

Union of India and Another

Vs

Avtar Singh and Another

Civil Appeal No. 503 of 1971

(D. A. Desai, A. P. Sen, V. B. Eradi JJ)

04.04.1984

JUDGMENT

DESAI, J. -

1. Avtar Singh and Dr. Kartar Singh two sons of S. Harnam Singh filed Civil Writ No. 1242 of 1965 against their father S. Harnam Singh, respondent 2 and Union on India and Tehsildar-cum-Managing Officer, respondents 1 and 3 respectively questioning the correctness and validity of an order dated March 15, 1965, Annexure 'G' to the petition.

2. S. Harnam Singh was the owner of agricultural land comprised in Deh No. 100 as also a portion of the land included in Deh No. 99 situated in District Nawab Shah, in erstwhile Sind Province now forming part of Pakistan. Harnam Singh had three sons : Avtar Singh, Dr. Kartar Singh and Harnam Singh. Smt. Tej Kaur was the wife of Harnam Singh. It was alleged that in the year 1946 Harnam Singh effected a partition of agricultural land between himself, his three sons and his wife Smt. Tej Kaur each being given an almost equal share. It was alleged that intimation of the alleged partition was sent to the revenue authorities of Sind Province with a request to effect necessary mutation in the revenue records showing land as having been given in the partition to the particular person. After the partition of the country S. Harnam Singh, his three sons and his wife migrated to India and they claim to be displaced persons. Harnam Singh lodged a claim on March 15, 1948 in respect of the entire land including the land be

3. An affidavit in opposition was filed on behalf of responded 1 and 3 one A. G. Vaswani, Settlement Commissioner (A) and Ex-Officio Under - Secretary to the Government of India, Ministry of About, Employment and Rehabilitation inter alia contending that in April 1948 when for the first time Shri Harnam Singh lodged his claim as displaced person against the loss of his land property in Pakistan, he had categorically stated that 225 acres of land situated in Sind belonged to him and there was no express or implied, over or covert reference or even a whisper of a partition between himself and his sons and wife before he migrated to India. It was also contended that the claim lodged by Harnam Singh in April 1948 was attested by Shri Harbans Singh, then Deputy Custodian of Evacuee Property, East Punjab and at the relevant time Judge of the Punjab High Court. It is alleged that on the basis of the alleged partition, separate claims were lodged for the first time in June 1948 each claiming 48 acres of land which w

4. The writ petition came up before a learned Single Judge of the High Court. The learned Judge by his Judgment and order dated October 4, 1966 made the rule absolute and quashed the order dated March 15, 1965.

5. The Union of India preferred Letters Patent Appeal No. 384 of 1966 which was heard by a Division Bench of the Punjab and Haryana High Court. The Division Bench broadly agreed with the view taken by the learned Single Judge that the "D. O letter of Shri Dube dated May 31,, 1963 conveyed the decision of the Government of India in exercise of powers under Section 33 and therefore, the power of revision against the order of the Chief Settlement Commissioner was exhausted because a quasi-judicial tribunal has no power to revise or review its earlier decision on merits even if the earlier decision in wrong on facts or law". Accordingly, while dismissing the L. P. Appeal the High Court held that the impugned order of the Government of India dated March 15, 1965 was without jurisdiction and was invalid and of no legal efficacy. hence this appeal by special leave by the Union of India.

6. Mr. Abdul Khader, learned counsel for the appellant urged that the High Court was in error in treating D. O. letter No. 33(66) /L&RO-62 of Shri N. P. Dube dated May 31, 1963 as a decision reached or recorded in exercise of the power conferred by Section 33 so as to exhaust the power of revision. Consequently, it was urged that the High Court was in error in holding that the decision of the Central Government dated March 15, 1965 was without jurisdiction.

7. Chronology of events and the assertion and counter-assertion would reveal that controversy centers round the nature and character of the letter dated May 31, 1963 of Shri N. P. Dube, Joint Secretary to Shri J. M. T. Tandon, Deputy Secretary to the Government of Punjab, Rehabilitation Department, Jullundur. More specifically the question is whether it was an inter-departmental communication or it was the decision recorded in exercise of the power conferred by Section 33 of the Act ? It it was not a decision recorded by the Central Government in exercise of the power conferred under Section 33 the judgment of the High Court would be unsustainable.

