

REPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ (1) LPA 617/2004 and CM Nos.7509-10/2004

RESERVED ON : February 11, 2008
DATE OF DECISION : February 18, 2008

GOVT. OF NCT OF DELHI & ANR. Appellants
Through : Ms. Rachna Srivastava, Advocate

versus

SHRI RAN SINGH & ORS. Respondents
Through : Mr. N.S. Dalal, Advocate

+ (2) LPA 618/2004 and CM Nos.7529-30/2004

GOVT. OF NCT OF DELHI & ANR. Appellants
Through : Ms. Rachna Srivastava, Advocate

versus

SHRI PRATAP SINGH Respondent
Through : Mr. N.S. Dalal, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

: **REVA KHETRAPAL, J.**

1. By this common judgment and order, we propose to dispose of two appeals filed by the Government of NCT of Delhi through the Settlement Officer (Rural) against the judgment and

order of the learned Single Judge dated March 04, 2004.

2. The facts relevant to the disposal of the aforesaid appeal as they emerge from the records of the case are that Shri Jai Dayal and Shri Bhim Singh, sons of Siri Chand, who were the predecessors in interest of the appellants herein, were Delhi Colonists, i.e., parties who were possessing land in Delhi which was taken over by the British Government for the construction of the capital city of Delhi, and were allotted land in Punjab. On representations made by them, it was decided that some lands should be set apart for them within the State of Delhi to satisfy their claims. Shri Bhim Singh accordingly received allotment of 10 SAS 8 units in village Barwala for which Sanad Nos.16 and 34 dated 20th December, 1958 and 28th November, 1967 were issued and further allotment of agricultural land measuring 4 SAS 3½ units in village Alipur was also made. Thus, the total allotment of agricultural land measuring 14 SAS 11½ units was made to Shri Bhim Singh as communicated by the Assistant Registrar (Lands), Jullundur, Punjab vide his letter 14275 dated 27th December, 1961. Similarly, Shri Jai Dayal (now deceased) represented by Shri Pratap Singh, received agricultural land measuring 13 SAS 8 units in village Barwala, Delhi. The deceased Shri Jai Dayal also utilised compensation of land on 5 SAS 13-1/3 in the shape of adjustment towards the sale price of a residential plot purchased by him in village Barwala. Thus, the total utilisation of land in his case came to 19 SAS 5-1/3 units.

3. Subsequently, however, a letter was received from the Assistant Registrar (Lands), Department of Rehabilitation, Government of Punjab on 08.03.1985 intimating that the Jamabandi of the village where both the aforesaid persons had land had been received from West Pakistan according to which the aforesaid persons were entitled to 8 SAS 4-1/3 units each, which meant that excess allotment of land had been made to the extent of 6 SAS and 6 ¼ units to Shri Bhim Singh and 11 SAS 7½ units to Shri Jai Dayal. Action for cancellation of the excess allotment was requested by the Department. Pursuant to the receipt of the aforesaid verification report, notice was served upon the allottees to show cause why the excess allotment of land be not cancelled. Initially, Shri Partap Singh, son of Shri Bhim Singh appeared before the Managing Officer and admitted to having received the allotment as aforesaid and requested for time to produce evidence to show that the allotment was in accordance with their title. But subsequently, he failed to appear despite the fact that the records were made available in accordance with his request. Consequently, ex party proceedings were taken against both the allottees and suo moto reference made to the Authorised Chief Settlement Commissioner under Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act") for setting aside the allotment to the extent of the excess area allotted to them.

4. The Authorised Chief Settlement Commissioner by a common order dated 30th November, 1982 accepted the suo moto reference in the aforesaid two cases of excess allotment. It was held by him that the allotment of agricultural land was made in satisfaction of the entitlement of the land claims of the two allottees and not by way of rehabilitation measure and, as such, the excess allotment found in both the cases was liable to be retrieved. It was also observed by the Authorised Chief Settlement Commissioner that the main plea of learned counsel for the respondents was that the provisions of Rule 62 of the Displaced Persons (C&R) Rules, 1955 were attracted in this case and the respondents were prepared to pay the price of the excess allotment of agricultural land as the same was not procured by them by fraud or misrepresentation of any fact. It was also noticed by him that the allottees of the land had further disposed of the land comprised in Khasra Nos.61/3, 61/4, 61/6 min, 61/19/2 and 61/18 village Barwala to one Shri Goverdhan, son of Shri Behari Lal of Village Chirag Delhi, who had been made a party to the suo moto reference, and to whom notice was issued, but received back undelivered. As for the plea that the provisions of Rule 62 are attracted in both the cases, the Authorised Chief Settlement Commissioner held that the aforesaid rule primarily dealt with the allotment of agricultural lands which were made before the commencement of these Rules, i.e., the land had been allotted to the displaced persons as

