.1970

JUDGMENT

REDDY, J. -

1. This appeal is against the order of cancellation of the allotment made in favour of the appellant's father in 1948 under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) in the following circumstances.

2. After the partition of Indian in 1947 the appellant's father Shri Ram Chander filed a claim in respect of the land which was owned and left behind by him in Pakistan. In respect of this claim land measuring 49.2 standard acres was allotted to him in village Pasina Kalan, Tehsil Panipat, District Karnal. Soon thereafter the appellant's father, after this allotment died in 1948 leaving the appellants and their brother Shri Ved Prakash as the only legal heirs. After the proprietary rights were conferred upon the appellants, Ved Prakash sold his share of the land to appellants Nos. 2 and 3 by registered sale deed, dated 27th November, 1957. It appears that the Section Officer-sum-Managing Officer, Department of Rehabilitation, Jullundur, Respondent No. 4 while verifying the claim discovered that an area of 15-171/2 standard acres was in excess of what the appellants were actually entitled to having regard to the nature of the land left by their father in Pakistan which was not wholly canal irrigated but comprised of Banjar Jadid, Banjar Qadim and Ghair Mumkin land and accordingly he re-opened the allotment and cancelled it to the extent of the excess. Against this order the appellants filed an appeal to Respondent 3 challenging the jurisdiction of Respondent 4, the Section officer-cum-managing Officer to pass an order cancelling permanent rights conferred on them. Respondent 3 however referred the matter to Respondent 2 - the Chief Settlement Commissioner, Punjab on 31-7-1964, who acting under Section 24(1) of the Acts cancelled the order of allotment to the extent of 15-171/2 standard acres out of the area allotted to appellant's father. Thereafter the appeal filed by the appellants was dismissed by Respondent 3 as infructuous. A revision against the order of the Respondent 2 was preferred to the Central Government under Section 33 of the Act which was also rejected not he 27th May, 1966. The appellants thereafter filed a writ petition in the High Court of Punjab for the issuance of a writ of certiorari for quashing the orders passed by the Respondents 1 to 4 which was dismissed in limine by a Bench of that Court on the 28th July, 1966. Subsequently another Bench of the same Court however, granted a certificate to appeal to this Court under Article 133 of the Constitution of India inasmuch as following the judgment of this Court in Ramesh and Another v. Gendalal Motilal Patnik and Others (AIR 1966 SC 1445), it was held that the order of dismissal in limine was a final order and the value of the subject-matter in dispute being Rs. 20,000/- the appellant was declared to be entitled to the grant of a certificate to appeal as a matter of right.

3. It is contended before us by Shri Bhamari Lal, learned Advocate, for the appellants that once proprietary rights have been conferred upon the appellants in respect of the entire area of the land which is allotted to hem, the Section officer-cum-Managing Officer had no jurisdiction to cancel the allotment and if this is so the High Court ought to have quashed that order in exercise of the jurisdiction vested in its under Article 226 of the Constitution of India. It is also contended that Respondent 3 was not justified in making a reference to Respondent 2 for cancelling the proprietary rights conferred upon the appellants because if Respondent 4 had no jurisdiction to cancel the order, he had also no jurisdiction to cancel the allotment except to cancel the order of Respondent 4. Further the reference made by Respondent 3 to Respondent 2 is equally bad because under Section 19 of the Act, read with Rule 102 of the Displaced Persons Compensation and Rehabilitation Rules, it is for the Section Officer-cum-Managing Officer, Respondent 4 to refer the matter to Respondent 2, as such the reference by Respondent 3 to Respondent 2 is bad in law.

4. Lastly it was contended that the authorities were in error in holding that there was no material for them to hold that the land which was owned by the appellant's father in Pakistan was not canal irrigated land because the first Fard Taqsim received from the Pakistan authorities did not even show the name of the appellant's father as owner of any land in Pakistan and when the second Fard Taqsim was received by the Rehabilitation authorities from Pakistan they did show the appellant's father as owner of the land but Khasra Gridawari which was received with it did not show the entire land as canal irrigated. In these circumstances it was urged that no reliance could be placed upon these contradictory documents which were sent by Pakistan authorities from time to time. The learned Advocate also contended that the best evidence which could have shown the classification of the land owned by the appellant's father was the Supreme Court Shud Kar' entries of the Canal Department which would corroborate the appellant's contention that the entire land was canal irrigated but when these documents were sent for, the Pakistan authorities said that the 'Shud Kar' had been destroyed and subsequently the Deputy Commissioner for India in Pakistan had informed that the Pakistan authorities were not co-operative in supplying the entries in 'Shud Kar'. It was also contended by the learned Advocates that the Jamabandi papers which are the most important revenue records ought to have been looked into instead of the Fard Taqusim and the Khasra Girdawari and if so examined the Namabandi papers would have shown that the land which the appellant's father owned was canal land.

