AIR 1965 P&H 52 : (1964) CriLJ 455 : (1964) 2 ILR (P&H) 330

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 1662 of 1963

Harnam Singh — APPELLANT

Vs

D.K. Puri and Others — RESPONDENT

Date of Decision: Feb. 13, 1964

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1965 P&H 52 : (1964) CriLJ 455 : (1964) 2 ILR (P&H) 330

Hon'ble Judges: Shamsher Bahadur, J; J.S. Bedi, J

Bench: Division Bench

Judgement

Shamsher Bahadur, J.

(1) What has been questioned in this petition under Art 226 of the Constitution of India is the right of the Settlement authorities under the Displaced Persons (Compensation and Rehabilitation), Act 1954 (hereinafter referred to as the Act,) to transfer the compensation payable to a displaced person who has become an insolvent to the receiver of his estate?

(2) Harman Singh petitioner is a displaced person and settled in Nabha after the partition. In partnership with some other persons the petitioner started ice factory but the business having failed the firm of which he was a partner was declared insolvent on 5th July, 1954 and the official Receiver Patiala, who is the first responded was appointed a Receiver of the estate on 7th May 1954. The petitioner had made a claim in respect of the property which he had left in Pakistan and it was verified for Rs. 41,912. The net compensation admissible on the petitioner computed at Rs. 9,551/-. At first petitioner filed an application for adjustment of his claim with the Settlement Officer, Patiala, on 28th May 1954, Subsequently he made a similar claim at Ludhiana without disclosing that he had already made an application at Patiala. The first respondent had in the meantime applied for being submitted on his behalf that this is the reason which impelled the petitioner to file another claim Ludhiana.

A statement of account was issued, to the petitioner on 15th August 1958, and when the Officer Receiver moved for payment of compensation due to the petition he was informed on 19th October 1962, by the Regional Settlement Commissioner, Jullundur that payment had already been made to the claimant. The Official Receiver there filed an appeal before the Chief Settlement Commissioner who set aside the statement of account which had formed the basis of the right of the petitioner to receive payment and directed that the amount should be available to the Receiver. This order of the Chief Settlement Commissioner passed on 23rd February 1963, was affirmed in revision by Shri N. P. Dube, Joint Secretary to the Government of India under S. 24(4) read with S. 33 of the Act on 27th May, 1963. The petitioner feeling aggrieved by these orders has moved this Court for a writ of certiorari to direct compensation to him.

(3) The Settlement authorities were influence mainly by the consideration that the petitioner has practiced a fraud inasmuch as he failed to disclose that two separate applications has been filed and that two separate applications had been filed and registered in respect of the same claim. It has been pointed out by the Deputy Chief Settlement Commissioner that the statement of account had been furnished to the petitioner as a result of suppression of this material detail. In form of affidavits which has to be field with the claim under the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, (Appendix I) it has to be mentioned that the claimant has not submitted an application in this form to any other authority."

The conclusion drawn by the Settlement authorities that the object of the petitioner in preferring a second claim at Ludhiana was to put off the Official Receiver at Patiala does not appear to the unreasonable. At Patiala m the Official Receiver has already applied for substitution in place of the petitioner. It is idle to contend that the petitioner could have made a disclose of the fact that a claim had also been preferred at Patiala. The Official Receiver was actually substituted in place of the Petitioner on 15th of December 1958. The order for adjustment of account having been, made on the second application made at Ludhiana was therefore cancelled by the Chief Settlement Commissioner. The assertion of the petitioner that he had informed the Ludhiana authorities about the first application at Patiala has not been borne out Commissioner. The findings of fact reached by the Chief Settlement Commissioner and the Central Government that the petitioner obtained the statement of account as a result of fraud and concealment of account as a result of fraud and concealment of fact cannot be agitated in these proceedings. It may be pointed out that in the preferred by the petitioner to the Central Government the finding of fact with regard to fraud only matter which was raised there was the legality of the Receiver''s right tot be subsituted in place of the insolvent.

(4) The Chief Settlement Commissioner exercise his powers under sub-section (2) Ss. 24 of the Act which provides that on being satisfied that an order for payment of compensation has been obtained by fraud false representation or concealment of any material fact he may pass an order directing that no compensation shall be paid to such person. The petitioner did not rest content with the order of the Chief Settlement

Commissioner and preferred a petition for revision under subsection(4) of S. 24 to the Central Government which has exercised its powers through Shri Dube its Joint Secretary and all questions of fact must be deemed to have been finally determined.