a rehabilitation measure. In the present two cases, the allotment of agricultural lands was made in satisfaction of the entitlement of the land claims of the two persons and not by way of rehabilitation measure. The provisions of Rule 62 had, therefore, no application to the present case. It was, however, directed by the Authorised Chief Settlement Commissioner that the excess allotment, which is found in both the cases, if retrieved, should not harm the persons who had purchased the land from these allottees and this aspect would be borne in mind by the Settlement Officer (Rural) while retrieving the excess land from both the allottees.

5. Aggrieved by the aforesaid order passed by the Authorised Chief Settlement Commissioner, New Delhi, the appellants impugned the same before the Deputy Secretary, Government of India under Section 33 of the Act. The said challenge was dismissed by the Deputy Secretary, Government of India by his order dated 31st January, 1985. Affirming the decision of the Authorised Chief Settlement Commissioner, it was held by him that the displaced persons from West Pakistan who were allotted lands after partition of the sub-continent were broadly in two categories, viz., those who were allotted lands by way of rehabilitation measure and those who were allotted lands in satisfaction of the compensation payable to them on their verified claims for the properties left in Pakistan. In order to bring about the speedy resettlement of displaced persons in some

categories of claimants, particularly in the case of Delhi colonists, the allotment of lands was made in anticipation of the verification of the record of their rights. In other words, it was allotment made in good faith. Subsequently, when the authentic record was prepared on the basis of Jamabandi received from Pakistan in accordance with the established practice, their area of entitlement was assessed, and the allottees were required to surrender any excess allotment made in good faith to them. The Sanads issued to the allottees carried a condition whereby the Government could resume the whole or part of the property if the transferee or his predecessor in interest had obtained the grant of allotment or any compensation in any form whatsoever by fraud or misrepresentation. The Department allotted the land to the successors in interest of the allottees in the instant case in good faith, who had made statements of their entitlement and produced certain records which subsequently could not be corroborated when compared with the revenue records received from Pakistan. It was further observed by the Deputy Secretary, Government of India that inspite of all the opportunities given to the appellants in the present case to prove their entitlement to the full area allotted to them, the appellants had failed to do so. In view of all these considerations, the claim of the appellants was rejected and dismissed.

6. The appellants thereafter impugned the aforesaid decision by filing writ petitions registered as WP(C) Nos.724 and 725/1985

impugning the order dated 31st January, 1985 passed by the Deputy Secretary, Government of India under Section 33 of the Act affirming the order dated 30.11.1982 of the Chief Settlement Commissioner. The principal contention of the counsel for the respondent before the learned Single Judge was that the Chief Settlement Commissioner could not have invoked the provisions of Section 24(2) of the said Act as a bare reading of the order of the Chief Settlement Commissioner shows that no finding was recorded by him about the conduct of the petitioners nor had any finding been recorded that the petitioners had obtained the land by fraud, false representation or concealment of material facts.

7. Support was sought to be drawn for the aforesaid contention by placing reliance upon the decision of the Supreme Court in ***Estates Development Ltd. vs. Union of India & Ors. (1970) 2 SCR 534***, wherein the Supreme Court held that the order of the Chief Settlement Commissioner must be quashed on the ground that there was no finding of the Commissioner that the appellant Company had obtained the allotment of the land “by means of fraud, false representation or concealment of any material fact”. It was further held that the finding recorded by the Chief Settlement Commissioner that the appellant Company had not proved its title to the land and the allotment was “undeserved” was not tantamount to a finding that the allotment had been obtained by a false representation or fraud or concealment of

material facts. Such a finding, it was further held, is a condition precedent for taking action under Section 24(2) of the Act. The condition imposed by the Section is mandatory and in the absence of any such finding the Chief Settlement Commissioner had no jurisdiction to cancel the allotment made to the appellant Company under Section 24(2) of the Act.

