

Santokh Singh

Vs

Union of India

Civil Appeal No. 3117 of 1985

(M. H. Kania, Kuldeep Singh JJ)

21.12.1989

JUDGMENT

KULDIP SINGH J. –

1. This appeal we hope is the finale of protracted litigation, over a period of forty years between two displaced persons from Pakistan, regarding transfer of an evacuee property under their occupation since August 1947. One of them has a 'verified claim' in respect of the property left by him in Pakistan and entitled to compensation whereas the other is a 'non-claimant.'

2. The question for consideration before us is whether the claimant has the right to get whole of the property transferred to him to the exclusion of the non-claimant.

3. The facts necessary are as under :

Jagat Singh and Raghbir Singh on Migration from Pakistan as displaced persons occupied in 1947 evacuee property No. 46 in the town of Mandi, Himachal Pradesh. It is not disputed that the two families are in possession of separate portions of the property which they are using as independent units. Raghbir Singh had a verified claim in respect of the property left by him in Pakistan whereas Jagat Singh was a non-claimant. Jagat Singh died on September 17, 1963 and his son Santokh Singh came on the scene as his successor. Mr. P. P. Rao, learned counsel appearing for Santokh Singh wanted to bring on record some documents to show that his client has also become a claimant as the claim in respect of this property left in Pakistan was got verified in the year 1978. We are not inclined to take these documents into consideration at this late stage. All the courts below have treated Jagat Singh as non-claimant and we propose to proceed on the same basis.

4. By an agreement dated August 27, 1959 property numbering 46 at Mandi was transferred to Raghbir Singh and thereafter he applied for the demarcation of the same. Meanwhile the portion of the property in possession of Santokh Singh was numbered as 46-A by the department and was transferred to him by an agreement dated June 27, 1964. In response to his application for demarcation Raghbir Singh was told that only the portion in his possession, and not the entire property was transferred to him. Feeling aggrieved he filed a revision petition under Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called 'the Act'). Certain discrepancies in valuation and demarcation regarding the property were noticed and as such the department also made a reference to the Chief Settlement Commissioner to initiate suo moto proceedings for cancelling both the transfers in the name of Raghbir Singh and Santokh Singh. Suo

moto revision and the revision filed by Raghbir Singh were heard and decided by Shri K. L. Wason Chief Settlement Commissioner on February 24, 1968. He set aside the transfer of portion 46-A in favour of Santokh Singh and ordered the transfer of whole of the property in favour of Raghbir Singh. Santokh Singh challenged the order before the Central Government by an application under Section 33 of the Act, which was heard by Shri Rajni Kant who by an order dated September 9, 1968 set aside the transfer in favour of Raghbir Singh also and remanded the case for fresh decision after hearing both the parties. Raghbir Singh challenged the order of Shri Rajni Kant by way of Civil Writ Petition No. 142 of 1968 which was allowed by the learned Single Judge on August 6, 1970 and the order of Shri Rajni Kant was set aside. The Letters Patent Bench by its judgment dated August 31, 1978 upheld the order of the learned Single Judge but left the merits to be decided a fresh by Shri Rajni Kant or his successor-in-office. Thereafter, in terms of the High Court order, the matter was heard a fresh by Shri Gulab I. Ajwani and by his order dated February 12, 1975 he came to the conclusion that the property was divisible and both the parties being in occupation since 1974 he directed that the portions of property in occupation of Raghbir Singh and Santokh Singh respectively be transferred to them. While recording the finding that the property was divisible Shri Ajwani observed as under :

"It is evident that the two persons, S/Shri Raghbir Singh and Santokh Singh, have been living in this property for several years and have evidently found it convenient to do so. the point made by Shri Mukhi that the property was indivisible would not appear to be correct or borne out by the record. The findings or observations of the Authorised Chief Settlement Commissioner in his order dated February 27, 1968 the property was not divisible one would also appear not to be borne out from the record. One wonders whence he got this impression of indivisibility of the property...

On the other hand in his report dated August 16, 1966, the District Rent and Managing Officer has referred to Shri Santokh Singh claiming to be an occupant of a separate portion and according to Shri Santokh Singh, a fresh line plan had been prepared in 1958 dividing property No. 46 into two portions with the value of Rs. 2452 and Rs. 3967 occupied by the parties mentioned in the note dated August 16, 1966, recorded by the Managing Officer. The Managing Officer has added "but by division of property further complications have come into picture, as Shri Raghbir Singh was one of the occupants of the portion which has been transferred to Shri Santokh Singh. He was not occupying any room in the other portion of the property, which is desired by Shri Santokh Singh to be transferred to Shri Raghbir Sing. " I do not see anywhere in Managing Officer's report that the property has been shown to be indivisible. Also the "complications" mentioned have not been spelt out in the report of the Managing Officer...

On the other hand, against the foregoing material, in my view, the Valuation Unit's report, which is available on record, helps to decide this case in a fair/reasonable manner. There is a remark at p. 6 of the valuation report, wherein it has been said : "Tenant wise is not desirable but whole property can be divided into portion as per line plan. " Thus, the whole property has been shown to be divisible into two portions as per the line plan and the cost of first portion is shown to be Rs. 2452 and of second portion at Rs. 3967...

While it is correct that Shri Raghbir Singh is a claimant and, therefore, entitled to certain consideration for the transfer of property in his occupation against the

compensation payable to him, it is also true that Shri Santokh Singh too is a displaced person and having been settled on this property for over a quarter century, it would appear manifestly unfair to dislodge/unsettle him at this distance of time after he had fought legal battles for ascertaining his rights and also allegedly applied some money in renovating/keeping the property in a proper state of repairs. Shri Raghbir Singh is certainly getting his due advantage by way of facility to get the compensation due to him adjusted against the cost of the property sought to be conveyed to him....

