

CIVIL MISCELLANEOUS

*Before S. K. Kapur, J.*MOTI RAM MEHRA AND OTHERS,—*Petitioners**versus*THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 395-D of 1958

1964

November, 13th

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 24—Powers of the Chief Settlement Commissioner under—Scope and extent of—Compensation awarded—Whether can be reduced—Interpretation of statutes—Intention of the Legislature—How to be determined.

Held, that notwithstanding the provisions of sub-section (2) of section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Chief Settlement Commissioner has the power to call for the record of any proceedings under the Act in which a Settlement Officer or an Assistant Settlement Officer has passed an order for the purpose of satisfying himself as to legality or propriety of such order. Section 24 confers a general supervisory power on a superior authority to revise any order passed by an inferior authority mentioned therein. Sub-section (2) of section 24 confers powers on the Chief Settlement Commissioner to cancel any lease or allotment or to direct that no compensation or reduced compensation shall be paid if there has been fraud, false representation or concealment of a material fact. This power is without prejudice to the generality of the power conferred under sub-section (1). The wide powers of superintendence can in no way be affected or prejudiced by section 24(2).

Held, that the power to examine the legality means the power to test whether the order is in accordance with law. The section also confers power to examine the propriety, which means that the Chief Settlement Commissioner is empowered to consider whether the order is proper or not. In other words, the Chief Settlement Commissioner in testing the legality or propriety has the jurisdiction to consider whether the order is correct in law or on facts. The omission to use the word "correctness" does not narrow down the scope of the section or the ambit of the power. If, therefore, an order awarding compensation is not legal or proper, the Chief Settlement Commissioner can revise the same under section 24(1) resulting in reduced compensation or no compensation being paid.

Held, that 'intention of the legislature' is a common but slippery phrase which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of law, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication.

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari or any other appropriate writ quashing the order of the respondent No. 1 and other orders in respect of refund of the compensation be issued against the respondents.

D. K. KAPUR, ADVOCATE, for the Petitioners.

PARKASH NARAIN, ADVOCATE, for the Respondents.

ORDER

KAPUR, J.—By this writ petition the petitioners have challenged the legality of the order, dated July, 1957, calling upon the petitioners to refund Rs. 570 each on the ground that an overpayment of compensation had been made to them.

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The petitioners are three brothers, who claim that they, along with their fourth brother, owned some property in Lahore. In the year 1938, a suit for partition of their property was filed and a final decree for partition was passed by the Commercial Sub-Judge, Lahore, on November 14, 1941. It is alleged in the petition that the parties thereafter dealt with their properties separately. This allegation has been denied in the affidavit filed on behalf of the respondents. It is stated on behalf of the respondents that there was no separation amongst the petitioners and they together were allotted one separate share and enjoyed it jointly. By order, dated 26th February, 1951, the Claims Officer, Simla, verified the claim, which had been filed by Moti Ram Mehra claiming Rs. 42,500 on account of 1/4th share belonging to him and his two brothers. The claim was verified at Rs. 32,500 and later increased by the Claims Commissioner, Delhi, to Rs. 37,000. It is further alleged in the petition that on 16th/19th June, 1953, the petitioner, Moti Ram, filed an application for compensation under the

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(No. 44 of 1954) and among other things, it was stated in column 3 that the claim was being made on behalf of self and two brothers. The office of respondent No. 3 considered the compensation application of the petitioner and the then Settlement Officer wrote a note suggesting that the partition between the brothers be accepted. To the same effect was the note of the Assistant Settlement Commissioner, dated 13th December, 1954. The then Regional Settlement Commissioner agreed with the above two notes by his order, dated December 20, 1954. After finalisation by the Accounts Branch, the Regional Settlement Commissioner, on December 31, 1954, ordered that the petitioners be paid interim compensation of Rs. 2,470 each. Petitioner No. 1. received the amount on 30th March, 1955, but petitioners Nos. 2 and 3 were directed to file separate applications, which they did and on 30th August, 1955, both of them were paid compensation on the same scale as petitioner No. 1. The petitioners were paid final compensation of Rs. 1,504 each on 23rd April, 1957. Thereafter the petitioners were informed that they had been overpaid and by letter, dated July, 1957, respondent No. 3 called upon the petitioners to refund Rs. 570 each. The petitioners raised objection to the authority of respondent No. 3 to review the order and claim refund. By letter, dated 17th August, 1957, the Assistant Settlement Commissioner called upon the petitioners to produce documentary evidence in support of the disruption of the Joint Hindu Family. In response to the said notice affidavit of Sita Ram Mehra, dated September 11, 1957, was filed. On December 27, 1957, the Regional Settlement Commissioner directed the petitioners to deposit Rs. 570 each and threatened coercive process for recovery thereof in case of default. The defence of the respondents as set out in the reply affidavit is that—

- (a) the properties with respect to which the claim was filed were ancestral. Neither were any separate claims filed nor was the verification of the claims done separately;
- (b) the conduct of the petitioners in filing joint claims proves the joint status of three brothers as one Joint Hindu Family.

