

In the High Court of Punjab and Haryana at Chandigarh

LPA No.226 of 2014 (O&M)

Date of decision: 8.1.2015

Amrik Singh

.....Appellant

Versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr.Som Nath Saini, Advocate, for the appellant.

Mr.R.K.S.Brar, Addl.A.G. Haryana.

Raj Mohan Singh, J.

1. In the present appeal, appellant assails order dated 10.10.2013, passed in CWP No. 14407 of 2010 and order dated 18.12.2013, passed in RA No. 461 of 2013 in CWP No. 14407 of 2010.

2. Appellant-petitioner filed the civil writ petition challenging order dated 6.7.2010 passed by respondent No.4, alleging that the same was contrary to the directions issued by this Court in order dated 23.1.2009 and was also without jurisdiction. Mandamus was also sought, directing the respondents to satisfy the claim of the appellant-petitioner for allotment of land.

3. Appellant-petitioner alleged that his predecessors-in-interest, namely, Gopal Singh and Dalip Singh migrated to India after partition of the country in the year 1947 and hence, they were 'displaced persons' within the ambit of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

4. Mutalba claim was filed by predecessors-in-interest of the

appellant on 24.3.1948 under the provisions of Punjab Refugees (Registration of Land Claims) Ordinance, 1948 and their claims were verified to the extent of 4-13 ¼ each in lieu of land left in Pakistan.

5. The predecessors-in-interest of the appellant were allotted the aforesaid land in village Mandwal, Tehsil Kaithal and possession was also delivered. They were also allotted land in village Pathrali, Tehsil Kama District Bharatpur (Rajasthan). On being settled in Rajasthan, they wrote a letter to the Rehabilitation Department and pursuant thereto, the allotment in village Mandwal (Haryana) was cancelled on 9.1.1952.

6. Appellant further alleged that his predecessors-in-interest, thereafter, continued to pursue the matter with Rehabilitation Department in Rajasthan to make the allotment permanent. Despite their wholehearted, the appellant was served with a notice by the Rehabilitation Authorities in Rajasthan on 13.11.1969 to deposit the price of the allotted land. Appellant is said to have deposited the total price of the land up to the year 1999 under coercion along with interest.

7. The appellant further alleged that thereafter, they starting pursuing their claim for restoration of allotment or alternate land in lieu thereof in village Mandwal in Haryana State where they got cancelled the allotment made in their favour in the year 1948.

8. The Displaced Persons (Compensation and Rehabilitation) Act, 1954 was repealed without any saving clause vide Act No.38 of 2005. The appellant claimed that no action was taken on the representation so made to the department. Reference

has been made to a letter dated 7.12.2007 issued by the Director of Land Records, Punjab-cum- Public Information Officer, Kapurthala Road, Jalandhar under the Right to Information Act, 2005 under reference to the application dated 16.11.2007, submitted by the appellant seeking record of Mutalba Claim, Jamabandi and Pedigree table in respect of Chak No.11. Apparently, the application was shown to have been moved on 16.11.2007 that too for the supply of documents, namely, Mutalba Claim, Jamabandi and Pedigree table. Evidently, this letter was not in the context of re-opening of the claim for alternate allotment. Appellant further claimed that inaction on the part of the department prompted him to file CWP No. 1891 of 2008, which was disposed of vide order dated 23.1.2009 in terms of order passed in CWP No.7025 of 2007 titled 'Smt.Saira Almas and others vs. State of Haryana and others'. The decision rendered in CWP No.7025 of 2007 was based on yet another decision dated 10.11.2008 passed in CWP No. 9517 of 2008 in case of 'R.K.Suneja and others vs. State of Haryana'.

9. Appellant appears to have given wrong number of the writ petition in Annexure P-8, which does not correspond to the averments made in para No.12 of the writ petition. The order dated 23.1.2009 was passed in CWP No.1891 of 2008, according to the pleadings in para No. 12 of the writ petition, whereas, Annexure P-8 gives a different number of the writ petition. Be that as it may, the fact remains that such like claims were to be processed in terms of observations made in CWP No. 7025 of 2007, **Smt.Saira's case (Supra)** and CWP No. 9517 of 2008, **R.K.Suneja's case (supra)**.