(5) Though this finding in respect of fraud being one of fact would be sufficient to defeat the petitioner we would like to advert briefly also to the legal issue raised by him. Mr. Ajit Singh Sirhadi has argued that the verified claim being unattachable and non-transferable cannot vest in the Receiver. It may be pointed that the question of this case. It is the right to receive compensation for a verified claim which has been assigned by the Settlement authorities to the Receiver. A conjoint reading of Ss. 7 and 8 of the Act makes it clear that the amount of compensation having once been ascertained the Central Government at once becomes liable for its payment Section 7 speaks of the method of determination of the amount of compensation and when this is ascertained the Settlement Commissioner under sub-section (2) has to make deductions from it in respect of the dues recoverable from the applicant. After deducting such dues the Settlement Commissioner has to make an order determining the net amount of compensation if any payable to the applicant under sub-section (3). The amount of net compensation payable to the petitioner having been determined at Rs, 9551/- the mandatory direction S. 8 becomes operative that,

"a displaced person shall be paid out of the compensation pool the amount of net compensation determined under sub-section (3) of S. 7.........

(a) in cash;

(b) in Government bonds;

(c) 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;

(d) by any other mode of transfer to the displaced person of any property from the compensation pool and setting off the valuation of the property against the compensation payable to him;

(e) by transfer of shares or debentures in nay company or corporation;

(f) in such other form as may be prescribed."

(6) As I said in Uttam Chand Vs. Chief Settlement Commissioner and Another, the right to be paid net compensation under Ss. 7 and 8 of the Act appears to be absolute and mandatory. The contention of Mr. Sirhadi that net compensation being still unascertainable it becomes exempt from attachment cannot be accepted. Reliance has been placed by Mr. Sirhadi on the decision of Gosian J. in Tirath Ram Lal Chand v. M/s Mehar Chand that the Government at that stage could not be deemed to have become the debtor. The view of Patel J. of the Bombay High Court in Khudabadi Bhaibund Co-operative credit Bank Ltd v.

The Khudabadi Bhaibund Co-operative Credit Bank Ltd. Vs. N.S. Verma and Another, . Section 9 of the Act says clearly that:

"Where there is any dispute as to the person or persons who are entitled to the compensation......

such dispute shall after such enquiry as may be prescribed be settled."

by prescribed authorities. Mr. Sirhadi relies on S. 15 of the Act which says that:

"No property which forms part of the compensation pool and which is vested in the Central Government under the provisions of this Act shall be liable to the proceed against for nay claim decree or order or by the other process of any court or other authority."

These two sections when read together mean that the dispute as to the person or persons who are entitled to compensation has to be settled by the authorities under Act and no process could be issued by any court of law to process could be issued by any Court of law to enforce payment from the compensation pool. What has been done in the present instance is that the Official Receiver mant under S. 9 and it has further been determined that the Receiver is entitiled to receive the compensation and not the petitioner. No process of the Court has been utilised or pressed into service by the Receiver who has approached the authorities. under the Act for a determination o f his dispute with the claimant. Section 15 places an interdict on any court to determine such disputes but it does not preclude the Deputy Chief Settlement Commissioner or the authorities under the Act to say that the Receiver is entitled to the compensation which has become payable in respect of the verified claim of the petitioner. The authorities under the Act have passed the order presumably in recognition of the right of the Receiver to represent a bankrupt during insolvency proceedings. It is too well-established a principle to need any elaboration that the estate of an insolvent vests in a Receiver who has to distribute the assets prorata among his creditors. If the petitioner can claim the compensation for himself it would infringe the rights of the general body of creditors.

(7) It remains to mention a Single Bench Judgment of this Court in Thakar Dass Vs. Chief Regional Settlement Commissioner, New Delhi and Others, in which Mahajan J. rejected the contention that the right in land so rejected the contention that the right in land so far as quasi-permanent allotments are concerned is not property Mahajan J. held that a displaced person has a right to be paid the compensation out of the compensation pool and once it is determined the manner how that compensation has to be paid is left to the discretion of the authority concerned. The amount of compensation has to be paid is left to the discretion of the authority concerned. The amount of compensation determined under the Act is not only property but will by operation of law vest in the Official Receiver the moment the displaced person is declared as insolvent. According to the Judgment of Mahajan J., with which we are in complete agreement the adjustment having been made in favour of the petitioner and it having been determined that he was entitled to be paid

Rs. 9,551 there came into being the property which could by process of law vest in the Receiver. Such a vesting has taken place not by process of a civil Court but by an order of the appropriate authorities under Act.

(8) In this view of the matter there is no force in this petition which fails and would stand dismissed. In the circumstances we would make no order as to costs.

J.S. Bedi, J.

(9) I agree

(10) Petition dismissed.