(c) Moti Ram petitioner filed compensation application under I (MA) priority category, under which category only such of the claimants could file compensation application who or a member of whose family was in receipt of the maintenance allowance;

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(d) the respondents are prepared to ignore the order dated 11th December, 1957 by Shri M. L. Puri, Settlement Commissioner and undertake to proceed with the case from the stage at which the Settlement Commissioner took it up and the matter will be decided by the competent authority exercising the powers of the Chief Settlement Commissioner, after hearing the petitioners; and

(e) the Chief Settlement Commissioner or his delegate are competent to hear and decide the matter.

At this stage I would like to point out that the affidavit on behalf of the respondents has not been properly verified. The verification must state the particular paragraphs which are true to the deponent's knowledge and those which are true to his information. Nothing much, however, turns on the verification in the present case since the only disputed point is regarding the construction of section 24 of the said Act. The matter came up for hearing before Shamsher Bahadur, J., on May 7, 1964, and though the point regarding denial of opportunity to be heard was conceded by the respondents, Mr. D. K. Kapur, the learned counsel for the petitioners, wanted to argue that the Settlement authorities had no jurisdiction at all to deal with the matter. The case was, therefore, adjourned to enable the respondents to file further affidavit dealing with the other matters raised in the petition. That is how the matter came up before me for disposal.

Mr. Kapur, appearing for the petitioners, raised the following contentions:—

- (a) The petitioners have been denied the opportunity of being heard;
- (b) The Chief Settlement Commissioner cannot take action under section 24(1) as he is competent to consider only the legality or propriety of an order passed by the various authorities

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mentioned therein. He is not, according to Mr. Kapur, competent to examine the correctness of such orders;

- (c) The expression "without prejudice to the generality of the foregoing power under sub-section (1)" means nothing more than that powers conferred by sub-section (1) of section 24 are not affected by sub-section (2) of section 24, but section 24(2) being a special provision, reduced compensation can be ordered only when it has been obtained by means of fraud, false representation, or concealment of any material fact;
- (d) No power can be exercised under section 24(1) unless one takes cognizance under that provision; and
- (e) The amount can be recovered as arrears of land revenue only if the order is passed under section 24(2).

Mr. Parkash Narain, the learned counsel for the respondents, does not dispute that proper opportunity of being heard has not been given to the petitioners and submits that the competent authority exercising the powers of the Chief Settlement Commissioner will decide the matter afresh after hearing the petitioners. That leaves the questions whether such competent authority has jurisdiction to revise the amount of compensation and in what circumstances is the amount recoverable as arrears of land revenue. Mr. Kapur submits that the legislature could not have intended to create two parallel authorities for cancelling any allotment or amending the terms of any lease. Mr. Kapur refers in this connection to section 19 and rule 102 and submits that power to cancel a lease or allotment is given to managing officer or managing corporation under section 19 and there is no reason why the same power should have been given to the Chief Settlement Commissioner under section 24. Intention of the legislature is common, but slippery phrase which, popularly understood, may signify anything from

intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of law, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. If Mr. Kapur's contention is accepted, a good part of section 24 will be reduced to silence in violation of a known rule of interpretation of statutes that such a sense is to be made upon the whole of the statute, as that no clause, sentence or word shall prove superfluous, void or even insignificant, if by another construction they may all be made useful and pertinent. Section 19 gives a general power to the managing officer or managing corporation to cancel any allotment or terminate any lease. It necessarily follows that cancellation or termination can be ordered even for the reasons and on the grounds set out in section 24(2) of the said Act. The irresistible conclusion would, therefore, be that section 24 confers a general supervisory power on a superior authority to revise any order passed by an inferior authority mentioned therein. Sub-section (2) of section 24 confers powers on the Chief Settlement Commissioner to cancel any lease or allotment or to direct that no compensation or reduced compensation shall be paid if there has been fraud, false representation or concealment of a material fact. This power is without prejudice to the generality of the power conferred under sub-section (1). The wide powers of superintendence can in no way be affected or prejudiced by section 24(2). My conclusion, therefore, is that notwithstanding the provisions of sub-section (2) of section 24, the Chief Settlement Commissioner has the power to call for the record of any proceedings under the Act in which a Settlement Officer, or an Assistant Settlement Officer has passed an order for the purpose of satisfying himself as to the legality and propriety of such order.

