

Joint Secretary To The Government Of ... vs Khillu Ram And Anr on 6 October, 1975

Equivalent citations: 1975 AIR 2275, 1976 SCR (2) 78, AIR 1975 SUPREME COURT 2275, 1976 (1) SCC 88, 1976 (1) SCWR 252, 1976 2 SCR 78

Author: A.C. Gupta

Bench: A.C. Gupta, V.R. Krishnaiyer, Syed Murtaza Fazalali

PETITIONER:

JOINT SECRETARY TO THE GOVERNMENT OF INDIA & ORS.

Vs.

RESPONDENT:

KHILLU RAM AND ANR.

DATE OF JUDGMENT 06/10/1975

BENCH:

GUPTA, A.C.

BENCH:

GUPTA, A.C.

KRISHNAIYER, V.R.

FAZALALI, SYED MURTAZA

CITATION:

1975 AIR 2275

1976 SCR (2) 78

1976 SCC (1) 88

ACT:

Displaced persons (Compensation and Rehabilitation) Rules, 1955, r. 30- Effects of its deletion on pending proceedings-Retrospective effect.

HEADNOTE:

Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, prescribes that where property is in the occupation of more persons than one, it shall be offered to the person whose gross compensation is the highest.

A particular property was allotted under this rule to the first respondent. A revision petition by the rival claimant, was dismissed ill September, 1963. But on August 13, 1963, the rule had been abrogated. The effect of the

deletion was that a property in the occupation of more than one person was to be put to sale. In an application under s. 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, by the rival claimant, the appellant held that the case should be governed by the rules as amended, that is, excluding r. 30, and set aside the order allotting the premises to the first respondent. A writ petition filed by the first respondent in the High Court was allowed.

In appeal to this court, the appellant contended that the rule was one of procedure and its deletion affected only the mode of proceeding by which the rival claim was to be decided.

Dismissing the appeal,

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HELD: The rights of the two rival claimants must be governed by r. 30 which was in force when the dispute arose and was decided by the authorities under the Act. [80 G-H].

(a) Rule 30 deals, not with form of procedure, but with the substantive right conferred by the Act on displaced persons. The Act provides for the payment of compensation and rehabilitation grants to displaced persons and matters connected therewith. Rule 30 is in Chapter V of the Rules which deals with payment of compensation by transfer of acquired evacuee properties. Assuming that the rule is only a mode or manner of payment of compensation, the form and manner in which compensation is payable is also a part of the right to get compensation. The rule is not an instrument of machinery for asserting a right conferred by the A t. it does not regulate the procedure for settlement of disputes concerning that right. Therefore, the deletion of the rule in 1963 cannot affect pending actions, [80 D-G].

(b) Neither by express words nor by implication the amendment of the rules in 1963 deleting r. 30 has been made retrospective in operation. [81 A-B].

Pt. Dev Raj v. Union of India & ors., A.I.R. 1974 Pun 65, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 862 of 1968.

Appeal by special leave from the Judgment and order dated the 6th December, 1964 of the Punjab & Haryana High Court in Civil Writ No.587 of 1964.

G. L. Sanghi and Girish Chandra for the Appellants. S. N. Anand for the Respondents.

The Judgment of the Court was delivered by GUPTA, J. This appeal by special leave arises out of a proceeding under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter

referred to as the Act). The only question for determination in the appeal is whether the deletion of rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules) with effect from August . 13, 1963 made any difference to the rights of the parties concerned in this case. The question arises on the following facts.

Shop No. 2 in Tripri township in Patiala which is a government built property was allotted in 1950 to the first respondent Khillu Ram jointly with one Tara Chand and his son by the Custodian of Evacuee Property. In 1951 both Tara Chand and his son Left Tripri to settle elsewhere and the second respondent Teju Mal applied for allotment of their share in the shop to him. By his order dated November 11, 1959 the Managing officer, Tripri and Rajpura, held that Teju Mal and Khillu Ram were in possession of the shop as allottees respectively of 2/3 and 1/3 shares therein. Aggrieved by the order of the Managing officer, the first respondent Khillu Ram preferred an appeal to the Settlement officer, Jullundur, who by his order dated February 12, 1962 set aside the order of the Managing officer and remanded the case for a fresh decision under rule 30 of the Rules. Rule 30 is in these terms:

