

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit, J.*SADHU RAM, AND OTHERS,—*Petitioners.**versus*CHIEF SETTLEMENT COMMISSIONER, PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2364 of 1965

July 18, 1967.

Administration of Evacuee Property Act (XXX of 1950)—Ss. 16 and 27—Assistant Custodian—Whether competent to pass an order restoring evacuee property to the owner on the ground that he was a non-evacuee after the commencement of Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 19 and 24—Order of allotment—Whether can be cancelled by Chief Settlement Commissioner—Proprietary rights granted to allottee—Whether can be cancelled by Chief Settlement Commissioner.

Held, that the Central Government acquired all evacuee property under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The result of this acquisition was that the property had vested in the Central Government and formed part of the Compensation pool and thereafter other officers under the Administration of Evacuee Property Act, 1950, except of course the Custodian General, under section 27 and perhaps the Central Government under section 16, had no jurisdiction to deal with the same. The Assistant Custodian, therefore, had no jurisdiction, under the law, to order the release of evacuee property in favour of its owner on the ground that he had never been an evacuee.

Held, that after the commencement of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Chief Settlement Commissioner cannot cancel the allotment of evacuee property which can only be done by the Managing Officer.

Held, that the Chief Settlement Commissioner is competent to cancel the proprietary rights if he comes to the conclusion that there was an impropriety or illegality in the order conferring proprietary rights on an allottee. He can do so in exercise of his powers of revision under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, even *suo motu* and if somebody

brings to his notice some illegality or impropriety in any order passed by his subordinates, he can make any order in relation thereto as he thinks fit.

Petition under Articles 226 and 227 of the constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued, quashing the impugned order of respondent No. 1.

H. S. WASU, ADVOCATE, for the Petitioners.

R. S. MITTAL, ADVOCATE, for the Respondents.

ORDER

PANDIT, J.—This petition, under Articles 226 and 227 of the Constitution, has been filed by Sadhu Ram and three others, challenging the legality of the order, dated 24th June, 1965, passed by the Chief Settlement Commissioner, Punjab, Jullundur, respondent No. 1.

According to the allegations of the petitioners, one Mehanga Ram was a displaced person, who owned rural land in Pakistan. Agricultural land measuring 19 Bighas and 18 Biswas situate in village Danauda Kalan, district Sangrur, belonged to one Jatti muslim, respondent No. 3. and his brother Sabrati, and this land was mortgaged with a local person named Kanahiya. After the partition of the country, this land became composite property under the Evacuee Interest (Separation) Act, 1951, as Sabrati and Jatti were known to have migrated to Pakistan. It, thus, vested in the Custodian who, later on filed a claim before the Competent Officer for the redemption of the mortgage. The Competent Officer redeemed the mortgage and the said land became evacuee property without any encumbrance. After redemption, this land was allotted to Mehanga Ram and proprietary rights were also conferred on him on 30th of December, 1960. He, thus became full owner of the land. After the conferment of the proprietary rights, he sold the entire land in favour of the petitioners through a registered deed, dated 2nd of June, 1962, for a sum of Rs. 3,200. The petitioners were also placed in its possession by Mehanga Ram. After a period of over three years from the date of the purchase of the land, the case was taken up by respondent No. 1, on a reference from the Assistant Custodian, Jullundur, wherein he had recommended that the permanent rights of the allotment of the

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land with regard to 1/2 share therein be cancelled from the name of Mehanga Ram. This reference seemed to have been made, because respondent No. 3 had filed an application under section 16 of the Administration of Evacuee Property Act, 1950, for the restoration of the said 1/2 share to him. The other 1/2 share belonged to his brother Sabrati, who had migrated to Pakistan. On this application, some order was passed by the Custodian authorities for the restoration of this land, which had gone out of the compensation pool after the conferment of the proprietary rights on the said Mehanga Ram. On receipt of this reference from the Assistant Custodian, Jullundur, respondent No. 1 set aside the proprietary rights conferred on Mehanga Ram and also cancelled the permanent allotment with respect to 1/2 share of the land in question by means of the impugned order. That led to the filing of the present petition.

