BOMBAY HIGH COURT

Totaram Teckchand

Vs.

H.K. Choudhary

Special Civil Appln. No. 997 of 1959

(Shelat and Patwardhan, JJ.)

16.12.1959

JUDGMENT

Shelat, J.

1. The petitioner is a displaced person from Sind (West Pakistan). On the partition of the country he migrated to India leaving behind him immoveable properties consisting of houses, shops and agricultural lands. Under the Displaced Persons (Claims) Act No. XLIV of 1950 the petitioner preferred his claim. In that claim he valued the houses and shops at Rs. 67,000. So far as agricultural lands were concerned, he did not place any pecuniary value but declared them to be 7 acres 32/1-2 gunthas. The two claims were separately indexed each as S/IK-11/ 323. The first claim was verified and valued at Rs. 29,631-10-0 and the second relating to agricultural lands was verified as being equivalent to 5 Standard acres 13-1/2 annas. The residential buildings and shops were indexed, verified and valued as one unit having an aggregate value of Rs. 29,631-10-0. In other words, the buildings and shops were not treated as separate claims but as forming one claim under the aforesaid Index number. The petitioner thereafter applied for compensation in terms of his verified claims both for the residential buildings and shops and also for his agricultural lands. This application was acknowledged by the department on 3-2-1956. On 7-8-1956, the department issued an Allotment Order in favor of the petitioner allotting to him 4 Standard acres and 6/2-5 units of agricultural lands situate at the village Waigaon, Taluka Hinganghat, District Wardha. The allotment order is Exhibit C to the petition. It is obvious from the order and the particulars of the claim and the Index Number of the verified claim of the Petitioner that 4 Standard acres and odd units were allotted to the petitioner as compensation in respect of his verified claim regarding the agricultural lands only. There was, however, no indication in this allotment order or otherwise how the respondent had dealt with the claim of the petitioner in respect of his rural buildings of which the verified claim as aforesaid was fixed at Rs. 29,631-10-0.

2. On or about 25-3-1957, house No. 293 situate in Taluka Hinganghat, District Wardha, was put up for public auction by the Department. That property was one of the properties in the compensation pool properties. At the public auction held on that day the petitioner was the highest bidder, his bid being for Rs. 9,200. The bid of Rs. 9,200 made by the petitioner being the highest, the auctioneer, who was acting for and on behalf of the respondent, accepted it. Under the rules governing the auction, the auction-purchaser would be required to pay 10 per cent of the purchase price as and by way of earnest money before he could be accepted as the auction-purchaser. That Procedure, however, does not seem to have been followed in this case. Instead of taking 10 per cent. of the auction price as deposit or earnest money from the petitioner, the auctioneer accepted from the petitioner an indemnity bond in terms of Form No. 21-A annexed to the Displaced Persons (Compensation and Rehabilitation) Rules of 1955. The indemnity bond so taken from the petitioner provided that the petitioner, the highest bidder, being a displaced person having a verified claim, was entitled instead of making a deposit to execute the indemnity bond. The petitioner by that indemnity bond undertook to pay to Government the sum of Rs. 920 being the deposit amount together with all costs, charges and expenses, losses and damages that shall or may be occasioned to the Government in the event of the petitioner failing to complete the purchase of the said house, in accordance with the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. Upon the indemnity bond having been executed by the petitioner, the respondent, by his letter dated 5-4-1957, informed the petitioner that his bid of Rs. 9,200 at the said auction sale had been accepted. It was also stated in that letter that since the petitioner was a displaced person with a verified claim, if he desired that the balance of the purchase money viz. Rs. 9,200 less Rs. 920 should be adjusted against the amount of net compensation payable to him in respect of his verified claim, he should submit in writing the full particulars viz., the registration number and the assessed value of his claim. The letter further stated that in case of default, that is, if the balance of purchase price was not credited or got adjusted, the amount deposited by the petitioner by way of 10 per cent. of the purchase price or the amount of earnest money for which he had executed the indemnity bond would stand forfeited to Government and the auction property would be re-auctioned in which event the petitioner would have to bear all the consequences of resale as provided for in the said rules in respect of evacuee properties. On 4-10-1957, the respondent wrote to the petitioner that on scrutiny of his compensation application it was found that the net compensation payable to him was nil. Therefore there was no question of any adjustment of the balance of the price of the said house towards the verified claim of the petitioner in respect of rural buildings. By that letter the respondent called upon the petitioner to pay in cash Rs. 920 as and by way of earnest and warned him that in case he failed to pay the said amount within 15 days from the date of receipt of the letter the said house would be resold at his risk and costs. Nothing seems to have happened thereafter until 29-8-1958 when the respondent wrote another letter to the petitioner referring to the petitioner's application for compensation that he was a non-claimant and that as agricultural land had been allotted to him the petitioner was not entitled to be awarded any compensation in respect of his verified claim for his rural buildings. The petitioner was asked by his letter to pay up the full amount of Rs. 9,200 and to produce the challan of the Reserve Bank or the State Bank of India within 15 days from

the date of receipt of the letter failing which he was warned that the 10 per cent earnest money would be forfeited and recovered from him as arrears of land revenue.