I am also not impressed with the arguments of the learned counsel that the Chief Settlement Commissioner cannot examine the question of overpayment since his jurisdiction is limited to examining the legality or propriety of the order of a subordinate authority. Mr. Kapur draws my attention to section 435, Criminal Procedure Code, and submits that whereas under section 435 jurisdiction has

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been conferred on the High Court, Sessions Judge or District Magistrate to examine the correctness, legality or propriety, the legislature has made a conscious departure in section 24 and has not authorised the Chief Settlement Commissioner to examine the "correctness" of the orders passed by the subordinate authorities. I am of the opinion that there is no force in the contention of Mr. Kapur. The power to examine the legality means the power to test whether the order is in accordance with law. The section also confers power to examine the propriety, which means that the Chief Settlement Commissioner is empowered to consider whether the order is proper or not. In other words, the Chief Settlement Commissioner in testing the legality or propriety has the jurisdiction to consider whether the order is correct in law or on facts. The omission to use the word "correctness" does not, in my view, narrow down the scope of the section or the ambit of the power. I may in this connection point out that in sub-section (1) of section 435, Criminal Procedure Code, the three terms "correctness, legality or propriety" are used, while in sub-section (2) thereof the terms used are "illegal or improper". The legislature could not in the context of this section, have intended that sub-section (2) thereof was confined to a more limited sphere than sub-section (1). This shows that in substance correctness is compounded of legality and propriety. In effect that which is legal and proper, is correct.

I am also not impressed by the arguments of Mr. Kapur that the compensation can be reduced only when there is fraud, false representation or concealment of material fact. Sub-section (2) is without prejudice to the generality of powers under sub-section (1). Sub-section (2), therefore, does not affect or prejudice the power to examine the legality or propriety of any order passed by the authorities mentioned in sub-section (1). If, therefore, an order awarding compensation is not legal or proper, the Chief Settlement Commissioner can revise the same under section 24(1) resulting in reduced compensation or no compensation being paid. What then is the purpose of enacting sub-section (2) of section 24? In my opinion it may have been intended to serve divers purposes, (a) in case of fraud, false representation or concealment of material fact, the Chief Settlement Commissioner may, in disregard of what

the claimant may be entitled to under the Act, order that he shall not be paid any compensation or shall be paid a reduced compensation or that his lease or allotment shall be cancelled, and (b) the Chief Settlement Commissioner may besides revising the order under sub-section (1), pass a final order himself after going through the entire material on the record, directing that either no compensation or reduced compensation be paid or allotment or lease be cancelled. This conclusion finds support from the fact that the powers under sub-section (2) of section 24 are exercisable "notwithstanding anything contained in this Act" which means that nothing in the Act is an impediment to the exercise of power invested under sub-section (2) of section 24. In view, however, of my conclusion on (a), the meaning and scope of section 24(1) and (b) that section 24(2) does not fetter the powers under sub-section (1) whereunder the errors, including errors arising by reason of fraud, false representation or concealment of material fact, can be rectified, it is not necessary to finally decide, in this case, whether in case of fraud, false representation or concealment of material fact the Chief Settlement Commissioner may disregard the amount to which a claimant may be entitled and direct that no compensation or reduced compensation be paid to him.

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Mr. Parkash Narain submits that the material on the records shows that the petitioners were wrongly treated as co-owners and paid compensation as such and consequently the Competent Authority could under section 24 correct the mistake. It is not necessary for me to go into the question of the nature of the illegality or the impropriety for that is a matter falling within the sphere of the jurisdiction of the Competent Authority under section 24. It is premature to decide the question as to which amount can be recovered as arrears of land revenue. That question may arise only after the matter has been disposed of by the Competent Authority under section 24. In the view that I have taken of section 24, it is not necessary to go into any other question raised by Mr. Kapur.

Since no proper opportunity of being heard has been given to the petitioners, the writ petition must be allowed and the order of respondent No. 3 for recovery of Rs. 570 from each of the petitioners quashed. It will, however,

Moti Ram Mehra and others be open to the Competent Authority to take such fresh proceedings as may be available under the law. The petition is, therefore, allowed with costs.

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