

Amar Singh vs The Union Of India And Ors. on 31 January, 1967

Author: Chief Justice

Bench: Chief Justice

ORDER

1. The petitioner herein is a displaced person from West Pakistan. After coming to India he occupied as tenant the entire first floor of the property No. XVI/1588 (Old)/ 1674 (new), situate in 35, Naiwala, Karol Bagh, New Delhi. The ground floor of that building was originally occupied by another tenant by name, Hari Singh. According to the petitioner Hari Singh vacated the portion of the building which he was occupying some time in 1956. Thereafter some unauthorised persons were occupying the same.

(2) 28th December, 1956, the petitioner applied for transfer of the building in question in his favour. The established facts are:-

(1) He is a displaced person;

(2) He has no verified claim;

(3) He is the lawful occupant of a portion of the premises, mentioned earlier;

(4) The other portions of the building are in possession of unlawful occupants, and

(5) The premises in question is an acquired evacuee property, which is an allottable property.

All the authorities below have rejected the petitioner's claim. Hence, he has come up with this petition under Article 226 and 227 of the Constitution. In this petition, he has prayed for two reliefs, namely (i) to quash the orders passed by the respondents by issuing a writ of certiorari and (ii) to issue a writ of mandamus to them requiring them to allot the premises in question to him.

(3) On the date the petitioner made his application for transfer of the property in his favour, namely, 28th December, 1956, the two relevant rules in force were rules 26 and 31 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. Rule 26, to the extent, it is necessary for our present purpose, reads as follows:-

"26. Where an acquired evacuee property, which is an allottable property is in the sole occupation of displaced persons, who does not hold a verified claim, the property may be transferred to him - * * * * * (The remaining portion of the rule is not relevant for our present purpose).

"31. (1) Where an acquired evacuee property, which is an allotable property, is in occupation of more than one displaced person, none of whom holds a verified claim, the property may be transferred to the displaced person who occupies the largest portion of the property or where two or more such displaced persons occupy a portion of the property, which is equal in area, the property may be transferred to the displaced person who has been in occupation of such portion for a longer period.

(2) The provisions of Rule 26 shall apply to the transfer of acquired evacuee property under this rule in the same manner as they apply to the transfer of such property under that rule."

(4) Rule 31 was abrogated on 3rd August, 1968.

(5) The authorities below have rejected the claim of the petitioner on the ground that the premises in question having been occupied by more than one occupant, Rule 26 is not applicable to this case, and further as Rule 31 had been abrogated before this case was decided, he could not take the benefit of that rule.

(6) Both under Rule 26 as well as under Rule 31, only a discretion is given to the authorities to allot the property to a displaced person. The displaced person has not been conferred with any right to have the property transferred to him. That being so, no mandamus can be issued to the authorities to compel them to allot the property in favour of the petitioner.

(7) Rule 26, which is still in force, applies only to cases where an acquired evacuee property, which is an allotable property, is in the sole occupation of a displaced person. On his own showing, the petitioner is not in the sole occupation of the premises in question. He is in occupation of only one floor therein. The remaining portions in the building are in occupation of unauthorised persons. It is true, the word "occupation" found in Rule 26, refers to lawful occupation. But then before a person can take then benefit of Rule 26, he must be in the sole occupation of the entire building. A partial occupation of a building by him though its remaining portions are unoccupied, does not give the displaced person the benefit of Rule 26. Therefore, the authorities were right in holding that the petitioner cannot have the benefit of Rule 26.

(8) Now coming to Rule 31, as mentioned earlier, when the petitioner's case came to be decided that rule had been abrogated. As seen earlier, the petitioner has no vested right to get the property transferred in his favour. Therefore, one rule 31 is abrogated, the discretion conferred on the authorities ceased to exist. They had to decide the matter before them in accordance with the law in force at that time. This is not a case where it can be said that any vested right of the petitioner is affected by the abrogation of the rule. Therefore the contention that the repeal of Rule 31 has not retrospective effect has no basis.

(9) For the reasons mentioned above this petition fails and the same is dismissed. No costs.

2. Petition dismissed.