8. The learned Single Judge relying upon the aforesaid judgment of the Supreme Court held that in the absence of any finding of any fraud, false representation or concealment of material facts, which has been held by the Supreme Court to be a condition precedent to the exercise of powers under Section 24(2) of the Act, the Central Government cannot be entitled in exercise the powers vested in it by Section 33 of the Act on receipt of revenue records and on finding that entitlement of the petitioners would have been less than what had been allotted to the petitioners. In view of the aforesaid, both the impugned orders cannot be sustained and were liable to be quashed. The same were accordingly quashed.

9. Aggrieved by the aforesaid judgment and order of the learned Single Judge, the present Letters Patent Appeals have been filed by the appellants on which we have heard Ms. Rachna Srivastava, counsel for the appellants and Mr. N.S. Dalal, counsel for the respondents and perused the records.

10. For the sake of convenience, the provisions of Section 24 of the Act, which are apposite, are reproduced hereunder:-

“(1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Settlement Commissioner, a managing officer or a Managing Corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the forgoing power under sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then, notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, cancelling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

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11. The contention raised by the learned counsel for the appellants is that the learned Single Judge did not consider that the respondents did not even dispute the correctness of the Jamabandi received from Pakistan, which clearly shows that the respondents were aware of their entitlement and deliberately concealed their entitlement, thereby obtaining excess allotment in their favour. Thus, it was a clear cut case of false

representation and concealment of material facts. Accordingly, the Settlement Officer-cum-Managing Officer, New Delhi made suo moto reference under Section 24 of the Act to the Chief Settlement Commissioner. The Chief Settlement Commissioner by his order dated 30th November, 1982 rightly held that the allotment of agricultural land was made to the respondents in satisfaction of the land claims of Delhi colonists and not by way of rehabilitation measure, which finding was affirmed by the Deputy Secretary, Department of Rehabilitation, Government of India under Section 33 of the Act. The Deputy Secretary by his order dated 31st January, 1985 dismissed the appeal and unequivocally held in the order that the respondents had obtained excess allotment of land by misrepresentation and concealment of facts and, therefore, the order passed by the Chief Settlement Commissioner did not call for any interference. Against the said order, writ petitions were filed in which the learned Single Judge without considering that it was a clear cut case of false representation and concealment of material facts and that specific findings had been recorded by the Chief Settlement Commissioner and by the Deputy Secretary that the allotment was obtained by making false representations allowed the aforesaid writ petitions.

12. Learned counsel for the appellants also urged that the learned Single Judge despite the specific plea taken by the appellants, in the counter-affidavit filed by the appellants in

opposition to the writ petitions, did not consider the ramifications of Rule 62 and their inapplicability to the present case, in as much as the land was allotted to the respondents not as a rehabilitation measure before the commencement of the Rules, but in satisfaction of the entitlement of their land claims. The respondents, it was submitted, have been given land to which they were entitled. Only the excess land is sought to be retrieved which was obtained by them by false representation.

13. Reliance is placed by learned counsel for the appellants on the judgment of the Supreme Court in **Sardari Lal and Anr. vs. Union of India and Ors. (1974) 1 SCC 1**, which was a case in which the Chief Settlement Commissioner, Jullundur, in exercise of his power under Section 24(2) of the Act issued notice to the appellants to show cause why the allotment in their favour should not be cancelled in view of fact that the Jamabandi in respect of the land received from Pakistan showed that the appellants had no occupancy rights therein and so no reliance could be placed on the affidavits produced by the appellants. The appellants filed an application for revision of the order under Section 33 of the Act before the Union of India, Department of Rehabilitation, which too was dismissed for the same reasons. Dismissing the writ petitions filed by the appellants under Article 226 and 227 of the Constitution, the High Court held that the appellants were not entitled to the exercise of writ jurisdiction. On an appeal by Special Leave Petition filed before the Supreme Court, the

Supreme Court held that the High Court was justified in declining to exercise its jurisdiction under Article 226 or 227 of the Constitution and held as follows:

“10. It is noteworthy that in the objections filed by the appellants to the notice by the Chief Settlement Commissioner to show cause why the allotment should not be cancelled, they never contended that the Jamabandi did not represent the correct state of affairs or that there is any mistake in it. In other words, in spite of the opportunity given to the appellants to support the allotment in their favour, they never challenged the correctness of the Jamabandi on the basis of which both the Chief Settlement Commissioner and the revisional authority came to the conclusion that the appellants had no occupancy right in the land in Pakistan. As there was a definite finding in the orders of these authorities that the appellants had no occupancy right in the land in Pakistan based on relevant materials and as the inference therefrom could only be that the appellants obtained the allotment by making false representation, we think that the High Court was justified in declining to exercise its jurisdiction under Article 226 or 227 of the Constitution.”