3. It is clear from these letters that the respondent had decided that the petitioner had no right to claim any compensation in respect of his rural buildings by reason of the fact that as compensation for his agricultural lands he had been allotted 4 Standard acres and odd and therefore by virtue of rule 65 of the said rules he was not entitled to a separate compensation in respect of his claim for rural buildings. Consequently the respondent seems to have decided that there was no question of adjustment of any net compensation towards the purchase price of the said house and therefore he called upon the petitioner to pay up the full amount warning him of the consequences that would follow in default of such payment. It is this order that the petitioner has challenged in this petition.

4. Mr. Bhatia on behalf of the petitioner has contended that the stand taken by the respondent in refusing to allow any compensation with regard to the verified claim of the petitioner in respect of the rural buildings cannot be sustained and that that stand was founded upon a wrong construction of the said rules, and particularly rule 65. Mr. Bhatia urged that on proper interpretation of the said rules it was incumbent upon the respondent to allow compensation in respect of the petitioner's said rural properties notwithstanding the fact that 4 Standard acres and odd had been allotted to the petitioner as compensation for the loss of his agricultural lands. Mr. Bhatia also urged that it was equally incumbent upon the respondent after having ascertained the net compensation payable to the petitioner in respect of the rural buildings to adjust the same towards the said sum of Rs. 920 as earnest money and the balance of the purchase price of the said house. He contended that the order passed by the respondent calling upon him to credit the entire amount of Rs. 9,200 in either the State Bank or the Reserve Bank of India and to produce the challan therefore was without jurisdiction as the order had no basis either in the rules of 1955 or on any of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

5. In his affidavit in reply the stand taken up by the respondent is that the petitioner was not entitled to any compensation as he had been allotted agricultural lands and as the lands allotted to him were more than 4 acres he was not entitled to any compensation in respect of his rural buildings by virtue of the provisions of rule 65 of the said rules. According to the respondent, the proper construction of rule 65 was to take the valuation of each of the four rural buildings of which the total verified claim was of Rs. 26,000 and odd, and as the petitioner had been allotted more than 4 Standard acres of land and as the valuation of each of the said four buildings taken separately was less than Rs. 20,000 rule 65 precluded the petitioner from claiming any compensation in respect of the rural buildings.

6. Rule 65 reads as follows :-

> "Separate compensation for rural building not to be paid in certain cases. - (1) Any person to whom four acres or more of agricultural land have been allotted shall not be entitled to receive compensation separately in respect of his verified claim for any rural building the assessed value of which is less than Rs. 20,000".

We are not concerned with sub-rule (2) of rule 65 and therefore we need not cite it. Under sub-rule (1) of rule 65, a person to whom 4 acres or more of agricultural land has been allotted would not be entitled to receive compensation separately in respect of his claim for a rural building, the assessed value of which is less than Rs. 20,000. According to the respondent, sub-rule (1) of rule 65 would be applicable to the present case, for the four properties when separately valued had an assessed value of less than Rs. 20,000. Therefore the petitioner having been allotted more than 4 standard acres of agricultural land no compensation would be payable to him in respect of his other claim for rural buildings. The question is, what is the meaning to be attached to the words "any rural building" in sub-rule (1) of rule 65?

7. In *Sundar Das v. Regional Settlement Commissioner*[1], the same question arose and a Division Bench of that High Court construing rule 65 came to the conclusion that the words "any rural building" should be construed as including "rural buildings". They relied upon the provisions of the General Clauses Act under which a singular includes the plural. With respect, we agree with the construction put upon rule 65 (1) by the Division Bench of the High Court of Rajasthan. In the case before us, it is clear that from the very inception the respondent had treated all the four rural properties of the petitioner as one unit. The claim lodged by the petitioner in respect of these properties was indexed under one number and the verified claim of all the properties was made as one aggregate verified claim, thus treating all these four properties as one unit. In the correspondence which the respondent addressed to the petitioner, it was never the case of the respondent that these four properties had been indexed or verified by him separately as separate units for the purpose of assessing their verified claim. The result therefore is that the verified claim of these rural properties which were treated as one unit was not less than Rs. 20,000. Consequently it would be difficult to sustain the contention of the respondent that because the verified claim of the rural buildings of the petitioner was less than the minimum prescribed in rule 65 (1), the petitioner was not entitled to have any compensation in respect of his rural buildings. Besides, it would be wrong to construe rule 65 as laying down a bar to a petitioner claiming compensation in respect of rural buildings even where the value of such rural building is less than Rs. 20,000 where sub-rule (1) of rule 65 applies, or of less than Rs. 10,000 where sub-rule (2) of rule 65 applies. It is inconceivable to think that the Legislature whose intention was to rehabilitate displaced persons would forbid a claim in respect of rural buildings merely because a displaced person was allotted a certain quantum of agricultural lands as and by way of compensation for the loss of his agricultural lands.

