

SUPREME COURT OF INDIA

Gopi Chand Dhawan

Vs.

Deputy Secretary, Punjab

C.A.Nos.730 and 997 of 1968

(A. C. Gupta and S. Murtaza Fazl Ali, JJ.)

04.05.1976

JUDGEMENT

GUPTA, J.:-

1. These two appeals by special leave arise out of proceedings under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The appellant in each case is a displaced person from West Pakistan and was allotted a house in Sukhera Basti, Abohar, in 1955, and they have been in possession of their respective houses since then. In 1955 they were given proprietary rights in the houses in their occupation. By an order dated May 10, 1958 the Additional Financial Commissioner acting as Chief Settlement Commissioner cancelled the allotment of evacuee houses in village Sukhera Basti and certain other villages on the ground of irregularities in the allotment in a large number of cases. Shri R. S. Grewal, who was the Chief Settlement Commissioner, observed in his order:

"Some of the allottees have obtained more than one house in different villages. Some have obtained houses in village Abohar, whereas the major portion of their land is elsewhere. The allotment is also

void because it is contrary to the basic rules that houses could only be allotted to allottees who hold land in that village, and not to outsiders. Many of the allottees have obtained extravagant accommodation. All these illegalities and irregularities have resulted in a great injustice and hardship to the allottees of land of village Abohar. I, therefore, set aside the allotment already made and cancel the permanent rights granted, and direct that the allotment should be made afresh in accordance with Rules 44 and 57 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, after a proper evaluation of the property with the assistance of the Executive Engineer, P. W. D."

It does not appear from the order that any specific finding was recorded in respect of the allotments made to the appellants in the two appeals before us. The Chief Settlement Commissioner added:

"In making the fresh allotment every possible effort should be made to cause the minimum dislocation and hardship. These allottees who have received proper allotment of houses need not be disturbed. Due regard should also be given to any improvements effected by allottees during the period that the houses have remained in their occupation. Such of the allottees as are in possession of house to which they are not entitled or in excess of the permissible area, may be permitted to purchase them against their claims should they so desire. The principle that should be followed in the new allotment is to cause minimum of dislocation and inconvenience to deserving allottees,....."

The appellants sought to have the order of the Chief Settlement Commissioner revised under Section 33 of the Act. Shri L. J. Johnson, Joint Secretary to the Government of India who dealt with the applications under Section 33, explained and modified the order of the Chief Settlement Commissioner by his own order made on November 21, 1958. The relevant extract from the joint Secretary's order reads:

"I, therefore, direct that the sanads granted to genuine allottees of Abohar should not be touched at this stage. If in the course of any enquiry made by the Department it transpires that any allottee of Abohar has obtained an allotment through fraud or misrepresentation, then proceedings to set aside the sanads can be taken after due notice to the allottee concerned in the normal course. It must be remembered that these allottees have been in possession now in some cases since 1951 and have, no doubt, effected repairs and improvements to houses which were given to them, once sanads were issued in their names, it was only natural for them to treat the houses as permanently transferred and to effect such improvements and repairs. Unless very compelling reasons exist it is quite improper to cancel their sanads merely on the ground that there is general enquiry to be made in regard to allotments in this village. It is apparent from Shri Grewal (Chief Settlement Commissioner, Punjab (s)) order itself that it was not his intention to touch genuine allottees. The general tone of the order, however, and in particular the directive that permanent allotments already made should be set aside raised apprehensions in the minds of the petitioners. It is necessary, therefore, to set these apprehensions at rest. The portion of the order of Shri Grewal relating to genuine allottees of

Abohar is set aside."

The extract from the Joint Secretary's order shows that the allotments to genuine allottees were not to be treated as cancelled if as a result of the general enquiry those allotments were not found to be vitiated by fraud, misrepresentation or any other serious infirmity which justified cancellation.

2. In May 1961 the Deputy Secretary to the Government of Punjab with delegated powers of Chief Settlement Commissioner directed the Managing Officer to make fresh allotment of evacuee houses in village Sukhera Basti, Pursuant to this direction the house allotted to the appellant in C. A. 730 of 1968 was allotted to the third respondent and the house allotted to the appellant in C. A. 997 of 1968 was allotted to respondents 3 to 5 of their respective appeals. The appellants moved the High Court under articles 226 and 227 of the Constitution against the cancellation of their allotments. The learned single Judge who heard these applications dismissed the same and on appeal under Clause 10 of the Letters Patent the Division Bench affirmed the order of dismissal.

3. In the course of hearing of the appeals, counsel for the appellants raised a point as to the scope of the proviso to Rule 2 (h) of the Displaced persons (Compensation and Rehabilitation) Rules, 1955. Rule 2 (h) defines 'urban area'. The question suggested itself from the fact that in February, 1961 Sukhera Basti area was included in the Municipal limits of Abohar. Presumably, the point was raised in an attempt to prove that the allotment of the houses to the respondents after that date was invalid. We think that the point, apart from its merits, does not really arise for consideration in these appeals in which the only question is whether the allotments in favour of the appellants were valid. This is a question which can be answered only by testing the allotments in favour of the appellants in the light of the directions given by Shri Grewal and Shri Johnson. If the allotments made in 1951 and sanads granted in 1955 are found to be valid, the inclusion of Sukhera Basti in the municipal limits of Abohar in 1961 would be of no relevance, and if they are invalid, then this fact is of no concern of the appellants. It does not appear, however, that before the houses allotted to the appellants were reallocated to the respondents, the directions contained in the orders made by Shri Grewal and Shri Johnson on 10-5-1958 and 21-11-1958 respectively were carried out. The High Court also does not appear to have been alive to this aspect of the matter. In these circumstances we think that in the interest of justice these two cases should go back to the Managing Officer having jurisdiction to deal with these cases to consider the validity of the allotment of the two houses forming the subject-matter of these two appeals, in accordance with the directions contained in the orders dated May 10, 1958 and November 21, 1958 passed respectively by Shri Grewal, Chief Settlement Commissioner, and Shri Johnson, Joint Secretary to the Government of India. We order accordingly. Both these appeals are therefore allowed and the order of the Division Bench and also of the learned single Judge of the High Court are set aside. There will be no order as to costs.

Appeals allowed.