10. In case of **Smt.Saira's case (supra)**, the decision was rendered on the basis of **R.K.Suneja's case (supra)**. Statement of Advocate General, Haryana was recorded to the effect that proceedings will continue for certain categories of cases even after repeal of Act.

11. Since the proceedings under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 have not been saved under the Repealing Act, all such proceedings came to an end by operation of law. The resultant effect would be that a law providing compensation to be granted to displaced persons never existed after the repeal Act came into force w.e.f. 6.9.2005.

12. State of Haryana considered the matter and enacted a new Act known as 'the Haryana Evacuee Properties (Management and Disposal) Act, 2008. The State of Haryana also issued instructions dated 22.9.2008 in order to remove any ambiguity which may have been crept in a consequence of promulgation of the Repeal Act making all the pending issues nugatory w.e.f. 6.9.2005. Such a mechanism was evolved for consideration of pending cases as on the date of the repeal. The instructions dated 22.9.2008 have the following characteristics:-

“....in order to remove ambiguity and doubts which appear to have been created, it is clarified that the enactment of the displaced persons claims and other Laws repeal Act 2005 would not affect disposal of the following categories of cases and the State Government/UTs may, therefore, take action as appropriate, to settle them under the

relevant State Laws or the General Clauses Act:-

3.1 Unsatisfied verified claims filed under the Displaced Persons (Claims) Act, 1950, in which right has accrued or has been acquired and which were pending as on 6.9.2005, the date on which the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and other related Acts were repealed.

3.2 Cases in which directions have been issued by various Courts for settlement of claims filed, confirming that an acquired or accrued right exists in favour of the claimant, under Displaced Persons (Claims) Act, 1950.

3.3 Verified claims in which full compensation has not been given so far.

3.4 Appeals and revision/review petition filed against orders passed by the authorities prescribed under the repealed Acts which are not yet to be disposed off"

13. Apparently, the aforesaid instructions were made applicable to the category of cases, which were pending as on 6.9.2005. In all, four categories were identified as depicted above. Other cases, falling strictly under the domain of the Haryana Evacuee Properties (Management and Disposal) Act, 2008, were also to be considered. After the repeal of 2005 Act, the evacuee lands falling in the State of Haryana are thus governed by the Haryana Evacuee Properties (Management and Disposal) Act, 2008 as amended in 2010. According to this Act, no allotment of evacuee land can be made to any person under Section 4 (1) of the Haryana

Evacuee Properties (Management and Disposal) Amendment Act, 2010. The salient features of the Act as amended in the year 2010 are as under:-

"4. Power to transfer evacuee property.-

(1) Notwithstanding anything to the contrary contained in any judgment, order, decree or decision of a court of law or an authority, no allotment of evacuee property shall be made to any person except as per the provisions contained in clauses (a) to (g) of sub-section (2).

(2) The Tehsildar may transfer any evacuee property, except under clause (c), on such terms and conditions, as may be prescribed,-

(a) by allotment at the rate of five hundred rupees per acre to Bhondedar, Dohlidar. Butimar. Muqararidar or such other category. as may be notified by the State Government and perpetual lessee including his predecessor-in-interest or successor-in-interest. who were in occupation/ possession as per revenue record as on the 15th August, 1947 and are still recorded as such on the date of coming into force of this Act.