In the return filed by Jatti, respondent No. 3, it was stated that he and his brother Sabrati owned 78 Bighas and 11 Biswas of agricultural land in village Danauda Kalan out of which 20 Bighas 2 Biswas were mortgaged with Kanahiya and Shiv Ram, for Rs. 1,000. Only Sabrati migrated to Pakistan, while he throughout remained in this village. The entire land belonging to the two brothers was at one time wrongly declared evacuee property. On the representation of Jatti, Shri Tej Singh, Assistant Custodian, by his order, dated 25th of November, 1960, released 39 Bighas and 4 Biswas falling to the share of Jatti, who remained in possession of this land all along since 1947, although he kept on paying Chakota to the Custodian organisation till 25th of November, 1960. He approached the Tehsildar several times for permission to deposit the mortgage money, but he was always put off on one ground or the other. Any order of allotment, according to Jatti, who was an Indian citizen, and relating to his property was void and illegal. Mehanga Ram never got possession of the land belonging to Jatti. In 1962, the petitioners forcibly took possession of 10 Bighas out of the land owned and possessed by him. Since then, Jatti was representing to the Custodian Department against his dispossession and at last by a letter dated 11th of January, 1965, the Custodian, Evacuee Property, Punjab, Jullundur, informed him that a reference was being made to respondent No. 1 for the cancellation of the permanent allotment in the name of Mehanga Ram. On 10th of August, 1965, Jatti got back possession of his share of land measuring 10 Bighas 1 biswa through the revenue officers.

under the orders of the Managing Officer. The impugned order passed by respondent No. 1, according to him, was perfectly legal and just.

It is unfortunate that the records in this case had not been produced by the office of the Chief Settlement Commissioner, Punjab. It is note-worthy that the learned counsel representing respondent No. 3 made an application to this Court on 29th March, 1967, saying that for a proper decision of the matter in controversy, it was necessary to peruse the record of the case pertaining to the orders passed by the Custodian-General or the Deputy Custodian-General of India at the time of remanding the case on the revision application put in by his client and the order passed by the Custodian-General or the Deputy Custodian-General after the report of the Assistant Custodian, Punjab, Jullundur, dated 25th November, 1960. On this application, I had, on 31st March, 1967, directed the Advocate-General, Haryana State, to produce these records within a fortnight. These records also were not made available in spite of the fact that two or three adjournments had been taken for the purpose. Under these circumstances, I had to decide the case on the material that was filed by both the parties in this Court.

It appears that the property of Jatti and the brother Sabrati, who were both Mohammedans, had been declared to be evacuee property presumably on the ground that both of them had migrated to Pakistan. The entire property was then acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the 1954 Act). This fact is clear from paragraph 1 of the copy of the order, dated 25th November, 1960, passed by the Assistant Custodian, Punjab, Jullundur, Annexure R-1 to the written statement, filed by Jatti. It is further clear from R-1 that Jatti filed a revision petition under section 27 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the 1950 Act), before the Deputy Custodian-General alleging that he had never migrated to Pakistan, that he was a non-evacuee and that his half share in the property had been wrongly taken over as evacuee property. On 23rd of July, 1960, the Deputy Custodian-General sent the case for enquiry, regarding his status and title to the property. This enquiry was conducted by the Assistant Custodian, Sangrur, because Jatti belonged to village

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Danauda Kalan, which was in that district. After the enquiry was completed, the Assistant Custodian, Sangrur, sent the report to the Assistant Custodian, Punjab, Jullundur, who then went through the evidence produced by Jatti and *vide* his order, dated 25th November, 1960, came to the conclusion that Jatti never migrated to Pakistan and throughout remained in India. He further came to the conclusion that he owned 1/2 share in the said property, the other half belonging to his brother, Sabrati, who had migrated to Pakistan. In view of this, it was ordered by the Assistant Custodian, Punjab, Jullundur, that Jatti was entitled to the release of his share in the property. Since the entire property had been mortgaged with a local person named Kanahiya and had since been redeemed by the Custodian Department, it was also directed that Jatti should first deposit the mortgage debt falling to his share in the Custodian's account and on his doing so he would become entitled to the release of his half share in the property. The entire land of both the brothers, however, was allotted to Mehanga Ram, who was a displaced person from Pakistan and owned rural land there. The exact date of this allotment is not clear, on the record, but it is common ground that later on proprietary rights were also conferred on Mehanga Ram on 30th December, 1960. Thereafter, on 2nd of June, 1962, Mehanga Ram, by a registered deed, sold this property in favour of the petitioners for Rs. 3,200. It seems that in spite of the order, dated 25th November, 1960, passed by the Assistant Custodian, Punjab, Jullundur, Jatti could not get possession of the half portion of the property which was released in his favour and he, therefore, made a representation on 23rd of October, 1944, to the Minister of Rehabilitation, Government of India, New Delhi. This representation was examined by the Deputy Secretary to Government, Punjab, Rehabilitation Department, Jullundur, to whom the papers must have been sent by the said Minister. He decided that as the land had been allotted to Mehanga Ram, after the order of release was passed in favour of Jatti by the Assistant Custodian, Punjab, Jullundur, the said allotment was irregular. On 11th of January, 1965, the Custodian, Evacuee Property, Punjab, Jullundur, informed Jatti about this fact and he was further told that the case was being referred to the Chief Settlement Commissioner at Jullundur for cancellation of permanent allotment made in the name of Mehanga Ram and that further orders would be communicated to him when the case had been decided by the Chief Settlement Commissioner. This is clear