14. Learned counsel for the respondents, on the other hand, categorically denied that there was any fraud, false representation or concealment of material facts on the part of the respondents for the purpose of obtaining excess allotment of land in their favour. The submission of learned counsel for the respondents was that the Chief Settlement Commissioner had no jurisdiction to cancel the allotment made in favour of the respondents without recording the finding that fraud had been committed by the respondents and/or that the respondents had misrepresented the facts and/or that the respondents were guilty

of suppression of material facts. Sub-Section (2) of Section 24 of the Act, it was contended, was wholly inapplicable to the facts of the present case and in this context reliance was placed by the respondents on the decision of the Supreme Court in ***Estates Development Ltd. (supra)*** as being on all fours with the present case. Reliance was also placed by learned counsel for the respondents on the provisions of Rule 62 of the Displaced Persons (C&R) Rules, 1955, and hence it is deemed appropriate to reproduce the said Rule which is in the following terms:

“62. Agricultural land allotted before commencement of these rules – Where any person has been allotted any agricultural land before the commencement of these rules in respect of his verified claim relating to agricultural land left in West Pakistan, the following provisions shall apply:

(a) If land allotted to such person is less than the area which should have been allotted to him under these rules, an additional area of land may, if available, be allotted to him to make up the deficiency.

(b) If the land allotted to such person exceeds the area which should have been allotted to him under these rules and if the allottee wishes to retain the excess land, he shall be required to pay the value of the excess land in such instalments as the Settlement Commissioner may determine:

Provided that if such person holds a verified claim in respect of any other property, the net compensation in respect of such property may be adjusted against the value of the excess land.

Explanation – For the purpose of this rule and the next succeeding rule, the value of land shall be determined at the rate mentioned in rule 56.”

15. A bare glance at the said Rule shows that the said Rule has no application to the facts of the present case, in as much as it is clarified in the Rule itself that it will have application only to such

cases of allotment of agricultural land which have been made before the coming into force of the Rules in respect of verified claims relating to agricultural land left in West Pakistan. It is not in dispute that allotment of agricultural land in the instant case was not made to the respondents prior to the commencement of the Rules, which came into force in the year 1955. It is evident from the records and indeed it was not disputed before us by the counsel for the respondents that the allotment had been made to the predecessors in interest of the respondents, much after the coming into force of the Rules, i.e., on 20.02.1958 and 28.11.1967 to Shri Bhim Singh and on 28.11.1957 to Late Shri Jai Dayal. Thus, quite clearly, Rule 62 has no application and the respondents cannot be allowed to derive any benefit from the provisions thereof.

16. So far as the power vested under Section 24 of the Act in the Central Government is concerned, there can be no manner of doubt that the Chief Settlement Commissioner, on being satisfied that any allotment granted to a person has been obtained by him by means of fraud, false representation or concealment of any material facts, is fully empowered notwithstanding anything contained in the Act to pass an order directing cancellation of the said allotment. In the instant case, in our considered opinion, there was false representation made by the respondents who were fully aware of the fact that land in excess of their entitlement had been obtained by them by

making false statements before the concerned authorities. On receipt of the Jamabandi from West Pakistan also the respondents were noticed and asked to produce evidence in support of the claims filed by them, but they chose not to produce any evidence in support of their claims and rather absented themselves from the proceedings, thereby leading to the inference that they were fully aware of the fact that they were not entitled to the excess allotment. The Authorised Chief Settlement Commissioner was, therefore, fully justified in cancelling the excess allotment made to the respondents by turning down their request for allowing them to retain the excess land allotted to them by invoking Rule 2 of the Displaced Persons (C&R) Rules. The Deputy Secretary, Department of Rehabilitation in exercise of his revisional jurisdiction also rightly held as follows:

"The Sanads issued to the claimants carry a condition whereby Government could resume the whole or part of the property if the transferee or his predecessor in interest had obtained the grant of allotment or any compensation in any form whatsoever by fraud or misrepresentation. The Department allotted the land to the successors in interest of the Petitioner in good faith. They also made statements of their entitlement and produced certain records which subsequently could not be corroborated when compared with the revenue record received from Pakistan. In spite of all the opportunities given to the Petitioners to prove their entitlement to full area allotted to them."

