

H.K. Choudhury, Regional ... vs Shri Issardas Kundanmal Motiani And ... on 15 February, 1965

Equivalent citations: 1965 AIR 1647, 1965 SCR (3) 78, AIR 1965 SUPREME COURT 1647

Author: S.M. Sikri

Bench: S.M. Sikri, P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah

PETITIONER:

H.K. CHOUDHURY, REGIONAL SETTLEMENT COMMISSIONER

Vs.

RESPONDENT:

SHRI ISSARDAS KUNDANMAL MOTIANI AND OTHERS

DATE OF JUDGMENT:

15/02/1965

BENCH:

SIKRI, S.M.

BENCH:

SIKRI, S.M.

GAJENDRAGADKAR, P.B. (CJ)

HIDAYATULLAH, M.

SHAH, J.C.

CITATION:

1965 AIR 1647

1965 SCR (3) 78

ACT:

Displaced Persons (Compensation and Rehabilitation)
Rules, 1955, r.19--If applies to agricultural property.

HEADNOTE:

The respondent who had a "verified claim" applied for compensation under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. He alleged that he was a co-sharer along with his brothers in agricultural property in West Pakistan and claimed his share of the compensation. The Assistant Settlement Officer held that the alleged co-sharers were members of a joint Hindu family and that the agricultural property was joint property. He then calculated the compensation on the joint property as per rr. 51 and 56

of the Displaced Persons (Compensation and Rehabilitation) Rules 1955. The respondent thereupon filed a petition in the High Court under Arts. 226 and 227 of the Constitution contending that on the finding that the respondent and his brothers constituted a joint family, the unit for assessment of compensation should first be determined according to r. 19, which makes special provision for payment of compensation to joint families, before compensation was calculated. The High Court allowed the petition.

In the appeal to this Court it was contended that r. 19 was inapplicable as that rule does not apply to agricultural land.

HELD: The High Court was right in holding that the rule applied to the claim of the respondent in respect of the agricultural land.

Chapter IV of the Rules in which r.19 occurs contains some rules which apply to applications for compensation in respect of agricultural lands also. Therefore it cannot be said that the Chapter does not deal with agricultural lands at all. Each rule must be considered to see whether it has application to a claim for compensation in respect of agricultural land. So considered, there is no principle of construction by which the scope of the general words in r. 19 could be limited, so as not to apply to agricultural land. Chapter VIII of the Rules provides for compensation in respect of verified claims for agricultural lands in rural areas and only deals with how a unit that has been determined is to be compensated. There is nothing in that Chapter which modifies or overrides r.19 which enables the authorities to determine the unit for assessment of compensation in the case of joint families. [83 D-E; 85 A-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 89--93 of 1964.

Appeals by special leave from the judgment and orders dated August 30, 1961 and June 13, 1961 in Special Civil Application Nos. 440, 441, 509, 510 and 7 of 1961.

K.S. Chawla and R.S. Sachthey, for the appellant (in C. As.

Nos. 89/91 of 1964).

C.K. Daphtary, Attorney-General, K.S. Chawla and R.N. Sachthey, for the appellant (in C.A. NO. 93/64). N.N. Keshwani, for the respondents in all the appeals. The Judgment of the Court was delivered by Sikri, J. These five appeals by special leave raise a common question of interpretation of r. 19 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (hereinafter referred

to as the Rules). It is common ground that nothing turns on any dissimilarity in the facts of each appeal. It will accordingly suffice if facts in Civil Appeal No. 93 of 1964 are set out.

The respondent, Lachman Hotchand Kriplani, is a displaced person from West Pakistan. He has three brothers. They owned 731 acres of agricultural land in District Nawabshah, Taluka Nawab Shah, Sind--now in Pakistan. The respondent submitted a claim under the Displaced Persons (Claims) Act, 1950 (XLIV of 1950)--hereinafter referred to as the Claims Act. The word 'claim' was defined to mean "assertion of a right to the ownership of, or to any interest in (i) any immovable property in West Pakistan which is situated within an urban area, or (ii) such class of property in any part of West Pakistan, other than an urban area as may be notified by the Central Government in this behalf in the official gazette". It is common ground that agricultural land in Sind was so notified. The respondent's claim was that he owned 1/4 share of 731 acres and 14 ghuntas standing in the name, of Fatehehand. The Claim Officer, by order dated October 7, 1952, accepted the claim and assessed his claim as 94-3 standard acres. On July 2, 1955, the respondent applied for compensation under the Displaced Persons (Compensation and Rehabilitation) Act (XLIV Of 1954)--hereinafter referred to as the Compensation Act. In the application he stated that he was not a member of a Joint Hindu Family in Pakistan, but his claim was as a co-sharer alongwith three others, who had filed separate claims. The Assistant Settlement Commissioner was, however, not satisfied with this assertion and after holding an enquiry, by order dated March 3, 1960, he held that the four alleged co-sharers were members of a Joint Hindu Family, and the whole agricultural land claim was to be treated as joint property. On August 29, 1960, a statement of account was issued to the respondent. This statement showed that his claim was assessed as Rs. 10,701/- gross compensation. This figure was arrived at, as stated in the affidavit of the Assistant Settlement Commissioner, thus:

"The claim was assessed for 376 standard acres and 12 units out of which the petitioner had 1/4th share. The compensation on 376 Standard Acres and 12 Units works out to 108 Standard Acres 0-3/10 Units as per scale indicated in Rule 51. This converted in terms of money as per Rule 56 comes to Rs. 42,806/- The petitioner's 1/4th share would be Rs. 10,701/-".

The respondent then on October 28, 1960, served a notice on the Regional Settlement Commissioner calling upon him to rectify the statement of account, failing which he will be constrained to move the High Court under arts. 226 and 227 of the Constitution. In this notice he claimed that r. 20 applied to his case; in the alternative he asserted that at least r. 19 should be applied to him. In reply, the Assistant Settlement Commissioner informed him that the calculation had been done correctly. Thereupon, he filed a petition under arts. 226 and 227, in the Bombay High Court. The High Court allowed the petition and set aside the statement of account furnished to the petitioner on August 29, 1960, and directed that the respondent shall give the benefit of r. 19 and determine the amount of compensation payable to him in accordance with the provisions of rr. 19, 51 and 56 and other rules of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The appellant having obtained special leave, the appeals are now before us. We may mention at the outset that in the High Court the respondent's counsel did not challenge the finding of the Assistant Settlement Commissioner that the respondent and his brothers were members of a joint family. The

High Court came to the conclusion that r. 19 applied to agricultural land. It found nothing in the scheme of the Rules, or in the language of r. 19, to support the claim of the Department that r. 19 applied only to nonagricultural land.

The learned Attorney-General, on behalf of the appellant, challenges the conclusion of the High Court. He has taken us through various sections of the Compensation Act of 1954 and various rules to substantiate his contention. Let us then look at the Compensation Act and the Rules. The Compensation Act was enacted to provide for payment of compensation and rehabilitation grant to displaced persons and for matters connected therewith. "Verified claim" is defined to mean, *inter alia*, a claim registered under the Displaced Persons (Claims) Act (XLIV of 1950). It is not disputed that the claim of the respondent verified by order dated October 7, 1952, is a verified claim.

Section 4 provides for an application for the payment of compensation in the prescribed form to be made by a displaced person having a verified claim within a certain period. Section 5 provides that on receipt of an application under s. 4, the Settlement Officer shall determine the amount of public dues, if any, recoverable from the applicant and shall forward the application and the record to the Settlement Commissioner. It will be noticed that a verified claim registered under the Claim Act, 1950, includes claims to urban as well as certain agricultural land. Therefore, both ss. 4 and 5 apply to such agricultural land as has been made the subjectmatter of claim and verification under the Claims Act of 1950. Section 6 was referred to by the learned Attorney-General but we have not been able to appreciate how it advances his case. Section 6 gives relief to certain banking companies in this way. If a banking company held a mortgage of an immovable property belonging to a displaced person in west Pakistan, and that mortgage was subsisting at the date when the claim of the banking company was registered under the Claim Act, 1950, and the displaced person is entitled to receive compensation in respect of any such property, the banking company was entitled to various reliefs, the appropriate relief depending on whether the compensation to the displaced person is payable (1) in cash or (2) in the form of transfer of any property, or (3) in any other form. In this section immovable property would include agricultural land and it cannot be denied that the respondent is entitled to compensation at least in one of the three forms mentioned in sub. s. (2).