from Annexure R-2 filed by Jatti respondent. The Chief Settlement Commissioner passed the impugned order on 24th of June, 1965, on a reference made to him by the Assistant Custodian, Jullundur, dated 15th May, 1965, wherein he had recommended that the permanent rights and the allotment of half of the land belonging to Jatti, in the name of Mehanga Ram be set aside, because it had been ordered by the Custodian Department that Jatti's share in the land be restored to him. It is apparent from the order of the Chief Settlement Commissioner that a notice was issued to Mehanga Ram, who, however, did not turn up and, consequently, *ex parte* proceedings were taken against him. The said reference was accepted by him and the permanent rights and the allotment, as proposed, were set aside. It was also mentioned in this order that the half-share in that land would be restored to Jatti in pursuance of the order passed by the Custodian authorities in his favour. The allottee would, however, be given alternative allotment according to his entitlement and rules.

The first question that arises for decision is whether the order, dated 25th November, 1960, passed by the Assistant Custodian, Punjab, Jullundur, releasing half of the property in favour of Jatti on the ground that the same was not evacuee property inasmuch as Jatti had never emigrated to Pakistan was within his jurisdiction or not. As I have said above, this order was passed after the property had been taken over by the Central Government under section 12 of 1954 Act. The result of this acquisition was that the property had vested in the Central Government and formed part of the compensation pool and thereafter other officers under the 1950 Act, except of course the Custodian-General, under section 27 and perhaps the Central Government under section 16, had no jurisdiction to deal with the same. It was suggested by the learned counsel for Jatti, that this order was passed by the Assistant-Custodian under section 16 of the 1950 Act. There is no force in this submission, because under that section the application had to be made to the Central Government or to any person authorised by it in that behalf. It was not the case of Jatti that he had made an application to any of these two authorities. Under section 27 of the 1950 Act, it was only the Custodian-General who could have released this property and that also by virtue of the explanation added to

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that section by section 5 of Act I of 1960. According to this explanation, the power conferred on the Custodian-General could be exercised by him in relation to any property notwithstanding that such property had been acquired under section 12 of the 1954 Act. It is under this section that the Custodian-General could hold that Jatti's share in the property could not have been declared to be evacuee property and that it should be restored to him. No order of the Custodian-General in this behalf was produced before me. The Assistant Custodian, Punjab, Jullundur, under the law, had no jurisdiction to order the release of the half share of Jatti in his favour. This order being without jurisdiction is, therefore, of no effect. That being so, the allotment made in favour of Mehanga Ram, cannot be held to be irregular as was mentioned in Annexure R-2.

The second question is whether the impugned order passed by the Chief Settlement Commissioner is a legal one or not. The first objection taken against it was that he could not have passed this order on a reference made by the Assistant Custodian, who is nobody under the 1954 Act under which the Chief Settlement Commissioner was functioning.

There is no merit in this objection, because under section 24(1) of the 1954 Act, the powers of revision could be exercised by the Chief Settlement Commissioner even *suo motu* and if somebody brings it to his notice some illegality or impropriety in any order passed by his subordinates, he could make any order in relation thereto as he thought fit. So, if the Assistant Custodian brought to his notice certain illegality or impropriety, he could pass the impugned order at his instance.