17. So far as reliance of the respondents on the decision in ***Estates Development Ltd. (supra)*** is concerned, it bears mentioning that the said decision was considered by a three

Judges Bench of the Supreme Court in a subsequent decision rendered by the Supreme Court in **Om Parkash and Ors. vs. Union of India and Ors. AIR 1971 SC 771**. In the said case, a contention was raised relying on Sub-Section (2) of Section 24 that as no fraud or false representation or concealment of any material fact had been alleged or proved, the Chief Settlement Commissioner could not have exercised the power vested in him under Section 24 of the Act. The Supreme Court upon considering the said contention and referring to the earlier decision rendered by it in the case of **Estates Development Ltd.** held that where land was allotted to a person on the basis of an oral verification and subsequently the Section Officer-cum-Managing Officer, relying on the Fard Taqsim and Khasra Girdawari, discovered that an area of some acres was in excess of what the allottee was entitled to and he cancelled the allotment to the extent of the excess, he had jurisdiction to cancel the allotment under Section 19 of the Act. It was further held that the Fard Taqsim was an important revenue record and the Section Officer-cum-Managing Officer as well as the Chief Settlement Commissioner were right in placing reliance on the Fard Taqsim and Khasra Girdawari. Both of them had jurisdiction to cancel the allotment under Sections 19 and 24 respectively.

18. Reliance placed by the counsel for the respondents on the decisions of the Supreme Court in **Visra Singh vs. State of Punjab and Ors. 1992 Supp (1) SCC 645** and **Kapur Singh Mistri vs.**

Financial Commissioner & Revenue Secretary to Govt. of Punjab and Ors. 1995 Supp (2) SCC 635 is also misplaced as the facts in the said cases were entirely different and distinct from the facts of the present cases. In **Visra Singh's** case (*supra*), the appellant continued to be in possession of the allotted land and in the meanwhile the entire properties in the compensation pool came to be vested in the Punjab Government and came to be dealt with by a new statute dealing with such properties popularly known as "Punjab Package Deal Properties (Disposal) Act, 1976".

19. In the case of **Kapur Singh Mistri** (*supra*), which was a case under Section 8 of the Act, the appellant was in possession of disputed property as a displaced person and was held entitled to the purchase of the same in terms of the policy decision of the Government. It was not a case of any fraud or misrepresentation or concealment of material fact by the appellant and as a matter of fact, the Settlement Officer by a specific order passed in this regard had offered to sell land to the appellant at an assessed price directing him to deposit a certain amount in terms of the letter of the Settlement Officer, Jullundur dated 9th December, 1968.

20. In view of the aforesaid, we have no hesitation in holding that the learned Single Judge was not correct in observing that there is no finding of any fraud, false representation or concealment of material facts, which has been held by the Supreme Court to be a condition precedent to exercise the

powers under Section 24(2) of the Act and that in the absence of such finding the Central Government was not empowered to exercise powers vested in it under Section 33 of the Act. We accordingly set aside the order passed by the learned Single Judge and hold that the appellants shall be entitled to retrieve excess land allotted to the respondents with the rider that while retrieving the said excess land from both sets of respondents the Settlement Officer (Rural) in terms of the orders passed by the Chief Settlement Commissioner and affirmed by the Deputy Secretary, Department of Rehabilitation, shall ensure that no harm is caused to the persons who are bona fide purchasers of the land from the respondents.

21. The appeals are allowed in the above terms, leaving the parties to bear their own costs.

CM Nos.7509-10/2004 and CM Nos.7529-30/2004 also stand disposed of accordingly.

REVA KHETRAPAL, J

CHIEF JUSTICE

FEBRUARY 18, 2008
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