

Shauqin Singh And Ors. vs Desa Singh And Ors. on 4 December, 1969

Equivalent citations: AIR1970SC672, (1970)3SCC881, AIR 1970 SUPREME COURT 672

Author: J.C. Shah

Bench: J.C. Shah, K.S. Hegde

JUDGMENT

J.C. Shah, J.

1. Ram Singh - originally a resident of District Lyallpur (now in West Pakistan), migrated to India in 1947 on the partition of the country. The Rehabilitation Department allotted to Ram Singh an area of land in Village Raipur Aram, District Jullundar in lieu of the land which Ram Singh was compelled to abandon. After the death of Ram Singh his sons respondents 1 to 3 complained to the Rehabilitation Department that Ram Singh was cultivating A grade land in District Lyallpur and was on that account entitled to allotment of A Grade land, he had been allotted in Village Raipur Arain C Grade land which was mostly Banjar Cadim unfit for cultivation and subject to river erosion. Respondents 1 to 3 in support of their application tendered certified extracts from Khasra-Girdwari for 1957-58 showing that the land allotted to Ram Singh was subject to river erosion. The Land Claims Officer held an enquiry and called for a report from the Revenue authorities. The Patwari of the village, the Kanungo-Tahsildar and the Assistant Commissioner verified the recitals made in the application, and recommended the case of respondents 1 to 3 for allotment of other land. The Land Claims Officer cancelled the allotment of land to Ram Singh in village Raipur Arain and allotted in lieu thereof other land in District Hoshiarpur with "permanent rights". Respondents 1 to 3 took possession of the land and started cultivation. They installed wells and built houses on the land.

2. In 1959 the question the Land Claims Officer recommended to the Chief Settlement Commissioner that the previous order cancelling the allotment of land in favour of Earn Singh was made on the basis of "fabricated extracts from the Khasra-Girdwari". The Chief Settlement Commissioner by order dated September 20, 1962, cancelled the allotment of land to respondents 1 to 3 in District Hoshiarpur.

3. Respondents 1 to 3 then moved a petition before the High Court of Punjab under Article 226 of the Constitution for a writ quashing the order dated September 20, 1962 of the Chief Settlement Commissioner. To this petition the present appellants were on their own application impleaded as

parties. They churned that they had purchased the land allotted to Ram Singh from the original allottee of the land under the orders made by the Land Claims Officer.

4. Mahajan, J., dismissed the petition holding that respondents 1 to 3 obtained the order of exchange and cancellation of the previous allotment by relying upon "fabricated Khasra-Girdwari entries" and the Chief Settlement Commissioner acted properly in setting aside the order made by the Land Claims Officer. Against that order an appeal was preferred to the High Court under the Letters Patent.

5. To determine whether the extracts from Khasra-Girdwari produced by respondents 1 to 3 with their application before the Land Claims Officer were "fabricated" the High Court called upon the State Government to produce the original Khasra-Girdwari for the year 1957-58, but the State did not produce the record on the somewhat specious plea that the Khasra-Girdwari was "not traceable". The State also relied upon an affidavit of the Deputy Secretary to the Government of Punjab, Rehabilitation Department, stating that the order of exchange was obtained by respondents 1 to 3 on the basis of incorrect Khasra-Girdwari entries and that the Tahsildar had signed the copy of the Khasra-Girdwari produced by respondents 1 to 3 without comparing them with the originals as required under the orders of Government. The High Court observed that the Deputy Secretary to the Government of Punjab, Rehabilitation Department, had no personal knowledge and his assertion that the exchange was obtained on the basis of incorrect entries in Khasra- Girdwari was not evidence which supported the claim that the extracts produced were not genuine. The High Court accordingly reversed, the order holding that there was no evidence to show that Khasra-Girdwari entries which were produced by. the respondents 1 to 3 before the Land Claims Officer on which the previous allotment was cancelled were not true extracts. The High Court relied upon the report made by the Patwari, Kanungo-Tahsildar and the Assistant Commissioner and held that the claim made by respondents 1 to 3 that the lands allotted to them were "poor quality lands and it was "difficult to earn any livelihood out of those lands" was correct. With certificate granted by the High Court the appellants have appealed to this Court.

6. Section 24(2) of the Displaced Persons (Compensation & Rehabilitation) Act 44 of 1954 confers authority upon the Chief Settlement Commissioner to revise the orders of subordinate authorities. In so far as it is relevant it provides:

Without prejudice to the generality of the foregoing power under Sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then, notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order... cancelling the lease or allotment granted to him....

The Chief Settlement Commissioner has, therefore, power under Sub-section (2) to cancel an allotment if he is satisfied that the order of allotment of land had been "obtained by means of fraud, false representation or concealment of any material

fact." The power is judicial and by the use of the expression "is satisfied" the Chief Settlement Commissioner is not made the final arbiter of the facts on which the conclusion is reached. The jurisdiction of the Chief Settlement Commissioner arises only if an allotment is obtained by means of fraud, false representation or concealment of material facts. The relevant satisfaction is a jurisdictional fact on the existence of which alone the power may be exercised. A superior authority or the High Court in a writ petition would, therefore, be entitled to consider whether there was due satisfaction by the Chief Settlement Commissioner on materials placed before him and that the order was made not arbitrarily, capriciously or perversely.

7. The Chief Settlement Commissioner had apparently called for the Jamabandi for the year 1957-58 but it was represented that it was missing. He however, relied upon the Khasra-Girdwari for 1950-51 to 1955-56 and held that some parts of the land of the village were under cultivation and on that basis he observed that the Enquiry Officer had come to the conclusion that the copies of the Khasra-Girdawari on the basis of which exchange had been obtained were forged and the exchange was liable to be set aside. Even the entries in the Khasra-Girdawari of the earlier years showed that large areas of lands of the village were not capable of full cultivation. There were again the reports of the Patwari, Kanungo-Tahsildar and the Assistant Commissioner that the lands in the village were in danger of being eroded by the action of the river Sutlej, that the displaced persons who were allottee of the lands were in danger of being deprived of their lands and that alternative allotment of land be made to respondents 1 to 3. The revenue authorities had reported that in the village there was a total area of 1102 acres of cultivable land out of which about 822 acres had been rendered uncultivable and only 280 acres remained cultivable. It appears further that when the river Sutlej was in floods it was difficult to save even the a bad land, that the residents of the village were permanently in danger of river erosion and that the Kanungo-Tahsildar regarded the condition of all the allottees as "miserable". The Chief Settlement Commissioner did not refer to the report of the Kanungo-Tahsildar and the Assistant Commissioner on the basis of which the Land Claims Officer had cancelled the original allotment.

8. It is clear that the Chief Settlement Commissioner without having the original Khasra-Girdawari before him and without considering the relevant evidence came to the conclusion that the entries produced before the Land Claims Officer in support of their application for cancellation of the allotment were "not genuine". There is in the order of the Chief Settlement Commissioner no reference to any evidence which may support this conclusion. The order of the Chief Settlement Commissioner being quasi-judicial in character and his satisfaction not being decisive of the matter, the High Court, in our view, was justified in holding that the conclusion of the Chief Settlement Commissioner, that the respondents 1 to 3 were guilty of fraud, was based on no evidence and the Court was competent to set aside the order of the Chief Settlement Commissioner.

9. The appeal fails and is dismissed with costs.