Section 7(1).directs the Settlement Commissioner on receipt of the application trader s. 5 to ascertain the amount of compensation having due regard to the nature of the verified claim and other circumstances of the case. Section 7(2) provides for the deduction of certain dues and the Settlement Commissioner then makes an order under s. 7(3) ascertaining the net amount of compensation. Section 8 provides the form and manner of payment of compensation of the net compensation determined under s. 7(3) as being payable to a displaced person. Subject to any rules that may be made, the net compensation is payable in cash, in government bonds, or by sale to the displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him, etc. Section 8(2) enables rules to be made by the Central Government on various matters, *inter alia*, the scales according to which, the form and the manner in which and the installments by which compensation may be paid to different classes of displaced persons. Section 40 enables rules to be made to carry out by the purposes of the Compensation Act. It is not necessary to refer to other sections of the Compensation Act.

Before we deal with the 1955 Rules, it is apparent that ss. 4, 5, 6, 7 and 8 do not in any manner distinguish between urban land and agricultural land as long as the agricultural land is the subject-matter of a verified claim. If a person holding a verified claim in respect of agricultural land owes public dues--and "public dues" is defined very widely in s. 2(d) to include all kind of loans not only from the Central Government but from a State Government also--this has to be deducted under s. 7(3). It is suggested that the expression "net amount of compensation"

in s. 7(3) means only cash compensation but we are unable to limit the expression thus in view of the scheme of ss. 4 to 8.

The Central Government in exercise of the power conferred by s. 40 of the Compensation Act made the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. Chapter I contains various definitions; Chapter II deals with procedure for submission of compensation application and determination of public dues. Rule 3 enables a displaced person having a verified claim to make an application for compensation. Rule 4 deals with the form of application and Appendix I is the form prescribed, and Appendix II is the questionnaire which has to be answered. One question is important for our purpose. Under the heading "11. Particulars of claims under Displaced Persons Claims Act, 1950" is mentioned: "(a) agricultural land, index no; Village/Tehsil/District; value assessed in standard acres; cosharers in each property with respective shares; if any property is mortgaged state mortgage money and name of the mortgagees". The rest of the rules, upto r. 9, in this Chapter deal with the scrutiny of the application and the determination of public dues. It is only necessary to notice r. 6(2) which requires a Settlement Officer to send a duplicate copy of the application to the Office of the Chief Settlement Commissioner for verification of the assessed value of the claim in respect of which the application has been made. Under r. 10 the Settlement Officer is required to pass an order and send a copy of the order and the original application along with the records of the case to the Regional Settlement Commissioner. It will be seen that Chapter II does not distinguish between verified claims relating to urban property and rural property. Then we come to Chapter III which contains r. 11. Under this rule the settlement Commissioner deals with the duplicate copy sent to him under r. 6(2). He verifies the assessed value of the claim, as stated in the application, with the final order in respect thereof, in the claims record and returns the duplicate copy to the Regional Settlement Commissioner with such remarks as may be relevant for the determination of the amount of compensation. Chapter IV deals with determination of compensation. It will be remembered that s. 5 of the Compensation Act requires the Settlement Officer to determine the amount of public dues and forward the application and the record of the case to the Settlement Commissioner, and r. 11, which we have just noticed, requires the Settlement Commissioner (Headquarters) to send the duplicate copy to the Regional Settlement Commissioner. Rule 12 directs the Regional Settlement Commissioner to consolidate all these papers. Rule 12 obviously applies to application in respect of verified claims to agricultural land. As we have already said, s. 5 and r. 11 applied to such verified claims. Rule 13 deals with

determination of certain dues to banking companies under s. 6 and any unsecured debt payable by an applicant in respect of which a communication has been received from any Tribunal under s. 52 of the Displaced Persons (Debt Adjustment) Act, 1951 (LXX of 1951). Rule 14 directs that the public dues and the amounts referred to in Rule 13 shall be deducted from the amount of compensation in a certain order of priority. Rule 15 reads as follows:

"Determination of net compensation; After deducting the amount referred to in rule 14, the Regional Settlement Commissioner or an Assistant Settlement Commissioner or a Settlement Officer, or an Assistant Settlement Officer, having jurisdiction and duly authorised by the Regional Settlement Commissioner, shall pass an order determining the net amount of compensation payable to the applicant in respect of his verified claim and shall prepare a summary in the form specified in Appendix VII (Abstract of particulars).

It is significant that Appendix VII has a column for agricultural land and a column for remarks regarding application of r. 19.

