

Sardari Lal and Another

Vs

Union of India and Others

Civil Appeal No. 1208 of 1967

(K.K.Mathew, A. K. Mukherjea JJ)

09.10.1973

JUDGMENT

MATHEW, J. –

1. This is an appeal, by special leave, against the judgment and order passed in Civil Writ No. 457 of 1967, by the High Court of Delhi.
2. The appellants are displaced persons from West Pakistan. On the basis of the claim made by them they were occupancy tenants of 125 acres of land in the village of Mauza Khunde in Montgomery District the land, Mr. Tirlok Singh I.C.S., the then Director General of Rehabilitation, allotted 55 acres of land too them by an order, dated June 12, 1953. A sanad was also issued on November 5, 1955.
3. The Managing Officer-Cum-Assistant Registrar of the Rehabilitation Department at Jullundur, on the scrutiny of the records came to know that the land in question was wrongly allotted to the appellants. He, therefore, forwarded the papers to the Chief Settlement commissioner, Jullundur, for appropriate action. The Chief Settlement Commissioner, Jullundur, in the exercise of his power under Section 24 (2) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter called the "Act", issued notice to the appellants appeared before him and contended that the land was allotted after full enquiry about the right of the appellants to get the allotment. The appellants also produced affidavits form the legal representatives of the previous owners of the predecessor granted occupancy right in the property to the predecessor-in-interest of the appellants. The Chief Settlement Commissioner was not satisfied about the occupancy right claimed by the appellants in the land in Pakistan. He, therefore, cancelled the allotment evidenced by the sanad by his order, dated June 19, 1965.
4. The reasoning of the Chief Settlement Commissioner was that the Jamabandi in respect of the land showed that the appellants had no occupancy rights therein and so no reliance can be placed on the affidavits produced by the appellants.
5. The appellants field an application for revision of the order, under Section 33 of the Act, before the Union of India, Department of Rehabilitation. The revision was dismissed for substantially the same reasons as those given by the Chief Settlement Commissioner in his order.
6. The appellants filed a petition under Article 226 and 227 of the constitution before the High Court Challenging the correctness of the order. The High Court dismissed the writ petition in limine and this appeal, by special leave, is against this order.

7. The main question which we have to consider in this appeal is whether there was any jurisdictional error or error of law apparent on the face of record in the order passed by Government in the exercise of its powers under Section 33 of the Act and whether the High Court was wrong in declining to exercise its jurisdiction under the articles.

8. On behalf of the appellants it was argued that an allotment made under the provisions of the Act after full enquiry can only be cancelled by establishing that the allotment was obtained by fraud or false representation and as there was no finding either in the order of the Chief Settlement was obtained by fraud or by making false representation they had no authority to cancel the allotment.

9. The chief Settlement Commissioner as well as the revisional authority found, on the basis of Jamabandi of village Khunde, that the appellants were in possession of the land in Pakistan not as occupancy tenants but only as "Gair Dakhilkar". There is no dispute that a person in occupation of land as "Gair Dakhilkar" should only be an ordinary tenant at will. The Chief Settlement Commissioner as well as the revisional authority further found that no reliance could be placed on the affidavits produced by the appellants from "the Muslims who were the nationals of Pakistan" and since the appellant produced no records to show that they were occupancy tenants, they should not have been allotted the land. In effect, we think, the finding is that the appellants obtained the allotment on the basis of false representation as regards their interest in the land in Pakistan.

10. It is noteworthy that in the objection filed by the appellants to the notice by the Chief Settlement Commissioner to show cause why the allotment should not be cancelled, they never contended that the Jamabandi did not represent the correct state of affairs or that there is any mistake in it. In other words, in spite of the opportunity given to the appellants to support the allotment in their favour, they never challenged the correctness of the Jamabandi on the basis of which both the chief Settlement Commissioner and the and the revisional authority came to the conclusion that the appellants had no occupancy right in the land in Pakistan. As there was a definite finding in the orders of these authorities that the appellants had not occupancy right in the land in Pakistan based on relevant materials and as the inference there for could only be that the appellants obtained the allotment by making false representation, we think that the High Court was justified in declining to exercise its jurisdiction under Article 226 or 227 of the Constitution.

11. We dismiss the appeal but, in the circumstances, make no order as to costs.

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