Union of India

Vs

Kimat Rai and Others

Civil Appeal No. 1799 of 1974

(L. M. Sharam, Dr. T. K. Thommen JJ)

21.09.1989

JUDGMENT

SHARMA, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana in a writ case filed by respondent 1, Kimat Rai under Article 226 of the Constitution. The writ petitioner, that is the present respondent, is a displaced person within the meaning of the expression as defined in Section 2(b) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Before the partition of the country, he was possessed of considerable area of agricultural land in the territory which in 1947 formed part of West Pakistan. On account of the widespread disturbances, he left his place and came to reside in India as an evacuee, and settled in Bombay. He, thereafter, made a claim for relief, which is displaced person is entitled to, under the law including a prayer for settlement of land in the State of Punjab which was later divided into the States of Punjab and Haryana. His case was recommended by the Central Government to the Punjab Government, but since he was not given any land he moved the High Court by the writ petition.

2. The Central Government, that is appellant, did not file any show cause or counter-affidavit before the High Court. The State Government of Punjab resisted the claim of land and inter alia pleaded that the area which was made available by the Central Government for the purpose had been earlier exhausted and was, therefore, not available.

3. The High Court dismissed the writ petition against the State of Punjab, but, issued a direction "to the Central Government to satisfy the unsatisfied claim of the petitioner in accordance with law." This judgment is under challenged by the Union of India.

4. Mr. Anil Dev Singh, the learned counsel for the appellant contended that 20,000 acres of land was transferred to the Punjab Government by way of a 'Package Deal' for the purpose of distribution to the displaced persons. Out of this area 7000 acres of land was earmarked for the non-Punjabi evacuees, and the writ petitioner is one of them. The request to the Punjab Government by the Central Government to make an allotment of land out of this area was, according to the learned counsel, made under Section 32 of the Act, and should have been duly carried out. The argument is that in view of the arrangement made by the Central Government the burden to meet the lawful claim of respondent 1 clearly rested on the State Government and the Central Government has been erroneously saddled with this duty by the High Court in the impugned judgment.

5. So far as respondent 1 is concerned he has not appeared before this Court in spite of service of notice. The learned counsel for the State of Punjab resisted the appeal, inter alia, on the ground that

the land given to the State Government by the Central Government for distribution to the displaced persons had been exhausted and no further area was available for this purpose and the State Government, therefore was not in a position to settle any land with respondent 1. On the second day of the hearing of the case the learned counsel stated that a high officer of the State Government, who was present in the court, instructed him to state that an area of about 26 acres of land out of the area allotted by the Central Government was available with the State Government and it was ready to settle the same with the writ petitioner. He also said that under the rules the maximum land which could be settled with a displaced person was 30 acres and the State Government would make up this area by setting an additional 4 acres of land from its own resources. Subsequently an affidavit by the Superintendent (Legal), Department of Rehabilitation, Government of Punjab, along with certain annexures, indicating the same stand, was filed in court which shall be sent to the High Court along with a copy of this judgment. The learned counsel, however, said that it has been discovered lately that some other persons have been exploiting the displaced persons by entering into some kind of arrangement or agreement so as to claim the settled land for their own purpose, and the State Government has been trying to thwart such attempt by nondisplaced persons. The State Government, would,, therefore, like to be assured that the land which the State Government is ready to settle actually goes to respondent 1 and not to any other unscrupulous person. We do not find any objection to this approach. The difficulty, however, is that respondent 1 has not appeared before this Court and necessary verification in this regard is not possible at this stage.

6. The learned counsel for the State, further pointed out that even after the claim of a displaced person is admitted, he has to satisfy certain conditions prescribed under the rules before an actual settlement can be made. On an earlier occasion a letter had been sent to respondent 1 for completing the formalities, but, he did not respond.

7. The High Court has not, in the impugned judgment, considered the factual aspects in the case on which the parties differ. The decision is based solely on a consideration of the legal position under the Act. In our view it was necessary for the High Court to have recorded its finding on the questions of fact on which the parties are at variance. However, in view of the latest stand indicated by the learned counsel for the State Government the scope of this case has subject to what respondent 1 may have to say considerably narrowed down. Accordingly, we set aside the impugned judgment and remit the case to the High Court for fresh disposal in accordance with law and the observations made above. Before proceeding further, steps should be taken for service of fresh notice on respondent 1 (that is the writ petitioner before the High Court), so that, he may appear and press his claim in the writ petitioner before the High Court. The appeal is disposed of in these terms. There will be no order as to costs of this Court.

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