Chand Kumar Kapur

Vs

Chief Settlement Commissioner, Punjab and Others

Civil Appeal No. 2057 of 1970

(D. A. Desai, Ranganath Misra, R. B. Mirsa JJ)

12.12.1983

JUDGMENT

RANGANATH MISRA, J. –

1. The only question which arises for consideration of this Court in this appeal by way of special leave under Article 136 of the Constitution against the judgment of the Punjab and Haryana High Court in letters patent appeal is as to whether the Managing Officer operating under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 ('1954 Act' for short), could cancel the allotment made in favour of the appellant under the East Punjab Administration of Evacuee Property Act, 1947 ('Punjab Act' for short) and schemes framed thereunder.

2. Appellant, an evacuee from West Pakistan owned agricultural land in District Lyallpur. As a displaced person he was allotted a little more than six standard acres of land in Village Kotla, Tehsil Jullundur in Punjab under the quasi-permanent scheme. In 1952 the Director of Rehabilitation submitted a proposal to the Financial Commissioner, Relief and Rehabilitation-cum-Custodian that premium cut of 5 villages, viz., Sufi Pind, Dhin, Barring, Khusropur and Alladinpur be enhanced from 18 3/4 per cent. to 50 per cent. as similarly situated villages near Jullundur City carried cut of 50 per cent. This proposal also suggested that in two other neighbouring villages, viz., Sheikhpind and Kotla where no premium cut had been applied earlier, a similar cut 5 per cent. should be applied. This was on the footing that these lands abutted the Jullundur Municipal area and had semi-urban character. The proposal was accepted by the Commissioner as also by the Governor of the State before July 2, 1952 when Rule 14(6) of the Evacuee Property (Central) Rules, 1950 was amended and in respect of quasi-permanent allottees cancellation was permitted only of grounds set out in rule 14(6). The allottees of Sheikhpind and Kotla villages challenged the orders implementing the policy decision of cut of 50 per cent. before the hierarchy of rehabilitation authorities and moved the High Court by filing a writ petition. When that writ petition was dismissed, special leave was obtainea from this Court and the Court found that after coming into force of the 1954 Act and the Notification made on March 24, 1955, under Section 12 of the Act, the lands already allotted to displaced persons ceased to be evacuee property and had become part of the pool created under the 1954 Act. Power was not available to be exercised under the 1950 Act.

3. Subsequently steps were taken to enforce the cut and a writ petition was moved before the High Court. When the Single Judge dismissed the petition, an appeal was taken to the Division Bench and four contentions were advanced on behalf of the appellant and each one was negatived and the appeal was dismissed. It may be stated that that appeal was heard along with 19 other raising common questions of fact and law. Against this confirming decision of the Division Bench, leave having been obtained from this Court, the present appeal has been filed.

4. Admittedly, the lands allotted to the appellant in village Kotla are close to the Municipal limits of the town of Jullundur and this being a question of fact, has not rightly been disputed before us. The High Court has found :

> It deserves notice that the proceedings for the enhancement of the valuation of the land of the village and the consequent raising of the cut to 50 per cent. were initiated as early as the year 1951. After due verification by the subordinate rehabilitation authorities by actual visits on the spot, the proposal to enhance the cut was finally approved by the Director-General of Rehabilitation and subsequently received the seal of approval by the order of the Governor in February 3, 1952. The significant fact is that sub-clause (6) of Rule 14 on which main reliance is being placed was substituted for the old sub-rule by Notification No. S.R.O. 1290 dated July 22, 1952.... It would thus appear that at the time when the proceedings were initiated and the final order dated February 3, 1952, was passed, the relevant provisions of sub-clause (6) of Rule 14 were not yet on the statute book and the action taken prior to their promulgation was thus perfectly valid and in accordance with law. The order dated February 3, 1952, therefore, did not have to conform to a provision which has been introduced subsequently. It was not the contention of the learned counsel that sub-clause (6) above-said is to take effect retrospectively nor do we find anything in the said rule to accord any such effect to the same.

On the aforesaid finding the High Court held that the scheme stood altered.

5. We approve of this view taken by the High Court. Strong reliance had been placed by appellant's counsel on Basant Ram v. Union of India (1962 Supp 2 SCR 733 : AIR 1962 SC 994 : (1963) 2 SCJ 29), Hukam Chand v. Union of India ((1973) 1 SCR 896 : (1972) 2 SCC 601 : AIR 1972 SC 2427) and Hoshnak singh v. Union of India ((1979) 3 SCR 399 : (1979) 3 SCC 135 : AIR 1979 SC 1328). In Basant Ram Case (1962 Supp 2 SCR 733 : AIR 1962 SC 994 : (1963) 2 SCJ 29) this Court decided that the approval of the Central Government on the basis of which the Notification of March 24, 1955 had been made was misconceived inasmuch as with the coming into force of the of the 1954 Act the Administration of Evacuee Property Act, 1950 (Central Act 31 of 1950) stood repealed and the evacuee property, subject to the Act of 1950, had become a part of the compensation pool under the Act of 1954. We agree with the analysis of that decision by the High Court. So far as the second case is concerned, the question that fell for consideration was whether rules framed by it could be given retrospective operation by the Central Government when the statute either expressly or by necessary implication had not authorised rules to be made with retrospective effect. So far as the last case is concerned, the facts which gave rise to the dispute were very different and the ratio thereof has no application to the present set of facts.

6. In dealing with a matter of this type the broad perspective of the scheme has to be kept in view. People who were uprooted from Pakistan and became displaced persons were to be compensated on the footing that they had left behind lands in Pakistan and lands of people who had left India for Pakistan had become evacuee property and the compensation to the displaced persons could be by settlement of such lands. In a case of this type no one can look for undue enrichment. Once it is held as a fact that the properties are semi-urban and admittedly this had not been kept in view when original allotment had been made it should always be possible to make an adjustment. Such an adjustment is just and fair. It is appropriate to take note of a very significant feature, namely, there were of these 117 allottees in these villages which were declared sub-urban and 97 of there allottees paid the extra premium, and were allowed to acquire the entire land given to them. Twenty allottees

including the appellant took steps to challenge the decision regarding levy of premium as also cut in the allotments. There is no justification as to why any differential treatment should be shown to these twenty allottees particularly when all the 117 allottees stood at par so far as the application of the decision contained in the order dated February 3, 1952 is concerned. We do not know if under the changed circumstances the same benefit is available to be extended to the appellant now, viz., permitting him to pay the extra premium at present. More time than 30 years have passed and with the passage of such a length of time changed situations must have come to prevail. We see no justification to accept the appeal and allow the benefit claimed by the appellant. But our dismissal of the appeal should not preclude the respondent authorities from entertaining the offer by the appellant, if made, to pay the extra premium and/or further demand with a view to obtaining a lawful settlement of the entire property without cut on the basis of the initial allotment. We make no order for costs in this appeal.

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