5. It is denied that the appellant's father obtained the allotment on the basis of an oral verification of his claim under 3 categories - Quasi-permanent. Temporary and Reserve. This oral verification is subject to correction, variation and cancellation if subsequently relevant revenue records which were called for from the Pakistan authorities justified such a course. The Section Officer-cum-Managing Officer could therefore under Section 19 of the Act cancel any allotment under which any evacuee property was allotted. The Chief Settlement Commissioner has also the powered under sub-section (1) of Section 24 of the Act to call for the records at any time of the proceedings under the Act in which an officer specified therein had passed an order, for the purpose of satisfying himself ad to the legality of propriety of any such order and may pass such order in relation thereto as he thinks fit. Sub-section (2) further provides as follows :

> "Without prejudice to the generality of the foregoing power under sub-section (1), if the Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then, notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass as order directing that no compensation shall be paid to such a person or reducing the

amount of compensation to be paid to him, or as the case may be, cancelling the lease of allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue."

6. It is therefore contended relying on sub-section (2), that inasmuch as no fraud or false representation or concealment of any material fact has been alleged or proved in this case, the Chief Settlement Commissioner cannot exercise the revisionary power under Section 24. This contention is our view has no validity. It is a well established proposition of law that where a specific power is conferred without prejudice to the generality of the general powers already specified, the particular power is only illustrative and does not in any was restrict the general power. The Federal Court had in Talpade's case indicated the contrary but the Privy Council in King Emperor v. Sibnath Benerjee observed at page 258 :

> "There Lordships are unable to agree with the learned Chief Justice of the Federal Court on his statement of the relative positions of sub-section (1) and (2) of Section 2 of the Defence of India Act, and counsel for the respondents in the present appeal was unable to support that statement, or to maintain that Rule 26 was invoked. In the opinion of their Lordships, the function of sub-section (2) is merely an illustrative one; the rule-making power is conferred by sub-section (1) and 'the rules' which are referred to in the opinion sentence of sub-section (2) are the rules which are authorized by, and made under, sub-section (1); the provisions of sub-section (2) are not restrictive of sub-section (1) as, indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-section (1)'.

7. The decision of this Court in Estate Development Ltd. v. Union of India and Others, did not consider this aspect of the matter and was only concerned with sub-section (2) of Section 24 and consequently it is not much assistance to the appellants.

8. In this view the contention of the learned Advocate that neither the Section Officer-cum-Managing Officer under Section 19 nor the Chief Settlement Commissioner under Section 24 had jurisdiction to revise their earlier orders, has no force, not is there any jurisdiction in the contention that Respondent 3 could not refer the matte to the Chief Settlement Commissioner for him to exercise he power under Section 24(1) of the Act.

9. On the merits of the case there is no doubt that the initial allotment was made on the assumption that the land belonging to the appellant's father which was left in Pakistan was canal land but as it turned out from the records which the Department of Rehabilitation obtained from the Pakistan Government the lands owned by the appellants were not entirely canal land but there were included in it Banjar Jadid, Banjar Qadim an Ghir Mumkin land, which did not entitled the appellant's father to allotment of 49.2 standard acres but to a lesser extent. In other words the allotment made to the appellant's father initially was 15-171/2 standard acres in excess of the extent to which he was entitled. The appellant, however, as already stated contends this finding. The learned Advocate on their behalf has urged before us that Fard Tawsim and Khasra Girdawari had not correctly indicated either the extent of the l and or its classification. We do not think this contention is tenable. The Chief Settlement Commissioner has in his order, dated the 22nd February, 1965, stated that the second Fard Taqsim and also Khasra Girdawari of 1946-47, showing the class of soil abandoned in Pakistan was verified after inspection from the original records from the Pakistan authorities and also be bye officials of the Indian Government. The Chief Settlement Commissioner proceeded to

observe that on the basis of second Fard Taqsim and the latest Khasra Girdawari supplied by the Pakistan Government is was found that the entire land abandoned by Shri Ram Chand was not canal irrigated, in spite of the fact that the total area of land abandoned by him in Chak No. 708/GB was 51-7-8 A. K. M. The kind of soil as found out from the Fard Taqsim was as under :

> #Nehri 29-6-16 A.K.M. Banjar Jadid 14-6-12 -do- Banjar Qadim 6-7-15-do- Ghair Mumkin 0-2-5 -do-##

10. On the basis of this information the appellant will be entitled to only 33-101/2 standard acres and consequently there is an excess allotment to the extent of 15-171/2 standard acres. The Chief Settlement Commissioner also pointed out that on four occasions the authorities concerned being moved by the appellants had sought for an obtained information and in so far as 'Shud Kar' are concerned they were informed that they were destroyed after 6 years and that no 'Shud Kar' were available for the year 1947 or before and on the 4th occasion when against information was sought for with respect to these Shud Kar as stated earlier the Deputy Commissioner for India in Pakistan had replied that the Pakistan authorities were not co-operative in such matters.