Shri Mukhi's assertion that the property is indivisible would appear not to be correct, particularly in view of the Technical (Valuation) Unit's report, which has been cited above."

5. Raghbir Singh challenged the order of Mr. Ajwani by way of Civil Writ Petition No. 30 of 1975 before the Himachal Pradesh High Court. The learned Single Judge by his judgment dated December 20, 1977 allowed the writ petition and set aside the order of Mr. Ajwani. The learned Judge on the interpretation of Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called 'Rules') came to the conclusion that Santokh Singh being a non-claimant had no right to the transfer of the property in preference to Raghbir Singh who was a claimant.

6. Shri Santokh Singh challenged the order of the learned Single Judge by way of Letters Patent Appeal 3 of the 1978 which was heard on June 18, 1985 and was dismissed. The bench upheld the judgment of the learned Single Judge by holding that the appellant being non-claimant could not take benefit of Rule 30 of the Rules. Hence this appeal before us by way of special leave petition.

7. The Letters Patent Bench of the Himachal Pradesh High Court framed the following three points for its determination :

"(a) Whether the appellant who is admittedly in possession of a portion of the house property No. 46 situate in khasra Nos. 1479 and 1480 total plot measuring 651 sq. yds. is entitled to get it transferred in his favour.

(b) Whether the house property No. 46-A is a separate unit, and

(c) Whether the house property No. 46 is divisible."

8. The bench noticed the contention of the learned counsel for the appellant regarding the divisibility of the property in the following words :

"The learned counsel for the appellant contended that the orders passed by Shri Gulab L. Ajwani were justified in the facts and circumstances of the case. The two units, i. e. house property No. 46 and house property No. 46-A was in possession of the appellant and could easily be separated from the remaining house property No. 46, even if both the properties were situate in khasra Nos. 1479 and 1-480 measuring 651 sq. yards. The properties were divisible. The main contention was that both the portions of the properties were separate and should have been transferred in favour of respective occupants. Reliance was placed upon Rules 25, 26 and 30 of the Displaced Person (Compensation and Rehabilitation) Rules, 1955 (hereinafter the Rules)

9. Although the bench posed questions (b) and (c) reproduced above regarding divisibility of the property and also noticed the argument of the learned counsel for the appellant but in the judgment under appeal neither the above quoted argument was considered nor the two questions dealt with or answered. The bench was also oblivious of the finding recorded by Shri Gulab I. Ajwani to the effect that the property was divisible and separate independent portions were in occupation of the parties since 1947. The High Court has gone on the interpretation of Rules 25, 26 and 30 of the Rules and has held that the appellant is not entitled to the transfer of evacuee property under any of the rules. Relevant parts of Rules 25, 26 and 30 of the Rules are as under :

"25. Transfer of acquired evacuee property which is an allottable property to person in occupation thereof who holds a verified claim-(1) Where an applicant for payment of compensation is in sole occupation of an acquired evacuee property which is an allottable property such property may be transferred to him in lieu of the compensation payable to him under the Act."

"26 Transfer of acquired evacuee property which is an allottable property in sole occupation of a person who does not hold a verified claim. -Where an acquired evacuee property which is an allottable property is in the sole occupation of a displaced person who does not hold a verified claim, the property may be transferred to him."

"30 Payment of compensation where an acquired evacuee property which is an allottable property is in occupation of more than one person.-If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allottable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired evacuee property which is allottable as may be available :

Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him.

Explanation 1. - The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allottable property held verified claims and some do not hold such claims."

10. The High Court held that the appellant being non-claimant Rule 25 is not applicable and since property No. 46 was not in his sole occupation Rule 26 was also not attracted.

11. The appellant's argument, based on Explanation 1 of Rule 30 that the property be partitioned, was also rejected. The High Court held that Rule 30 including Explanation 1 was applicable only to claimants. According to the High Court partition under Explanation 1 can only be claimed by a person who is holding a verified claim. We are of the view that this case can be decided on its peculiar facts and it is not necessary to go into the question of interpretation of Rules 30 of the Rules. Even otherwise this rule was deleted as far back as August 13, 1963.

12. Both the parties are in possession of the property since 1947. After the floods in 1960 they spent

money in rebuilding their respective portions. There is no complaint that the separate portions in their possession are not viable independent units. The two families have been living in this property for over forty years and have obviously found it convenient to do so.

13. The Chief Settlement Commissioner Shri Gulab I. Ajwani exercising the powers of the Central Government under Section 33 of the Act has considered in detail the question regarding the divisibility of the property. He has taken into consideration the technical valuation unit's report and various other factors and has given a positive finding that the property is divisible. We have reproduced his findings in the earlier part of this judgment. The learned Single Judge and the Division Bench of the High Court have neither noticed the above findings nor have dealt with the question of divisibility of the property. No fault can be found with the finding of the Chief Settlement Commissioner that the property is divisible and we uphold the same. The appellant Santokh Singh and respondent Raghbir Singh are, therefore, treated to be in sole occupation of the two independent properties and as such Raghbir Singh being holder of a 'verified claim' and Santokh Singh a 'non-claimant' are entitled to the transfer of the property in their occupation under Rules 25 and 26 of the Rules respectively.

14. We, therefore, allow the appeal and set aside the judgments of the learned Single Judge dated December 20, 1977 and of the Letters Patent Bench dated June 18, 1985. We uphold the order dated February 12, 1975 by Shri Gulab I. Ajwani, Deputy Chief Settlement Commissioner exercising the delegated powers of the Central Government under Section 33 of the Act and we direct that the said order be complied with and the portions of the property in occupation of appellant Santokh Singh and respondent Raghbir Singh be transferred to them in accordance with the said order. There shall be no order as to costs.

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