

Union of India

Vs

Bhagwan Das

Civil Appeal No. 2102 of 1970

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

19.07.1984

ORDER

1. In this appeal by certificate under Article 133(1)(c) of the Constitution, the appellant - the Union of India questioned the correctness of the decision of the Bombay High Court in special Civil Application No. 1893 of 1965. The High Court granted the certificate in view of the decision of the this Court in Tribhuban Prakash Nayyar v. Union of India ((1970) 2 SCR 732 : (1969) 3 SCC 99 : AIR 1970 SC 540) which was pronounced after the High Court rendered judgment and before petition for certificate was disposed of.

2. Respondent Bhagwandas Laduman claimed to be a displaced person and had verified claims in respect of his property in Pakistan Initially claims were accepted. At a later date on the material that was made available, the Additional Settlement Commissioner issued notice to the respondent calling upon him to show cause why the proceeding should not be reopened and verified claims be re-examined and allotment of property made to him be not reviewed. The respondents did not appear in response to the notice. However the Additional settlement Commissioner by two orders dated August 30, 1960 Ex.D and April 24, 1963 Ex.F reopened the verified claims rejecting a part of the earlier verified claims for standard acres 3.4 units. This power was exercised under Section 5(1)(b) of the Dis-placed Person (Claims) Supplementary Act, 1954 (the Act for short). The respondent challenged the aforesaid two orders in the special civil application filed by him under Article 226 of the Constitution. The only contention raised by him in the writ petition and which found favour with the Division Bench of the Bombay High Court was that, upon a true construction of the construction of the relevant provisions of the Act, power to review the order of a coordinate officer was not conferred and, therefore, the later orders were without jurisdiction. In reaching this conclusion, the High Court followed its two earlier judgments. After the judgment was pronounced in the petition of the respondent, an application under Article 133(1)(c) of the Constitution was moved by the present appellant/respondent in the High Court for a certificate under Article 133(1)(c) of the Constitution in view of the decision of this Court in Tribhuban Prakash Nayyar v. Union of India ((1970) 2 SCR 732 : (1969) 3 SCC 99 : AIR 1970 SC 540) which took a contrary view. The High Court granted certificate of fitness in view of the aforementioned decision.

3. The only question canvassed before us is whether the decision in Tribhuban Prakash Nayyar case ((1970) 2 SCR 732 : (1969) 3 SCC 99 : AIR 1970 SC 540) covers the points raised before the High Court and a contrary view is taken by this Court. This Court in Tribhuban Prakash Nayyar case ((1970) 2 SCR 732 : (1969) 3 SCC 99 : AIR 1970 SC 540) was concerned with the power conferred under Section 5(1)(b) of the Act. The Court held that the power of suo motu revision which inheres the power of review of the order earlier made in the same proceedings was wide enough to confer the power to reopen the verified claims and the consequent allotment. The ambit of power of

revision was held to include and comprehend the power to review and revise the verified claims accepted by the lower officers or accepted on a prior occasion made by the same authority or coordinate authority. In fact this Court held that the power conferred by Section 5(1)(b) is wide enough to permit reopening of the verified claims and which would consequently have an impact on allotment and settlement. The High Court took the view that there was no power to review earlier order as also to review the accepted verified claims. The view taken by the High court is no more good in law in view of the decision of this Court in Tribhuban Prakash Nayyar case ((1970) 2 SCR 732 : (1969) 3 SCC 99 : AIR 1970 SC 540). This was the only point raised in this appeal. It goes to the root of the matter and the decision of the High Court cannot stand. Therefore, the appeal is allowed and the order of the High Court allowing the special civil application of the respondent is set aside, and it is dismissed. Consequently the orders made by the authorities under the Act will remain valid and binding. The appeal succeeds to that extent only.

4. As the respondent has not appeared in this appeal, there will be no order as to costs.

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