8. It is clear from the rules that the object of the Legislature in framing them was to rehabilitate displaced persons in the same manner and fashion to which they were accustomed to before their

migration. It appears from the rules that the method of rehabilitation contemplated by these rules was a three-fold one : (1) Where a displaced person was an agriculturist before his migration and had lost his agricultural lands by reason of his migration, the policy was to rehabilitate him by giving him agricultural lands in lieu of the agricultural lands lost by him; (2) in the case of a displaced person who had lost urban properties, the policy was to rehabilitate him by allotting him as far as possible some urban property; and (3) where a displaced person had lost both agricultural lands as well as rural properties, the policy seems to be to place him as far as possible in the same position that he was in before migration. That being so, it seems to us impossible to construe Rule 65 so as to mean a bar against claiming compensation for the loss of rural buildings where such rural buildings have a verified claim either under Rs. 20,000 or Rs. 10,000 as the case may be. The restriction that is placed in rule 65 is against receiving compensation "separately" in respect of rural buildings. That does not mean that a person who has lost rural buildings by reason of his migration is not entitled to have any compensation in respect thereof. The object of rule 65 is that where a person has lost agricultural lands and has been allotted agricultural lands but his verified claim for rural

[1] AIR 1959 Raj 102

buildings is less than Rs. 20,000 or Rs. 10,000 as the case may be, compensation payable to him in respect of rural buildings should be taken into account while allotting agricultural lands to him. What is prohibited under rule 65 is a separate compensation in terms of money for residential buildings. As we have said, it is impossible to think that the Legislature intended that a person who has been allotted more than 4 Standard acres of land, would not be entitled to claim compensation for the loss of rural buildings only because the verified claim in respect of his rural buildings comes to, say, Rs. 19,999. Such a construction, in our view, would be inequitable. The contention raised by the respondent in his affidavit in reply that since the verified claim of each of the four buildings was less than Rs. 20,000 the petitioner was not entitled to any compensation therefor merely because more than 4 standard acres had been allotted to him as compensation for the loss of his agricultural lands cannot be sustained.

9. Mr. Chandiramani on behalf of the respondent contended that apart from rule 65, there were other rules which came in the way of the petitioner from successfully claiming compensation in respect of the rural properties once the agricultural lands of over 4 standard acres had been allotted to him as compensation for the loss of his agricultural lands. In support of that proposition he drew our attention to rules 44, 49, 51 and 57 of the rules. It is necessary in this connection to observe that rule 44 is contained in Chapter VII which deals with "payment of compensation for rural houses and shops left in West Pakistan" whereas rules 49, 51 and 57 are contained in Chapter VIII which deals with "compensation in respect of verified claims for agricultural lands". Mr. Chandiramani contended that under rule 44 where a verified claim relates to a house or a shop situate in a rural area in West Pakistan, the claimant may be allotted in lieu of compensation payable to him for such house or shop an acquired evacuee property of the appropriate grade according to the scale specified in sub-rule (3) of rule 44 in any rural area in India. Sub-rule (3) of rule 44 lays down that the Settlement Commissioner should classify

acquired evacuee houses in rural areas in India into Grades A to H set out therein according to the different values of the acquired evacuee houses. Thus Grade A would be in respect of a house of the value of Rs. 50,000 and above and Grade H would be in respect of a house whose value is below Rs. 1,000. Mr. Chandiramani then relied upon rule 57 which deals with allotment of a house in addition to agricultural land. Rule 57 provides that a displaced person having a verified claim in respect of agricultural land, who has settled, in a rural area and to whom agricultural land has been allotted, may be allotted a house in addition to such land in accordance with the scale laid down in that rule. The scale is two-fold viz., where a claimant has been allotted land up to ten standard acres he should be allotted a house of the grade of H whereas a claimant who has been allotted land exceeding ten standard acres but not exceeding fifty standard acres may be allotted in addition to such land a house of Grade G. From rules 44 and 57 Mr. Chandiramani sought to argue that since the petitioner had already been allotted more that 4 acres of agricultural land he would not be entitled to be allotted a house of any other grade except Grades G and H set out in rule 44 and therefore, argued Mr. Chandiramani, the petitioner would not be entitled to any rights following from the auction sale of house No. 293. In our view, the contentions of Mr. Chandiramani cannot be accepted for a number of reasons.