11. It may be observed that no where it urged that neither the Fard Taqsim not the Khasra Girdawari were not important revenue records nor that they do not disclose the classification of the land or source of irrigation. What was urged was that the records sent by the Pakistan Government were not reliable. We do not think that the contention that Fard Taqsim and Khasra Girdawari are not important documents is justified not can it be said that it is not possible to say what is the nature, extent or quality of the land. The learned Advocate has referred us to page 49 of Land Resettlement Manual by Tirlok Singh which is said to be a standard work. It is therein stated that for class of land the entry in the Jamabandis is to be followed strictly.

12. Even the earlier references in the book show that the entries in the Jambandi did not give all the necessary details and therefore certain directions had to be given. It is also evidence that details regarding the extent of distribution and calcification of land could be obtained from Fard Taqusim which is also an important revenue recorded.

13. A reference to the Punjab Land Revenue Act, 1887, would show that a Jambandi is a register of holding of owners and tenants prepared pursuant to Section 31(2) of the Punjab Land Revenue Act, 1887. Under Section 31 to 40 of the said Act record-of-rights and annual records are prepared. Jamabandi is part of the standing record maintained under Section 3(2). A standing record is one framed at a settlement made before the said Act was passed or in pursuance of a notification issued under Section 32 of the Act and is considered to be convenient way of distinguishing it from the annual record, an amended edition of the record-of-rights prepared for each estate yearly or at such intervals as the Financial Commissioner may prescribe in which all changes which have occurred since the standing record was framed are, or should be, incorporated. The form in which the Jambandi is to be maintained is given in Land Revenue Rule 72 in which one of the particulars to be given in Column 6 is the "well" or other means of irrigation" for the particular land. Khasra Girdawari is a harvest inspection book. This is given in the Punjab Land Records Manual. Column 5 requires the class of land according to last Jamabandi to be shown. A new Khasra Girdawari will be brought into use when a new quadrennial Jamabandi has been preparation nd maintenance of Fard Taqsim Arazi Matruka made in exercise of the powers conferred by Section 46 of the said Act. The Fard Taqusim Arazi Matruka of the village would show that Column 7 requires the "well or other sources of irrigation" to be stated, just in the same way as in the Nambandi Column 6. (The relevant particulars and forms of Jamabandi, Khasra Girdawari and Fard Taqsim are at pages 199-200, 362

to 367 and 305-306 respectively of the Punjab Land Revenue Act, 1887, V Edition, 1963, by Agarwala). We are however, not concerned with the various aspects of these records as it is not necessary for us to consider them in this case except to the extent necessary namely to show that a Fard Taqsim is as important a document as Jamabandi and gives in so far as this case is concerned the relevant date for determining whether the land owned and left by the appellant's father was entirely canal land. Both the Section Officer-cum-Managing Officer as well as the Chief Settlement Commissioner therefore, were right in placing reliance on the Fard Taqsim and Khasra Girdawari to come to the conclusion that the entire land belonging to the appellant's father was not canal irrigated, and therefore, what was allotted was 15-171/2 standard acres in excess.

14. Even from the order in Revision of the Central Government, Department of Rehabilitation, dated 3-3-1966, it is apparent that the appellants had against pressed before him similar contentions to those urged before the Chief Settlement Commissioner. Shri Nair in a detailed order while dismissing the revision observed :

> "As regards the plea that yet another opportunity may be given to the Petitioners to produce some documentary evidence I am of the opinion that in the circumstances explained by the Chief Settlement Commissioner (R) it will hardly serve any purpose as the Shud Kar of the Canal Department on which they rely are reported to have been destroyed. However, if there is any cogent documentary proof to establish that the entire land was Nehri, the petitioners can place in before the authorities concerned in order to get their account corrected. As matters stand at present which indicate that all possible efforts were made to obtain the information from Pakishan. I find no illegality or impropriety in the impugned order. The petition is devoid of force and is hereby rejected."

15. We consider this order to be fair and reasonable. There is no doubt that it is still open to the appellants to avail of the opportunity afforded to them to procure and produce such material form which it can be established that the entries in the Fard Taqsim and Khasra Girdawari are not correct or that the lands owned by the appellants' father were canal lands entitling the appellants to an allotment of 49.2 standard acres. Till then no exception can be taken to he orders passed by the concerned authorities. The appeal therefore fails and is accordingly dismissed with costs.

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