

Estates Development Ltd vs Union Of India & Ors on 22 September, 1969

Equivalent citations: 1970 AIR 1978, 1970 SCR (2) 534

Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah, A.N. Grover

PETITIONER:
ESTATES DEVELOPMENT LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT:
22/09/1969

BENCH:
RAMASWAMI, V.
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RAMASWAMI, V.
SHAH, J.C.
GROVER, A.N.

CITATION:
1970 AIR 1978 1970 SCR (2) 534
1969 SCC (3) 39
CITATOR INFO :
D 1971 SC 771 (6)

ACT:
Displaced Persons (Compensation and Rehabilitation) Act
(44 of 1954), s. 24(2)---Order of Chief Settlement
Commissioner--Conditions precedent for making.

HEADNOTE:

By a sale deed executed on November 24, 1944 the appellant company purchased certain land located in an area now part of West Pakistan. After the partition of India, the company, on the basis of a registered sale deed, was allotted certain land in Kapurthala in 1950 in lieu of the land abandoned in Pakistan. On a report made by the Managing Officer, Respondeat No. 3 on August 30, 1960 recommending cancellation of the allotment of land to the

company and after hearing the company, the chief Settlement Commissioner rejected the registered sale deed and came to the conclusion that at the time of partition the company did not own any land in Pakistan nor was it in occupation of any such land. Therefore by his order dated February 27, 1961, he set aside the permanent rights acquired by the company.

HELD: The order of the Chief Settlement Commissioner must be quashed on the ground that there is no finding of the Chief Settlement Commissioner that the company had obtained allotment of the land "by means of fraud, false representation or concealment of any material fact" within the meaning of s. 24(2) of the Act. It is true that the Chief Settlement Commissioner had recorded a finding that the company had not proved its title to any land in the area now part of Pakistan and the allotment was "undeserved". But this is not tantamount to a finding that the allotment had been obtained by a false representation or fraud or concealment of material facts. Such a finding is a condition precedent for faking action under s. 24(2) of the Act. The condition imposed by the section is mandatory and in the absence of any such finding the Chief Settlement Commissioner had no jurisdiction to cancel the allotment made to the company under s. 24(2) of the Act. [537 A--D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1576 of 1966. Appeal from the judgment and ordered dated October 26, 1965 of the Punjab High Court in Letters Patent Appeal No. 174 of 1964.

Bishan Narain, S.K. Mehta and K.L. Mehta, for the appellant.

Harbans Singh and R.N. Sachthey, for the respondents. The Judgment of the Court was delivered by Ramaswami, J. In the month of August, 1942 the appellant company (hereinafter called the Company) was incorporated -with its registered office in the city of Jullundur dealing in sale and purchase of land as its substantial business. By a sale deed executed on November 24, 1944 the company purchased 646 karnals, 9 marlas of land from Harjit Singh for a sum of Rs. 32,326/-. The land was located in village Monanpura of District Sheikupura, now in West Pakistan. Out of the consideration for the sale, a sum of Rs. 9,000/- was left with the company for payment to the previous mortgagees and the balance of the money was paid to Harjit Singh before the Sub-Registrar at the time of registration. On the basis of the registered sale deed the company was allotted 27 standard acres and 11 1/2 units of land village Bohani, Tehsil Phagwara District Kapurthala in the year 1950 in lieu of the land abandoned in Pakistan. A sanad no. K2/4/8 dated March 9, 1950 was issued in favour of the company. There was consolidation of holdings in village Bohani and as a result of consolidation the area allotted to the company came to 23 kanals and 5 marlas. Out of this the company sold 9-1/2 kanals to Mohan Singh, a Jar of village Bohani for Rs. 1900.00 by registered sale deed dated May 22, 1956. Another portion of 220 kanals and 15 marlas was sold on September 12, 1958 for Rs. 10,012/- to one Mehnga Singh and his sons. It was later

discovered that the company had been allotted less area of land than it was entitled to as a result of consolidation operations and so. an additional area of 24 kanals was allotted to the company in village Bohani to make up the deficiency. On August 30, 1960 the Managing Officer, respondent no. 3, made a report, Annexure C, to the Chief Settlement Commissioner, Respondent no. 2 recommending cancellation of the allotment of land to the company and consequently the grant of permanent rights to it. The company was heard by the Chief Settlement Commissioner and thereafter the Chief Settlement Commissioner rejected the registered sale deed and balance sheets and relying on the jamabandi, annexure X, came to the conclusion that at the time of partition the company did not own any, land in Pakistan nor was it in occupation of any such land. By his order dated February 27, 1961 respondent no. 2 set aside the permanent rights acquired by the company to the extent of 27 standard acres, 111/2 units and also cancelled the quasi-permanent 'allotment of the ,land made in the name of the company. On March 29, 1961 a revision petition was filed by the company to the Central Government, respondent no. 1. But the revision petition was dismissed on May 10, 1961. On June 8, 1961 the company filed a writ petition under Art. 226 of the Constitution praying for grant of a writ to quash the order of the Chief Settlement Commissioner dated February 27, 1961. The writ petition was allowed by Shamshat Bahadur, J. But the respondent took the matter in appeal under el. 10 of Letters Patent to a Division Bench which reversed the judgment of the learned single Judge and ordered the writ petition to be dismissed.

Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) (hereinafter called the Act) states:

"(1) The Chief Settlement Commissioner may at any time call for the record o/any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Settlement Commissioner, a managing officer or a managing corporation has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) 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 directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, canceling the lease or 'allotment granted to him; 'and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, Such amount or excess, as the case may be, may on a certificate issued by the Chief Settlement Commissioner be recovered in the same manner as an arrear of land revenue.

In support of the appeal it was contended on behalf of the company that the document described as jamabandi, annexure II to writ petition, was not the jamabandi of the year 1946- 47 of the land in dispute and the Division Bench was in error in holding that the Chief Settlement Commissioner could properly rely upon annexure . It was pointed out that annexure II was not the jamabandi for 1946-47 but it consisted of three notes one saying "Maamur bai", that is, that there is no land of non-Muslims in the village. the second note related to Kartar Chand and Gopal Dass who embraced Islam and the third related to sale of his land by Harjit Singh in favour of S.A. Latif. All these notes are dated May 3, 1951. It was pointed out that these notes were made on May 3, 1961 for the purposes of exchange of jamabandi and the document did not depict the state of affairs as on August 15, 1947 which was the material date. It is not necessary to examine this document in detail for we are of opinion that the appeal must be allowed and the order of the Chief Settlement Commissioner must be quashed on the ground that there is no finding of the Chief Settlement Commissioner that the Company had obtained allotment of the land "by means of fraud, false representation or concealment of any material fact" within the meaning of s. 24(2) of the Act. It is true that the Chief Settlement Commissioner had recorded a finding that the company had not proved its title to any land in village Momonpura and the allotment was "undeserved". But this is not tantamount to a finding that the allotment had been obtained by a false representation or fraud or concealment of material facts. Such a finding is a condition precedent for taking action under s. 24(2) of the Act. The condition imposed by the section is mandatory and in the absence of any such finding the Chief Settlement Commissioner had ,no jurisdiction to cancel the allotment made to the company under s. 24(2) of the Act. For these reasons we hold that the appeal should be allowed and the judgment of the Division Bench dated October 26, 1965 in Letters Patent Appeal should be reversed and the judgment of Shamshat Bahadur, J., dated November 28, 1963 quashing the order of the Chief Settlement Commissioner dated February 27, 1961 should be restored.

The appeal is accordingly allowed with costs. R.K.P.S. Appeal allowed.