" Payment of compensation where an acquired evacuee property which is an allotable property is in occupation of more than one person. If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property, the property shall be offered to the person whose gross compensation is the biggest and the other persons may be allotted such other acquired evacuee property which is allotable as may be available :"

This rule has a proviso and an explanation none of which is relevant for the present purpose. After remand the case was transferred to the Assistant Settlement officer who found that the gross compensation payable to the first respondent was higher than that of the rival claimant, Teju Mal and in terms of rule 30 allotted the entire shop to the first respondent by his order dated November 27, 1962. A revision petition against this order made by Teju Mal was dismissed by the Deputy Chief Settlement Officer on September 5, 1963. In the meantime, as stated already, rule 30 had been abrogated with effect from August 13, 1963. Teju Mal then moved the Central Government under sec. 33 of the Act. Teju Mal's application under sec. 33 was heard on February 25, 1964. The effect of deletion of rule 30 was that the properties which were in the occupation of more than one person were to be put to sale. The Joint Secretary to the Government of India who heard the application under sec. 33 held that the case should be governed by the Rules as amended in 1963 excluding rule 30, and accordingly by his order dated February 26, 1964 he set aside the order allotting the shop to the first respondent Khillu Ram and directed the property in question to be put to sale. The first respondent filed a writ petition in the Punjab High Court for quashing the order passed under sec. 33. The Punjab High Court held that the subsequent deletion of rule 30 did not affect the existing rights of the first respondent and quashed the order of the Central Government made under sec. 33. The correctness of this ` order is challenged in the appeal before us which has been preferred by the Union of India and several other authorities concerned with the administration of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

The only submission made by Mr. Sanghi appearing for the appellants is that rule 30 was a rule of procedure and its deletion in 1963 affected only the mode of proceeding by which the rival claims of Khillu Ram and Teju Mal was to be decided. It was argued that - amendment of the Rules in 1963 deleting rule 30 being procedural in character would affect the proceeding between the two respondents then pending, and their rights, it was submitted, should therefore be decided on the footing as if Rule 30 had never been in force. We are unable to accept this submission. The Act provides for the payment of compensation and rehabilitation grants to displaced persons and matters connected therewith. Under the Act a displaced person has a right to get compensation in the form and manner prescribed by the Act and the Rules framed thereunder. Rule 30 is in Chapter V of the Rules which deals with payment of compensation by transfer of acquired Evacuee Properties. Though the shop in question is a government built property and not an acquired evacuee property, rule 43 in Chapter VI of the Rules which provides for payment of compensation by transfer of government built property says that the "provisions of rules 25 to 34 shall, so far as may be, apply to the transfer of any Government built property or Government plot under this Chapter". Rule 30 prescribes that where the property is in the occupation of more persons than one, it shall be offered to the person whose gross compensation is the highest. Clearly rule 30 deals not with the form of procedure but with a substantive right conferred by the Act on displaced persons. Mr. Sanghi described this rule as only a mode or manner of payment of compensation. This may be so, but the form and manner in which compensation is payable is also part of the right to get compensation. Rule 30 is not an instrument or machinery for asserting the right conferred by the Act; it does not regulate the procedure for settlement of disputes concerning that right. Therefore, the deletion of the rule in 1963 cannot affect pending actions. The rights of Khillu Ram and Teju Mal must be governed by rule 30 which was in force in 1959 when the dispute arose and was decided by the Managing officer. A full Bench of the Punjab and Haryana High Court in *Pt. Dev Raj v. Union of India & ors.*⁽¹⁾ considering the same question which arises for determination in this appeal, held that "a displaced person has a right to the determination of his claim for compensation and its satisfaction in the

1) A. I. R. 1974 Pun. 65 prescribed manner and this is a substantive right", that so far as rule 30 is concerned "the right which a displaced person claims under this rule .. cannot be adversely affected or taken away unless it is expressly stated in the amending provision, or the language of the Act This, in our opinion, is a correct statement of the law. Neither by express words nor by implication the amendment of the Rules in 1963 deleting rule 30 has been made retrospective in operation.

For these reasons the appeal fails and is dismissed but without any order as to costs.

V.P.S.

Appeal dismissed.