10. As we have already pointed out, rule 44 forms part of Chapter VII which deals with payment of compensation for rural houses and shops whereas rule 57 forms part of Chapter VIII, a distinct Chapter, dealing with a distinct topic, viz., compensation in respect of verified claims for agricultural lands. It would not be proper, therefore, to take rule 57 from its proper context and treat it as either overriding rule 44 or to treat rule 44 as subject to the provisions of rule 57. The next difficulty in accepting the contention of Mr. Chandiramani would be that rules 44 and 57 contemplate allotment of a house towards compensation for a rural building or an agricultural land and not to a sale of an immovable property from out of the pool of compensation properties. Rule 44 merely lays down that where a verified claim relates to a house or a shop situate in a rural area in West Pakistan the respondent may allot to such a person in lieu of compensation payable to him for such a house or shop an acquired evacuee house of the appropriate Grade. The several grades provided for in sub-rule (3) of rule 44 are for the purpose of standardizing so as to facilitate the respondent in allotting different kinds of houses corresponding to the quantum of the verified claims of the various claimants before him. Rule 49 on the other hand lays down that compensation in respect of verified claims for agricultural lands should be normally paid in the form of land. That rule expressly provides that except as otherwise provided in that Chapter, viz. Chapter VII of which as we have said Rule 57 forms part, a displaced person having a verified claim in respect of agricultural land shall, as far as possible, be paid compensation by allotment of agricultural land. The object of rule 49 is clear viz. to rehabilitate a displaced person who has lost agricultural lands when he migrated to this country to be placed as far as possible in the same position that he was in viz. as an agriculturist living on the income of agricultural lands. It is for that purpose that rule 49 provides that such a displaced person should be allotted agricultural lands. Rule 57 upon which Mr. Chandiramani relied is an enabling rule giving power to the respondent to allot a house in addition to agricultural land even where compensation payable to a

displaced person for the loss of agricultural lands would be governed by the provisions of rule 44. Since rule 44 provides that such compensation to such a displaced person should normally be made by allotment of agricultural lands, the Legislature wanted to confer in certain cases power upon the respondent to allot in addition to agricultural lands a house to a displaced person although his claim for compensation was only is respect of the loss of agricultural lands. It may be remembered that Section 8 of the Displaced Persons (Compensation and Rehabilitation) Act of 1954 provides various forms and manners of payment of compensation, such as in cash, in Government bonds, by sale to a displaced person of any property from the compensation pool and setting off the purchase price against compensation payable to him or by any other mode of transfer in favor of a displaced person of any property from the compensation pool, by transfer of shares or debentures in any company or corporation or in such other form as may be prescribed. Consistent with the provisions of Section 8 of the Act, the Legislature, while framing these rules, has given power under rule 57 to the respondent to allot a house in addition to agricultural lands even to those displaced persons to whom payment of compensation is governed by Chapter VIII of the rules. Since the object of Chapter VIII and particularly rule 57 is to rehabilitate such a displaced person on agricultural land, the house to be allotted to him in addition to such agricultural land would be either of Grade G or Grade H. But this, as we have said, is an enabling rule giving power to the respondent in proper cases to allot a house of either of the two Grades to a displaced person who has been allotted agricultural lands. Thus rule 44 is not subject to rule 57.

11. In the case before us, however, no allotment order has been so far issued by the respondent. Neither, rule 44 nor rule 57 of the rules would apply to this case. The case before us would, on the other hand, falls under the provisions of Section 8(c) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, where it is expressly provided that compensation payable to a displaced person can be adjusted against the price of property purchased by a displaced person from out of the evacuee properties in the compensation pool. There is no question of rule 57 being made applicable to the case before us. Consequently the contentions raised by Mr, Chandiramani on the basis of rules 44 and 57 cannot be accepted.

12. As we have already pointed out, the construction sought to be placed upon rule 65 by the respondent and upon such construction refusing any compensation whatsoever in respect of the loss of rural buildings to the petitioner is an erroneous construction. His order that the petitioner was not entitled to any compensation in respect of his verified claim for rural buildings has therefore no foundation. It follows a fortiori that the order passed by him directing the petitioner to pay the purchase price of Rs. 9,200 within a specified time and informing him there under that in default of his paying so he would be liable to all the consequences including forfeiture was without foundation.

13. In the circumstances and for the reasons aforesaid we set aside the order passed by the respondent and direct the respondent to proceed to ascertain compensation payable to the petitioner in respect of his verified claim relating to his rural properties. We also direct him to

adjust the net compensation payable to the petitioner towards, in the first instance, 10 per cent of the earnest money payable by the petitioner and thereafter to adjust the balance towards the remaining purchase price of the said building. In the event of the net compensation being less than the total purchase price of the said building, the respondent would be entitled to call upon the petitioner to pay such deficit. The petition is therefore allowed. Rule made absolute to the extent aforesaid. The respondent will pay to the petitioner the costs of this petition.

Rule made absolute.