Pausing here, it is difficult to hold that rr. 12, 13 and 14 do not apply to applications for compensation in respect of agricultural lands which are the subject-matter of a verified claim. There fore, we must reject the contention that Chapter IV, in which r. 19 occurs, does not deal with agricultural lands at all. It may be conceded that r. 16 does not apply to agricultural lands. The scale compensation in respect of agricultural lands which are the subject-matter of a verified claim is expressly dealt with else where. Rule 51 which provides that the scale of allotment of land as compensation in respect of a verified claim for agricultural land shall be the same as in quasi-permanent land allotment scheme in the State of Punjab and Patiala, and the East Punjab States Union, as set out in Appendix XIV. The explanation further provides that if any public dues are recoverable the allocable area shall be reduced correspondingly. Rule 49 read with r. 56 enables the compensation due on the verified claim for agricultural land to be converted into cash if a person wishes to have his claim satisfied against property other than agricultural land. Rule 18 expressly excludes agricultural land from its purview. What emerges from a consideration of these rules in Chapter IV is that we must consider each rule and see whether it has application to a claim for compensation in respect of agricultural land.

Rule 19 reads thus:

"Special Provision for payment of compensation to Joint families--Where a claim relates to properties left by the members of an undivided Hindu family in West Pakistan thereafter referred to as the joint family) compensation shall be computed in the manner hereinafter provided in this rule. (2) where on the 26th Sept. 1955 (hereinafter referred to as the relevant date) the joint family consisted of:--

(a) two or three members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into two equal shares and calculating the compensation separately on each such share,

(b) four or more members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into three equal shares and calculating the compensation separately on each such share.

(3) For the purpose of calculating the number of the member of a joint family under sub-rule (2), a person who on the relevant date:--

(a) was less than 18 years of age,

(b) was a lenial descendant in the main line of another living member of joint Hindu family entitled to claim partition shall be excluded:

Provided that where a member of a joint family has died during the period commencing on the 14th August 1947 and ending on the relevant date leaving behind on the relevant date all or any of the following heirs namely:--

(a) a widow or widows,

(b) a son or sons (whatever the age of such son or sons) but no lenial ascendant in the main line, then all such heirs shall, notwithstanding anything contained in this rule, be reckoned as one member of the joint Hindu family.

Explanation--For the purpose of this rule, the question whether a family is joint or separate shall be determined with reference to the status of the family on the 14th day of August, 1947 and every member of a joint family shall be deemed to be joint notwithstanding the fact that he had separated from the family after the date". The heading "Special Provision for payment of compensation to joint families" is general. So is sub-rule (1). The word properties' is general and would include agricultural land. That this is the meaning is also borne out if we consider the word "claim". The word "claim" must have reference to the claim in the application to be made under s. 4 read with rr. 3 and 4, and as we have already noticed, the application would include a claim in respect of agricultural land if it is the subject-matter of a verified claim.

The learned Attorney-General has not been able to point to any principle of construction which would enable us to limit the scope of the general words in r. 19(1). His main argument that no rule in Chapter IV applies to claims in respect of agricultural land we have already rejected.

The learned Attorney-General then urges that the scheme of the Rules is to provide in separate chapters for compensation in respect of various classes of properties, and he says that Chapter VIII provides for compensation in respect of verified claim for agricultural land situated in rural area and the rules contained in the chapter are the only rules that govern the grant of compensation. But

none of the rules in this chapter deals with what is to happen if the agricultural land was held by a joint family in West Pakistan or if the agricultural land was held by co-owners in West Pakistan. Even if a Joint Hindu Family is treated as a unit for some purposes in some laws, co-owners are very rarely treated as a unit and it would require express language to treat co-owners as a unit and award compensation to them as a unit. However, r. 20 recognises the general rule and provides that where a claim relates to property left in West Pakistan, which is owned by more than one claimant as co-owners, the unit for the assessment of compensation shall be the share of each co-owner and the compensation shall be payable in respect of each such share as if a claim in respect thereof has been filed and verified separately. The learned Attorney-General, when asked, said that even r. 20 would not apply to a claim in respect of agricultural land, but we are unable to accede to this contention. It would be the height of inequity to hold this. In other words, rr. 19 and 20 enable the authorities to determine the unit for assessment of compensation. This subject is not dealt with in Chapter VIII, which deals with how the unit, be it an individual, a member of Joint Hindu Family or a co-owner, is to be compensated. There is nothing in Chapter VIII which modifies or overrides rr. 19 and 20. Accordingly, in agreement with the High Court, we hold that r. 19 will apply to the claim of the respondent in respect of agricultural land left by him as a member of the Joint Hindu Family.

In the result, the appeal fails and is dismissed with costs. As stated in the beginning, it is common ground that if this appeal fails the other appeals must also fail. They are accordingly dismissed with costs. There will be one hearing fee in them.

Appeals dismissed.