

Raj Kumar
and others
v.
The State of
Punjab
and others

Shamsher
Bahadur, J.

committee where oath was to be taken and that essential requirement not having been fulfilled, the question of the election being declared invalid could hardly arise. The petition, in my view, being wholly misconceived is dismissed with costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

DIWAN SINGH,—*Petitioner*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 1447 of 1962.

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 65—Compensation in lieu of rural properties of less than Rs 10,000—Whether admissible to a claimant whose allotment of agricultural land has been cancelled.

Held, that under Rule 65 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, a displaced person, who has been allotted land of four acres or less, is not entitled to any compensation for rural properties of less than Rs 10,000 left in Pakistan. But if his allotment of land has been cancelled, he will be entitled to receive compensation in lieu of his claim for rural properties even if their value is less than Rs 10,000.

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the orders of the respondents and directing them to proceed according to law and transfer the Industrial Establishment No. 26, Ludhiana to the petitioner against its reserve price as a lawful occupant thereof towards the satisfaction of his claim application bearing registration No. P/Ludhiana/5307.

H. S. WASU AND L. S. WASU, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL AND M. R. AGNIHOTRI.,
ADVOCATE, for the Respondents.

ORDER

SHAMSHER BAHADUR, J.—What is sought to be challenged in this petition under Article 226 of the Constitution of India is the order of the Settlement Commissioner cancelling the claim of Diwan Singh for allotment of rural land under rule 65 of the Displaced Persons (Compensation and Rehabilitation) Rules, on the ground that he had already been allotted agricultural land as compensation.

As stated in the petition, the petitioner Diwan Singh is a displaced person and got a verified claim of Rs. 7,036

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in lieu of the rural properties left by him in Pakistan. He was granted compensation in lieu of this claim which was for rural properties abandoned in Pakistan. This claim was admitted in the first instance but came to be cancelled by the Settlement Commissioner on 24th of January, 1957, for the reason that the petitioner was already an allottee of a agricultural land and the assessed value of his rural claim was below the limit laid down in rural 65. Sub-rule (2) of rule 65 of the Displaced Persons (Compensation and Rehabilitation) Rules is to this effect:—

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“Any person to whom four acres or less 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. 10,000.”

It is plain that if the petitioner had been allotted land of four acres or less the compensation for rural properties of less than Rs. 10,000 would be inadmissible. The case of the petitioner, however, is that his allotment had been cancelled as far back as 28th of August, 1951. Exhibit R. 2 which is filed by the respondent, shows that this allotment was cancelled for the reason that the allottee had not taken possession of the land. There is also an order of the Patwari of 30th of December, 1961 (Annexure G) to this effect:—

“It is submitted that Diwan Singh, Hakam Singh, Ganda Singh, Sardari Lal, sons of S. Dewa Singh are stated to be the allottees of 3/4th of a unit of land comprised in Khasra Nos. 119/0-9 according to the allotment order No. 11 of Mauza Jansoi, Hadbast No. 42. But as the allottees did not take possession, the said allotment has been cancelled and the land has been re-allotted to some other person.”

It is urged by Mr. Kaushal, for the respondent, that, as the cancellation had been made on 30th of December, 1961, the order passed by the Assistant Settlement Commissioner on 30th of October, 1961, could not be assailed. I am afraid, there is no merit in this reasoning. According to Annexure R. 2 filed by the Union of India, the cancellation had been

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made as early as 1951 and under the second clause of rule 65 the petitioners' claim for allotment could not be defeated.

There are two unreported decisions of this Court to which my attention has been invited by Mr. Wasu, the learned counsel for the petitioner. In *State of Punjab v. Harjinder Singh*, L.P.A. No. 502 of 1958, decided by Mehar Singh and Grover, JJ., on 21st of February, 1961, rule 65 came for consideration and it was observed by the Bench that if a claim is withdrawn on behalf of the minor allottee, the compensation is admissible. Rule 65, in order to hit the right of a person to receive compensation, says that the person must actually be in possession of the property allotted to him. If the allotment is cancelled or the claim is otherwise withdrawn, then the right cannot be destroyed. The other Bench decision in *Diwan Chand v. The Union of India*, Civil Writ No. 286 of 1961, decided by Tek Chand and Dua, JJ., on 14th of February, 1962. In that case reliance was placed on *Harjinder Singh's* case in L.P.A. No. 502 of 1958. It was observed that the claimant in *Harjinder Singh's case* had withdrawn his claim for allotment of agricultural land and had only pressed his claim for residential house and *haveli*. In *Diwan Chand's case*, what happened was that though the claimant had not applied for any allotment of agricultural land, the Department had *suo motu* made such allotment and later cancelled the same because it was not taken possession of. Rule 65 was in the circumstances held to be inapplicable.

Following these decisions, I am of the view that the claim of the petitioner for allotment of small portion of agricultural land had been cancelled in 1951. This petition, therefore, must be allowed and the impugned orders of the authorities are set aside. The petitioner is entitled to get his costs of this petition.

B.R.T.,

FULL BENCH

Before S. B. Kapoor, H. R. Khanna and Inder Dev Dua, JJ.

HARBANS SINGH AND OTHERS,—Petitioners

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

L.P.A. No. 24 of 1965.

*Northern India Canal and Drainage Act (VIII of 1873)—S. 57—
 Scheme for the acquisition of land—Whether necessary to be framed—*