Wahidi Begum Vs Union of India

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 23, 2014

Acts Referred: Administration of Evacuee Property Act, 1950 â€" Section 16, 16(1), 2(d), 27
Constitution of India, 1950 â€" Article 226, 227, 31(2), 31-B

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: Som Nath Saini, Advocate for the Appellant; Saurabh Mohunta, DAG, Advocate for the Respondent

Final Decision: Allowed

Judgement

Paramjit Singh Patwalia, J.
Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the

references (Annexures P-4 and P-5) made by respondent no. 6-Section Officer/Managing Officer, Land Claims Organization, Rehabilitation

Department, Haryana and order dated 31.03.1993 (Annexure P-6) passed by respondent no. 3-Chief Settlement Commissioner, Rehabilitation

Department, Haryana whereby orders dated 31.07.1958, 28.09.1959 and June, 1963 passed by the Central Government u/s 16(1) of the

Administration of Evacuee Property Act, 1950 (in short "1950 Act") read with Section 20-A of the Displaced Persons (Compensation &

Rehabilitation) Act, 1954 (in short "1954 Act"), have been set aside and allotment of land made in favour of the petitioner has been set aside.

2. It is the case of the petitioner that her father and uncle jointly owned 2716 bighas and 3 biswas of agricultural land in joint khewats of three

villages of the then Tehsil Fatehabad, District Hisar. The petitioner, her father and uncle never migrated to West Pakistan, but stayed in India. They

never became evacuees within the term as defined in Section 2(d) of the "1950 Act", however, their land was wrongly taken in "evacuee pool" by

the Rehabilitation Department. The Central Government while exercising the powers u/s 16 of the "1950 Act" made orders dated 31.07.1958 and

28.09.1959 and issued certificates declaring the petitioner entitled for restoration with regard to property belonging to her father and uncle,

respectively, who had died. The entire area of holdings of both the owners was not included in Schedule II attached to order dated 31.07.1958

and the same was later corrected as 2716 bighas 3 biswas vide corrigendum order of June, 1963.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner contended that the petitioner, her father and uncle never migrated to Pakistan as they shifted in India to some

other place at the time of partition of the country. The property was, therefore, wrongly declared evacuee property and could not have been

distributed. The petitioner is entitled to restoration of land owned by her father and uncle. In support of his contentions, learned counsel relied upon

The Financial Commissioner Revenue and Another Vs. Sifte Hassan (deceased through his legal representative),

5. Per contra, learned State counsel has supported the impugned orders and contended that "1954 Act" has been repealed on 06.09.2005 and as

per the new statute framed in 2008 i.e. Haryana Evacuee Properties (Management and Disposal) Act, 2008, there is no provision for any

authority/forum to restore the property declared as evacuee.

6. I have considered the rival contentions of learned counsel for the parties.

7. It would be appropriate to reproduce Section 16 of the "1950 Act" which reads as under:

16. Restoration of Property- (1) The Custodian may, on application made to him, in this behalf in writing by an evacuee or any person claiming to

be the heir or an evacuee, restore, subject to such terms and conditions as he may think fit to impose, the evacuee property to which the evacuee

or other person would have been entitled if this Act were not in force.

Provided that the applicant produces in support of his application a certificate from the Central Government, or from any person authorized by it in

this behalf, to the effect that the evacuee property may be so restored if the applicant is otherwise entitled thereto.

(2) On receipt of an application under sub Section (1), the Custodian shall cause public notice thereof to be given in the prescribed manner and,

after holding a summary inquiry into the claim in such manner as may be prescribed, may

(a) make a formal order declaring that the property shall be restored to the applicant; or

(b) reject the application: or

(c) refer the applicant to a civil court for the determination of his claim and title to the property;

Provided that no order for restoration shall be made under this section, unless provision has been made in the prescribed manner for the recovery

of any amount due to the Custodian in respect of the property or the management thereof.

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8. The relief to the petitioner cannot be denied on the ground that Section 20-B of the "1954 Act" has been held to be ultra vires the Article 31-B

of the Constitution of India. The plea of State counsel that the ''1950 Act and the "1954 Act'' have been repealed on 06.09.2005 and new statutes

do not contain any provision empowering any authority for restoration of land to any Muslim restoree, is not sustainable, as the petitioner had been

pursuing her remedy much prior to 2005 and she cannot be deprived of her legal right on the ground that new statutes came into being in the years

2008 and 2010.

9. In Sifte Hassan''s case (supra), a Division Bench of this Court had an occasion to deal with the identical issue involved in the present case and

held as under:

The plea that as Section 20-B of ''the 1954 Act'' has been declared ultra vires in ''Lachhman Dass''s case (supra), the land cannot be restored, is

incorrect. Indisputably, Section 20-B of the Act, imposes certain restrictions on restoration of evacuee property. Section 20-B of the said Act was

held ultra vires of Article 31(2) of the Constitution of India as it offends the right to property of a person, whose property was declared evacuee

and was liable for restoration, u/s 27 of ''the 1950 Act'' or under the Evacuee Interest Separation Act, 1951. Counsel for the State has not been

able to point out as to how the judgment passed by the Hon''ble Supreme Court in ''Lachhman Dass''s case (supra) applies to the present

controversy or would validate the order passed by the Financial Commissioner against the respondent.

Counsel for the State made a faint attempt to argue that as ''the 1950 and 1954 Acts'' have been repealed on 06.09.2005 and the new

enactments, namely, Haryana Evacuee Properties (Management and Disposal) Act, 2008/Haryana Evacuee Properties (Management and

Disposal) Amendment Act, 2010, do not contain any provision empowering any authority for restoration of land to any Muslim restoree, the

impugned order is illegal and liable to be set aside. The plea, in our considered opinion, is nothing but a hollow attempt to take away the genuine

claim of the respondent. The respondent had been pursing his remedy since 1959 and he cannot be deprived of his legal right merely because in

the new Act passed in the year 2008/2010, the State has failed to discharge its obligation to provide a forum for the redressal of genuine

grievances of the rightful claimants or to restore/allot land to the successful litigants.

In view of what has been discussed hereinabove, the appeal is dismissed, leaving parties to bear their own costs.

10. The matter in hand is squarely covered by the decision rendered by the Division Bench of this Court in Sifte Hassan''s case (supra).

11. In view of decision rendered in Sifte Hassan''s case (supra), instant petition is allowed, impugned references (Annexures P-4 and P-5) made

by respondent no. 6-Section Officer/Managing Officer, Land Claims Organization, Rehabilitation Department, Haryana and impugned order dated

31.03.1993 (Annexure P-6) passed by respondent no. 3 are set aside.

12. No order as to costs.