The second objection was that the Chief Settlement Commissioner could cancel the proprietary rights only under the 1954 Act, if there was some illegality or impropriety in the order passed by his subordinate officers. There was no impropriety or illegality in the instant case and, therefore, the Chief Settlement Commissioner had acted beyond his jurisdiction in setting aside the proprietary rights. This objection also, in my opinion is pointless, because it had come to the notice of the Chief Settlement Commissioner that Jatti had never migrated to Pakistan and had throughout remained in India and he could, therefore, not be called an evacuee. This finding was given by the Assistant Custodian, who was fully empowered to do so under the 1950 Act. As a matter of fact it is under that very Act

that such questions are generally decided. The moment the Chief Settlement Commissioner was convinced of this fact, he thought it highly improper that proprietary rights in Jatti's property should be conferred on anybody else. There was, thus, this impropriety in the order conferring proprietary rights on Mehanga Ram and the Chief Settlement Commissioner was well within his jurisdiction to cancel these rights.

The last objection against this order was that, in any case, the Chief Settlement Commissioner had acted beyond his jurisdiction in setting aside the allotment of Jatti's share in the land in favour of Mehanga Ram, because under the 1954 Act, it was only the Managing Officer and not the Chief Settlement Commissioner, who could have cancelled his allotment under section 19 of the 1954 Act read with rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules. I may, however, state that the Chief Settlement Commissioner can also cancel the allotment under sub-section (2) of section 24 under certain conditions, but it is nobody's position that he had done that in the instant case on any of those grounds. This submission finds support in a Bench decision of this Court in L.P.A. 338 of 1962, *Puran Singh v. Chief Settlement Commissioner and another* (1), decided on 15th December, 1965, to which I was also a party. There, it was held that the Chief Settlement Commissioner cannot cancel the allotment which can only be done by the Managing Officer. Following this decision, I would, therefore, accept this petition to this extent that I would quash only that part of the order of the Chief Settlement Commissioner by which he directed cancellation of the allotment while his order with regard to the cancellation of the permanent rights would stand. The result is that the petition is allowed to this extent only. In the circumstances of the case, there will be no order as to costs.

It may be stated that the learned counsel for Jatti, raised a preliminary objection that the writ petition should be dismissed on the short ground that the petitioners had suppressed an important fact, namely, about the existence of the order, dated 25th November, 1960, Annexure R-1, passed by the Assistant Custodian, Punjab, Jullundur. There is no substance in this preliminary objection, because in para 7 of the writ petition, it was stated by the petitioners that five years after the conferment of proprietary rights on Mehanga Ram and after a period of over three years of the date of the purchase

(1) L.P.A. 338 of 1962 decided on 15th December, 1965.

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of the land by them from the said Mehanga Ram, the case was taken up by the Chief Settlement Commissioner on a reference from the Assistant Custodian wherein he had recommended that the permanent rights and the allotment of land with regard to 1/2 share of Jatti therein be cancelled. This reference, according to the petitioners, seemed to have been made on the ground that Jatti had filed an application under section 16 of the 1950 Act for the restoration of 1/2 share only in the land in question, the other half belonging to his brother Sabrati, who had migrated to Pakistan. On this application some order was passed by the Custodian authorities for restoration of this land which had gone out of the compensation pool after the conferment of proprietary rights on the said Mahanga Ram. There was thus no suppression of any fact. Whatever the petitioners knew, they had stated in the petition. It should also be remembered that Mehanga Ram, their predecessor-in-interest was not a party to the order, dated 25th November, 1960, and, therefore, neither he nor his successors-in-interest, namely, the petitioners were actually aware of this particular order.

It was also contended by the learned counsel for Jatti that there should be no interference in the impugned order which had not resulted in any injustice to the petitioners, as the land was being given to its real owner, namely, Jatti, who had never become an evacuee and had always remained in India. It is not easy to appreciate this argument, because the petitioners were *bona fide* purchasers from Mehanga Ram. They had paid good money for this land and, as already mentioned above, it was after five years of the conferment of proprietary rights on Mehanga Ram and after more than three years from the date of the purchase by them that the case was taken up by the Chief Settlement Commissioner. It was not even suggested that they were aware of the fact that Jatti had not migrated to Pakistan when they purchased this property. They should not suffer for no fault of theirs. At any rate, the order cancelling the allotment which was passed without jurisdiction, cannot be allowed to stand.

It may also be mentioned that proceedings in accordance with law can be taken by the aggrieved party under sections 16 and 27 of the 1950 Act and 19 of the 1954 Act, if the same were permissible and were so desired.

B.R.T.: