

Before K. Kannan, J.

KARTAR SINGH AND ANOTHER,—Petitioners

versus

**FINANCIAL COMMISSIONER (APPEALS
AND ANOTHER,—Respondents**

CWP No. 16729 of 1990

26th May, 2011

Constitution of India, 1950—Art.226—Displaced Persons (Compensation & Rehabilitation) Act, 1954—Displaced Persons (Compensation & Rehabilitation) Rules, 1955—Rl.67-A & 117(7)—Payment of compensation through allotment of property as heirs to the “displaced person”—Allotment cancelled on the ground that possession not taken—Displaced person filed petition for alternative allotment within the period prescribed under Rule 67-A—Petition dismissed for non-prosecution as the notice for adjudication was returned unserved—Revival Application filed—Allotment made by Managing Officer which was however cancelled on the ground that the application for alternative allotment was beyond time—Appeal dismissed.

Held. that procedure under Rule 117 not followed and as such Petitioners application could not treated as a fresh petition beyond the period of limitation.

(Para 4)

Further held. that if a displaced person’s right to payment of compensation through allotment is recognized by statute, a right to property which survives by succession shall also be taken as lawfully surviving to the Petitioners to seek for alternative allotment.

(Paras 4 & 5)

Som Nath Saini, Advocate, *for the petitioners.*

K.S. Sivia, Deputy Advocate General, Punjab.

K. KANNAN, J. (ORAL)

(1) The petitioners challenge the order of the authorities under the Displaced Persons (Compensation and Rehabilitation) Act and the relevant Rules declining to entertain a petition for payment of compensation through the allotment of property as heirs to the "displaced person".

(2) It is not now in dispute that the petitioners' father Nadar Singh was a displaced person from the erstwhile West Punjab (now in Pakistan) and he was entitled to compensation under the 1954 Act. The allotment which was made in his favour was, however, cancelled on 16th September, 1963 on the ground that the property had not been taken possession as required to be done. The displaced person, therefore, filed a petition for an alternative allotment on 31st October, 1963. This application was admittedly within time as contemplated by Rule 67-A of the Rules of the year 1955. It appears that the application was taken up for consideration but when the notice for adjudication was sent to the petitioner, it was returned as unserved with the report that he had left the village. The application was, therefore, dismissed for non-prosecution. The application was sought to be revived by the petitioners in the year 1982 under Annexure P1 on 9th August, 1982. The Managing Officer made the allotment entertaining the claim through his order dated 9th July, 1984. This allotment order was cancelled on 5th May, 1986 on the ground that the application for alternative allotment was beyond time. An appeal to a still higher officer was also dismissed on 3rd May, 1990 through Annexure P6. These orders are challenged in the writ petition.

(3) Learned Counsel states that in terms of Rule 117, if any order or notice is returned undelivered, a publication in an issue of a newspaper or affixture and by beat of drum at some place or adjacent to the property was required to be done. The counsel refers me to the provisions of Rule 117(7) which reads as follows :-

"(7) Where an order or notice sent by post is returned undelivered, or where the Settlement Officer or other authority is satisfied that there are reasons to believe that the order or notice cannot be

delivered in the ordinary course, the Settlement Officer or other authority may direct that the order or notice may be served either :

- (a) by publication in one issue of a newspaper having circulation in the area in which the person concerned is known to have last resided or to have carried on business; or
- (b) (i) by affixture of a copy of the same on a conspicuous part of the property in relation to which the order or notice has been made or issued; and
- (ii) by beat of drum at some place on or adjacent to such property.”

(4) Admittedly from the order of the Chief Settlement Commissioner, it is seen that the procedure as contemplated under the relevant Rule was not followed. While it is contended by the counsel for the State that if the order of dismissal of the application was seen to be unjustified, the petitioners could not have sought to revive the petition as late as on 9th August, 1982. The petition itself was beyond the time contemplated under Rule 67-A. In my view the petitioners' application cannot be treated as a fresh petition beyond the period of limitation, it must have been taken only as a revival of the petition which was dismissed for non-prosecution and which order was not communicated in the manner contemplated by Rule 117(7). While it could be justifiably be contended that a fresh petition for allotment could not have been done beyond the period of limitation, there could be no basis for rejection of a claim by the petitioners as heirs of a displaced person, who had a right of complaint that their claim had not been satisfied yet. If a displaced person's right to payment of compensation through allotment is statutorily recognized, a right to property which survives by succession shall also be taken as lawfully surviving to the petitioners to seek for an allotment pursuant to the application filed by Nadar Singh on 31st October, 1963. While I have no problem about the contention that a fresh petition for allotment could not have been entertained beyond the period of limitation,

the petitioners were entitled to consideration as successors for the application which was filed on 31st October, 1963. The learned counsel for the petitioners refers me to a decision of this Court in **Guran Ditta versus Financial Commissioner (Revenue) and Secretary to Government of Punjab (1)**, but I do not think it is applicable to this case, for, the said decision adverts to a situation where an allotment was not cancelled and, therefore, it was found that an application under Section 67-A was not attracted at all. In this case, the cancellation had been done and communicated to the party and it was only on that basis a fresh application had been made on 31st October, 1963. I have held that the consideration of this application was not done in the manner required by the relevant provisions and so long as the claim remained unsatisfied, it was perfectly tenable for the legal representatives to seek for such payment of compensation through allotment of the property.

(5) The impugned orders are, therefore, quashed. Normally, I would have put the matter back to the Managing Officer for consideration of the application filed on 31st October, 1963 in accordance with law. However, I find the Managing Officer, who had passed the order on 9th July, 1984, was not merely dealing with the application filed under Annexure P1, dated 9th August, 1982, but he treated it as revival of the application filed through their father on 31st October, 1963 and he proceeded to make the allotment. The order passed by the Managing Officer was pragmatic under the circumstances and I would, therefore, maintain the order as one passed on the application filed on 31st October, 1963. The petitioners would be entitled to such allotment of the property secured through Annexure P3. If for any reason, the property has been lost by way of allotment to any other person or it is not capable of being enjoyed by the allottee, the matter shall be considered by the Managing Officer and appropriate alternative allotment shall be made in accordance with law. Towards that end, there shall be no need for any fresh application by the petitioners.

(6) The writ petition is allowed.