

Chief Settlement Commissioner (Rural) Punjab and Another

Vs

Ram Singh and Others

Civil Appeal No. 1954 of 1972

(K. N. Singh, M. P. Thakkar JJ)

16.10.1986

JUDGMENT

THAKKAR J. -

1. Five displaced persons (respondents 1 to 5) were allotted certain lands under the provisions of Displaced persons (Compensation and Rehabilitation) Rules, 1955 (Rules) from the compensation pool. By some inadvertent error on the part of the allotting authority in making computation, agricultural land to the extent of 11 standard areas 2 units was allotted to them in excess of their lawful entitlement in lieu of agricultural lands left behind by them in areas now forming a part of Pakistan when they were obliged to migrate to India in the wake of the partition. A number of proceedings were undertaken in the context of the excess allotment made to them (hereafter called the allottees). Ultimately the Chief Settlement Commissioner by his order dated May 4, 1963, canceled the allotment of the excess land (11 standard areas 2 units) which was made by an inadvertent mistake. On May 17, 1963 the allottees made an application praying that the excess land wrongly allotted to them should be sold to them under Rule 73(2)(ii) of the Rules, on the premise that they had a legal right to purchase the excess land under the said Rules. This application was rejected by the Chief Settlement Commissioner on March 19, 1964 who repelled the plea of the allottees holding to the effect that he had a discretion in the matter and that it was not incumbent on him to sell the excess land and it was not obligatory to do so. The allottees challenged both the aforesaid orders by way of writ petitions in the High Court. It appears that meanwhile, the Competent Authority (Chief Settlement Commissioner) allotted aforesaid excess land to Piara Singh, Inder Singh and Joginder Singh (present respondents 6, 7 and 9). When the writ petitions came up for hearing the learned Single Judge of the High Court upheld the contention of the original allottees in regard to the interpretation of Rule 73(2)(ii) and directed the appellants to sell the excess land to the original allottees in pursuance thereto. The Division Bench concurred with the learned Single Judge and confirmed the order. This appeal by certificate stems from the said judgment of the High Court.

2. The rule in question provides as under :

The settlement Commissioner may, after considering the recommendation of the Settlement officer, direct the settlement officer -

#(i) * * *##

(ii) to transfer to the allottee in permanent ownership less area than originally allotted to him unless the allottee is prepared to pay for the excess area either in cash or by

adjustment against the compensation payable to him in respect of verified claim for any urban property or rural building.

The High Court has acceded to the submission urged on behalf of the allottees that by virtue of the aforesaid rule the Chief Settlement Commissioner was under a legal obligation to allot the excess area to them upon their paying for the excess area in cash or by adjustment against the compensation payable to them in respect of verified claim for any urban property or rural building. The High Court negatived the contention urged on behalf of the appellant (Chief settlement Commissioner, Punjab) that the expression 'may' conferred a discretion on the Settlement Commissioner and that it did not impose any legal obligation on him to sell the excess area to the persons to whom land was allotted in excess of their lawful entitlement. It is the validity of this view which is in issue before this Court.

3. The questions as regards the true interpretation of Rule 73 (2)(ii) is no more res integra. It has been concluded in favour of the appellants by a decision rendered by a Constitution Bench of this court in Civil Appeal No. 375 of 1963 (Judgment given on December 20, 1963 (not reported)) (Mohinder Singh v. Chief settlement Commissioner) rendered in the context of Rule 62 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 which is in pari material to the present rule, namely, clause (ii) of sub-rule (3) of Rule 73. The Constitution Bench has taken the view that the expression 'may' cannot be read as 'shall' the rule confers a discretion on the Settlement Commissioner, and that it does not create any legal right in favour of the persons to whom land has been allotted in excess of their entitlement to insist on the land being sold to them either against cash payment or by way of adjustment against their verified claims etc. In our opinion, the interpretation canvassed by the allottees would defeat the very purpose of the Rules, for, in that event, those who have by mistake or otherwise secured allotment of agricultural lands in excess of their lawful entitlement would benefit at the cost of rightful claimants having verified claims whose claims may have to be denied for want of sufficient lands to allot to them. Rightful claimants will not get the land as their claims cannot be met, the lands which could have been allotted to them from the pool having been sold to those who secured excess allotment on account of mistake or otherwise. An interpretation which would defeat the benign purpose to compensate those who have suffered on account of partition but would result in rewarding those who have gained undue advantage by mistake or otherwise and placing a premium on such mistakes, cannot be countenanced. The Judgment of the High Court on this point cannot, therefore, be sustained. We may observe for the sake of record that the judgment of the High Court upholding the order of cancellation of the allotment to the allottees of excess area to the extent of 11 standard areas 2 units by mistake remains undisturbed.

4. Learned counsel for the allottees (original writ petitions) in desperation has urged a contention based on the Punjab package Deal Properties (disposal) Act, 1976 (21 of 1976). This plea was neither taken in the writ petition nor urged in the High Court by the allottees. We do not think that we can permit the allottees who have enjoyed an undeserved benefit for 30 years (from 1956 to 1986) to raise this new plea for the first time in this Court. Under the circumstances, the appeal must be allowed, the orders passed by the learned Single Judge as confirmed by the Division Bench of the High Court must be set aside, and the order passed by the Chief Settlement Commissioner must be restored. We order accordingly, While granting leave in this matter on September 5, 1972, this Court had directed the appellants to pay the costs irrespective of the result. The appellants will therefore pay costs of this appeal to respondents 1 to 5.

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