Explanation.-For the purposes of this clause, perpetual lessee means a person or his successor-in-interest to whom erstwhile Muslim evacuee owners, before migration to Pakistan, had given land on lease for cultivation for unlimited period and

the lease is entered in the revenue record for the period prior to 15th August, 1947 and the same continues unabated as such;

(b) by allotment at the rate of two thousand rupees per acre to the lessee or his successor-in-interest of the inferior evacuee land which was allotted to him under policy instructions No. 7841-JN (4)-61/2699 dated the 29th August, 1961, who are in continuous cultivating occupation thereof;

(c) by sale through negotiation to any department of Government of India, State Government, Boards and Corporations duly constituted under any law, Panchayati Raj Institutions or other registered bodies and cooperative societies registered under any general or special law for a public purpose, at such price, terms and conditions, as the State Government may, determine by order;

(d) by sale through public auction;

(e) by sale through auction restricted to the members of the Scheduled Castes and Backward Classes, as notified by the State Government, from time to time, on such terms and conditions, as may be prescribed;

(f) to the person on the basis of his possession under any policy, scheme or rules;

(g) to any person with disability, on such terms and

conditions, as may be prescribed :

Provided that the sale under clause (c) shall be done in accordance with the Rules of Business of the Government of Haryana, 1977. However, the conveyance deed for the transfer of the evacuee property under clause (c), shall be issued by the concerned Tehsildar :

Provided further that land in rural area and urban area which is free from encroachment and free from all encumbrances shall be transferred to the concerned Gram Panchayat or Municipality, as the case may be, on such terms and conditions, as the State Government may, by order, direct.

(3) Every Tehsildar selling any evacuee property by public auction or otherwise under sub-section (2), shall be deemed to be a revenue officer within the meaning of sub-section (4) of section 89 of the Registration Act. 1908 (XVI of 1908)".

No allotment of evacuee land can, therefore, be made to a displaced person (s) migrated from Pakistan at the time of partition of the country in lieu of the land left by him/ them under Section 4 (1) of the Haryana Evacuee Properties (Management and Disposal) Amendment Act, 2010.

14. Appellant moved the application for the first time on 19.3.2009 only. The reading of letter dated 7.12.2007 (Annexure P-6) gives different connotation and therefore, the same was not a representation of claim. The learned Single Judge dismissed the writ

petition on the ground that the appellant failed to give any satisfactory explanation regarding deposit of the price of land to the Rajasthan Government by his predecessors-in-interest in compliance of notice dated 13.11.1969.

15. We have heard learned counsel for the appellant at a considerable length and in all fairness, even on the additional issues, which were not apparently raised before the learned Single Judge. We propose to deal with those contentions as well.

16. The claim made by the appellant on 19.3.2009, under the Haryana Evacuee Properties (Management and Disposal) Act 2008 as amended in 2010, was, be that as it may, hopelessly time barred.

17. The order dated 6.7.2010, rejecting the claim by Tehsildar (Sales), Kaithal, was appealable order but the appellant did not assail the same and without exhausting the alternate remedy, ventured to file the writ petition. On that score also the writ petition was not maintainable.

18. The appellant did not implead State of Rajasthan as a party respondent. The assertion in respect of depositing the entire money with the Rehabilitation Department of Rajasthan up to the year 1999 could have been verified and established only by the concerned department of Rajasthan. The deposit of full payment would have brought the transaction within the ambit of completed transaction and the prayer in this case for alternate allotment has to be obviously viewed as a case of double allotment. Since there was no proof adduced in respect of deposit of the amount with the Rehabilitation Department of Rajasthan, the writ petition has been

rightly dismissed by the learned Single Judge.

19. The appellant sought to lead the proof of deposit of price of land with Rehabilitation Department of Rajasthan pursuant to notice dated 13.11.1969 by way of a review application. That application was, however, dismissed vide order dated 18.12.2013 on the ground that the appellant cannot be allowed to re-argue the matter under the garb of review application.

20. Learned counsel has argued that the appellant through his predecessors-in-interest had already deposited the price of land with the Rehabilitation Department of Rajasthan up to the year 1999. If it was so, then also the case has to be treated as a 'completed transaction of allotment' and the claim for alternate allotment in Haryana has to be viewed as a case of double allotment. The land in Rajasthan was allotted to the predecessors-in-interest of the appellant against their claim in Haryana. The appellant specifically applied on 17.12.1985 to Union of India, requesting that the land allotted to them in Rajasthan may be treated as the allotment against their claim. The appellant was allotted 25 bighas of land in Rajasthan and according to his own showing, they had already paid the amount. The Rules of allotment formulated by Rajasthan Government have not been made available in order to show as to why the amount was got deposited from the appellant or whether the same was towards the price of the land or was got deposited as charge or otherwise. No document has been produced in this regard.

21. Even if the plea of the appellant is accepted that his predecessors-in-interest had deposited the price of land with the

Rehabilitation Department of Rajasthan, in that eventuality also they should have approached the concerned authority in Rajasthan for the settlement of their claim. In the Rules framed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. i.e. Rule No.67-A, the last date of submission of application was 31.12.1963. Apparently, till the repeal of the said Act, no application was pending at the instance of the appellant. After the repeal, an effort has been made to create evidence by seeking information under the Right to Information Act with the help of Annexure P-6 on record of the writ petition. The application was moved on 16.11.2007 and necessary information was given to the appellant by supplying record of Mutalba Claim, Jamabandi and Pedigree table in respect of Chak No.11. The afore-noticed representation in any case cannot be construed to a claim pending at the time of repeal of Act of 2005 i.e. on 6.9.2005. The application itself was moved on 19.3.2009, which was hopelessly belated and could never advance the claim of the appellant in any manner.

22. Even as per the Government instructions dated 22.9.2008, the same would not affect the disposal of four category of cases as shown therein. According to clause 3.1 of the aforesaid instructions, unsatisfied verified claim, which was pending on 6.9.2005, was to be considered. In the light of no claim pending at the instance of the appellant as on 6.9.2005, no help can be extracted from the aforesaid instructions.

23. The second leg of the claim that could have been appreciated was if it was lying within the four corners of the Haryana

Evacuee Properties (Management and Disposal) Act 2008 as amended by Amendment Act of 2010. According to this Act also, no allotment of evacuee property shall be made to any person except as per provisions contained in clauses (a) to (g) of sub section 2. Clauses (a) to (g) of the aforesaid Act do not cover the case of the appellant in any manner.

24. The appellant has also made strenuous effort to plead that the action of the respondents is contrary to the provisions of Section 6 of the General Clauses Act, 1897 which has the effect of such repeal. Even the certiorari reading of Section 6 (a) of the ibid Act gives the following reading:-

Section 6. Effect of repeal: Where this Act, or any Genral Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) to (e) xx xxx xxx xxx”

25. Even on this front also the case of the appellant does not stand to the test. Since there was no such claim pending or forwarded by the appellant at the time of repeal, therefore, no question of revival of anything which was not in force or existing at the time of repeal. Repeal cannot revive anything, which was not pending at that stage.

26. The entirety of the facts and circumstances of the case,

as depicted above, do not entitle the appellant to any claim which is not within the ambit of instructions dated 22.9.2008 or the provisions of the Haryana Evacuee Properties (Management and Disposal) Act 2008 as amended by Amendment Act of 2010.

27. Tehsildar (Sales) has rightly dismissed the claim of appellant vide order dated 6.7.2010. Still, that order was amenable to further challenge by the appellant but he did not opt to assail the same in any appellate or revisional jurisdiction. The claim of the appellant appears to be barred in view of Rule 67 (a) framed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 as the then applicable, which provided for submission of application of claim up to 31.12.1963. The application moved by the appellant on 19.3.2009 at a belated stage, indeed bars his claim in addition to the fact that such claim was not covered under the instructions dated 22.9.2008 or the provisions of the Haryana Evacuee Properties (Management and Disposal) Act 2008 as amended by Amendment Act of 2010.

28. For the reasons or conclusions arrived at, we are of the view that the appeal is totally bereft of merits and the same is accordingly dismissed. Since the appeal has been decided on merits as such no separate order in the application for condonation of delay is required to be passed.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

January 8, 2015
anita