8. The Act as its long title shows was enacted to provide for the payment of compensation and rehabilitations grants to displaced persons and for matters connected therewith. Consequent upon the partition of the country, there was migration of population both the ways. Large number of residents of areas now forming part of Pakistan migrated to India and there was also a flow in the reverse direction. Those who migrated under those tragic, traumatic and compulsive circumstances were forced to leave their properties at the place they were settled for generations. Both India and Pakistan were faced with a huge problem of settling persons thus displaced. In order to compensate such displace persons who were uprooted out of their abodes, the Act was enacted.

9. Section 2(b) defines 'displaced person' to mean "any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming art of West Pakistan, has, after the first day of march 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan and also includes the successors-in-interest of any such person". 'Evacuee property' has been defined in Section 2(c) to mean " any property which has been declare or is deemed to have been declared as evacuee property under the Administration of Evacuee Property Act, 1950". Section 14 of the Act envisages constitution of a compensation pool which shall consist of evacuee property bot

33. The Central Government may at any time call for the record of any proceeding under the Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions

contained in the Act or the rules made thereunder.

10. Having noticed the relevant provisions, certain facts may be reiterated. Harnam Singh displaced person submitted land claim on march 15, 1948 at Delhi or an area of 300 acres said to have been abandoned by him in Nasrat Tehsil, district Nawabshah Inside. He filed another claim at Jullundur on April 1, 1948, reducing his claim to 225 acres. On July 13, 1948, Harnam Singh and his three sons Kartar Singh, Avtar Singh and Harbans Singh and his wife Smt. Tej Kaur lodged separate claims each for 48 acres of land in lieu of land alleged to have been abandoned by each one of them in Pakistan. There was a modified claims submitted on February 22, 1949. the difference between the first and the second claim arises from the altered stand adopted by the claimants. Initially Harnam Singh claimed to be the exclusive owner of 225 acres of land but when separate claims were submitted by his three sons and his wife it was alleged that thee was oral partition of the property belonging to Harnam Singh between himself, his w of land. Upon their request to convert temporary allotment into quasi-permanent allotment, their cases were examined by the Managing officer who found that there was an excess allotment of 1-12 1/2 standard acres in case of each of the claimants and with their consent the excess area of 8-14 1/2 standard acres was cancelled. A little while after the Officer-in-Charge (Land claims), Jullundur examined the case of each of the claimants and made a reference to the Chief Settlement Commissioner on September 2, 1960 recommending that 48-14 standard acres was in excess of the entitlement of the five claimants in view of the entries in Jamabandi and the excess allotment be cancelled. A further enquiry revealed that the claim of Harnam Singh that there was partition between himself and is sons was untenable and that except Harnam Singh the other claimants did not have any land of their ownership and therefore the entire allotment deserved to be cancelled. The Chief Settlement Commissioner rejected the reference by

11. It would appear from the mere recital of the facts that the Chief Settlement Commissioner who rejected the reference as per his order dated August 21, 1961 held the allotment in favour of the five claimants to be valid, legal and correct.

12. If the decision of the Chief Settlement Commissioner dated August 21, 1961 is wholly in favour of Harnam Singh and his sons and wife, they could, by no stretch of imagination, be said to be persons aggrieved by the decision of the Chief settlement Commissioner. Harnam Singh and his sons contended that the allotment was valid and that the reference made by the Officer-in-Charge (land claims department) must be rejected. The Chief Settlement Commissioner accepted this submission of Harnam Singh and his sons and rejected the reference. Can it ever be said that a decision wholly in favour of harnam Singh and his sons is one adverse to them or that they are aggrieved by the decision ?

13. It is now necessary to turn to an intervening event. It appears that the Chief Settlement Commissioner while rejecting the reference and accepting the allotment in favour of Harnam Singh and his sons on the basis of holding and oral partition as legal and valid observed in para 213 of the order as under :

Further in the terms of the proprietor rights Sanad if any evidence comes to the notice of the department which establishes any of the facts mentioned in the clause below, the Central Government can at any time resume whole or any part of the property.

After converting temporary allotment into quasi-permanent allotment a Sanad was issued to each

claimant. One condition in the Sanad was that if it appears at any time that the or grant or allotment of land described in the Sanad, is obtained by fraud, false representation or concealment of any material fact, it shall be lawful for the President to resume the whole or any part of the said property so allotted.

14. In view of the aforementioned observation and in absence of any document evidencing partition of the property as claimed by Harnam Singh, the Punjab Government made a reference to the Pakistan authorities for the necessary verification of entries in the Government record. A similar request was also addressed to the Central Government which led to a query being addressed to the High Commissioner for India in Pakistan to obtain documentary evidence if any in this behalf. Nothing concrete emerged from these queries. In the mean time, Harnam Singh submitted a representation (Annexure 'B' to the petition) dated March 13, 1962 to the Government of India for issuing a direction under Section 33 of the Act that the matter be treated as finally settled. Some correspondence ensued between the Union of Government and the Government of Punjab which ultimately led to Shri N. P. Dube, Joint Secretary, Ministry of Rehabilitation sending a letter dated May 31, 1963 to the Deputy Secretary to the Government of Punjab, Re

N. P. Dube, Regd. A. D. Joint Secretary. D.O. No. 13 (66)/L&R/62 W.H. & R.
(Department of Rehabilitation) May 31, 1963##

My dear Tandon, Please refer to Balmukand Sharma's D. O. letter No. 422/ SINGH dated August 29, 1962, in connection with the representation filed by Shri Harnam Sing, P. C. S. (Retd.). The High Commissioner for India in Pakistan was also addressed by Secretary in August 1962 to get the required information but the Pakistan Government have not been able to supply it so far. The matter has, therefore, been considered in this offer and it is felt that there is not point in waiting any more and the matter should be finalised on the basis of the judicial findings arrived at in the case. We also feel that thee are no reasons to differ from those judicial pronouncements at this stage. The record received from the Punjab Government is, therefore, returned with the request that the case may be finalised as mentioned above.

Yours sincerely, Sd. N. P. Dube June 1, 1963 Shri J. M. Tandon, Deputy Secretary to
the Government of Punjab, Rehabilitation Department, Jullundur.##

On November 5, 1963, the Managing Officer, Rehabilitation Department, Government of Punjab submitted a note inter alia pointing out that the story of partition alleged by Harnam Singh and his sons in a myth and consequently, except Harnam Singh, no other claimant was entitled to any allotment and therefore, the decision of the Chief Settlement Commissioner dated August 21, 1961 requires to be reopened under Section 33 and allotment upheld by him should be cancelled. Upon this not a reference was made to the Central Government. Thereupon a notice dated May 21, 1964 was issued to Harnam Singh and his sons, his wife Smt. Tej Kaur having died in the mean time, calling upon them to show why the order of the Chief Settlement Commissioner dated August 21, 1961 should not cancelled. Ultimately, the impugned order was passed.

15. Undoubtedly, the impugned order is made under Section 33 which confers a wide power of revision on the Central Government. The power of widest amplitude for revising and reopening any proceeding under the Act and to pass any order in relation thereto as in the opinion of the Central Government the circumstances of the case require and as is not inconsistent with any of the provisions contained in the Act or the rules made thereunder is conferred on the Central Government. This is undoubtedly a power of revision. It is not even hedged in by any concept of

limitation. Such power of wide plenitude had to be conferred on the Central Government to set right any illegal, unfair, unjust or plainly untenable order because the proceedings under the Act were not adversary in form and character which may lead to the one or the other party approaching the Central Government to set right the matter. If a displaced person obtains allotment from the compensation pool, to which he was not entitled, certainly the Central

16. It was, however, contended that a power of revision cannot be repeatedly exercised and there must be attached finality to the orders. This submission would necessitate an examination in depth of the nature and extent of power conferred by Section 33. But in the facts of the present case we consider it unnecessary to undertake this exercise. We would proceed on the assumption that Section 33 does not provide a reservoir of power from which revisional jurisdiction can be exercised more than once in respect of the same order or the same proceeding. In this view of the matter the decision in Everest Apartments Co-operative Housing Society Ltd. v. State of Maharashtra is hardly of any assistance.

17. The question that would squarely arise is : whether on an earlier occasion, had the Central Government exercised any revisional power conferred by Section 33 in respect of the order dated August 21, 1961 by the Chief Settlement commissioner by which the departmental reference was rejected and the Chief Settlement Commissioner had upheld the allotment of land in favour of Harnam Singh and his sons.

18. Mr. P. P. Rao, learned counsel for the respondents strenuously urged that the letter of Shri N. P. Dube dated May 31, 1963 is a decision recorded by the central Government in exercise of the power conferred by Section 33 in respect of the proceeding in which allotment made in favour of Harnam Singh and his sons was upheld by the Chief Settlement commissioner and therefore, the order of the Chief Settlement Commissioner dated August 21, 1961 became final and could not be the subject matter of a revision second time, under Section 33 of the Act. There is no substance in this contention.

19. It needs to be recalled that the decision of the Chief Settlement Commissioner dated August 21, 1961 was wholly in favour of Harnam Singh and his sons. At least Harnam Singh and his sons could not be said to be persons aggrieved by the order so as to move the Central Government invoking its revisional power under Section 33. Mr. Rao, contended that the representation Annexure 'D' dated March 13 of Harnam Singh reveals that he apprehended that the case may be reopened and therefore, by his representation he moved the Central Government to affirm or confirm the decision of the Chief Settlement Commissioner dated August 21, 1961. We remain unimpressed. If every litigant in whose favour a competent authority has made an order can still approach the higher authority for the affirmance of the order without any rhyme or reason, the whole gamut of power of revisional jurisdiction would become a plaything for already successful party who may foreclose the decision and when needed can successfully urge that the po

20. Mr. Bindra, learned counsel who appeared for some of the respondents made a strenuous effort to persuade us to look into the equalities of the case. In fact, we are wholly disinclined to undertake this exercise of evaluating facts or evidence in a petition for a writ of certiorari. Further in the impugned decision the facts as appearing from the record and submissions made by the learned counsel for claimants are exhaustively dealt with and no case for interference is made out. Only two aspects however may be referred to.

21. Harnam Singh claimed to be the owner of 225 acres of land situated in erstwhile Sind Province.

In the first claims lodged by him, he clearly stated that he was owner of 300 acres. He then modified it to 225 acres. In neither of the two claims, he ever suggested that there was a partition between him and his sons also giving a share to his wife. The story of partition clearly appears to be an afterthought because it is helpful in obtaining higher allotment. No documentary evidence has been placed on record to support the case of partition which clearly appears to have been an afterthought. Earlier Jamabandi entries from Pakistan permitted a negative inference that there was no partition. The Central Government while setting aside the order of the Chief Settlement Commissioner dated August 21, 1961 recorded the finding that : (i) there is not writing or deed of partition; (ii) revenue records show the name of Shri Harnam Singh alone on the basis of the sale deed in his exclusive name : (iii) there are not

22. In the concluding stages of the arguments the respondents contended that Harnam Singh has died and his heirs having not been substituted, the appeal has abated. There is not merit in this contention. Harnam Singh was not the petitioner before the High Court. He was respondent 2. No relief was claimed against him. Further Harnam Singh was not asked to surrender the land. Petitioners before the High Court were adversely affected by the impugned decision, Death of Harnam Singh would therefore have no impact on this appeal. Therefore, the contention is rejected.

23. In view of the above discussion, this appeal is allowed and the judgment and the order of the learned Single Judge dated October 4, 1966 in Civil Writ No. 1242 of 1965 as also the judgment and order in L. P. A. No. 384 of 1966 dated May 22, 1969 of the same High Court are quashed and set aside and the decision of the Central Government dated March 15, 1965 is restored with no order as to costs throughout.

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