Purshottam Lal Dhawan Vs Dewan Chaman Lal and Another

Appeal (civil) 754 of 1957

Court: Supreme Court of India

Date of Decision: March 14, 1961

Acts Referred:
Administration of Evacuee Property (Central) Rules, 1950 â€" Rule 14, 31(5)#Administration of Evacuee Property Act, 1950 â€" Section 27, 56

Citation: AIR 1961 SC 1371 : (1962) 1 SCR 297

Hon'ble Judges: Raghubar Dayal, J; K. Subba Rao, J; J. R. Madholkar, J

Bench: Full Bench

Final Decision: dismissed

Judgement

Subba Rao, J.
This appeal by special leave is directed against the order of the Additional Deputy Custodian-General of Evacuee Property,

New Delhi, dated September 29, 1954, setting aside the order dated August 25, 1952 of the Additional Custodian, Rural, Jullundur, confirming

that of the Deputy Commissioner, Ambala, dated May 12, 1951.

2. The appellant belongs to a group of evacuees which may for convenience be described as Dhawan Group. Diwan Chaman Lal, respondent No.

1, was a displaced person from West Pakistan where he owned considerable properties. On September 1, 1949, in lieu of land left behind in

Pakistan, he was allotted 152.9 acres of land in village Kharwan in Tehsil Jagadhri, District Ambala. The appellant and his group also owned large

extents of properties in West Pakistan. Each one of that group was allotted different extents of land in the same village. Before possession was

taken by the allottees, two persons, namely, Hari Chand and Khilla Ram, filed applications dated November 14, 1949, and November 11, 1949,

respectively for re-allotment on the ground that the soil of the village was not of uniform quality and the allotment on the basis of blocks was not

justified. The Additional Deputy Commissioner, Ambala, recommended the splitting of the land into four blocks and the said recommendation was

accepted by the Director-General, Rural Rehabilitation, by his order dated December 2, 1949. Thereupon the village was divided into four blocks

and was re-allotted. On account of the re-allotment, the 1st respondent could not get his entire allotment in village Kharwan in one block and he

was given instead land in different blocks and different villages. Aggrieved by this order, the first respondent filed a review application before the

Deputy Commissioner, Ambala, on September 27, 1950, praying for the restoration of his original allotment made on September 1, 1949. The

Deputy Commissioner, Ambala, rejected that application on May 12, 1951. Against that order the first respondent preferred a revision to the

Additional Custodian, who dismissed the same on August 25, 1952. Against that order of dismissal, the first respondent filed a revision to the

Custodian-General on October 30, 1952. To that revision only the Custodian was made party; but the appellant and the members of his group

were subsequently made parties by an order of the Deputy Custodian-General dated August 25, 1953. Thereafter notices were issued to them.

The appellant and others on their being made parties raised various contentions. The Deputy Custodian-General cancelled the allotment made in

favour of the Dhawan Group in respect of the excess area allotted to them and directed the land obtained by means of this cancellation to be

utilised for the consolidation of the allotment of the first respondent in village Kharwan. He also gave further consequential directions. The present

appeal is preferred by Purshotam Lal Dhawan, a member of the Dhawan Group, against the said order.

3. Learned counsel for the appellant raised before us the following two points : (1) The revision to the Deputy Custodian-General was barred by

time. (2) On the date when the allotment made to the appellant was cancelled, the Deputy Custodian-General had no power to cancel the

allotment.

4. To appreciate the first contention some relevant dates may be given. The order of the Additional Custodian was passed on August 25, 1952.

The said order was communicated to the first respondent on September 11, 1952. The revision was filed on October 10, 1952. On the date of the

filing of the revision only the Deputy Custodian was made a party, but later on the Dhawan Group was impleaded in the revision in October 1953.

No application for excusing delay in preferring the revision against the said persons was made. It was contended before the Deputy Custodian-

General that the revision petition was barred by time against the Dhawan Group, but the Deputy Custodian-General rejected that argument and

disposed of the petition on merits.

5. The first question for consideration is whether the revision was barred by limitation in so far as the Dhawan Group was concerned. Some of the

relevant provisions regulating the power of revision of the Custodian-General may noticed. Section 27 of the Act says, ""The Custodian-General

may at any time either on his own motion or on application made to him in this behalf call for the record of any proceedings in which any Custodian

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"". Under the proviso to that section, ""the Custodian-General shall not pass an order under the sub-section prejudicial to any

person without giving him a reasonable opportunity of being heard"". In exercise of the powers conferred by s. 56 of the Act, the Central

Government made the following rules among others :

6. Rule 31. (5) Any petition for revision when made to the Custodian-General shall ordinarily be made within sixty days of the date of the order

sought to be revised. The petition shall be presented in person or through a legal practitioner or a recognized agent or may be sent by registered

post. The petition shall be accompanied by a copy of the order sought to be revised and also by a copy of the original order unless the Revising

Authority dispenses with the production of any such copy.

7. In contrast to the said provisions, rule 31(1) dealing with appeals says,

All appeals under the Act shall when they lie to the Custodian, be filed within thirty days of the date of the order appealed against and when they

lie to the Custodian-General, within sixty days of such date"".

8. Section 27 of the Act confers a plenary power of revision on the Custodian-General and it empowers him to exercise his revisional powers

either suo motu or on application made in that behalf at any time. The phrase ""at any time"" indicates that the power of the Custodian-General is

uncontrolled by any time factor, but only by the scope of the Act within which he functions. The Central Government cannot obviously make a rule

unless s. 56 of the Act confers on it an express power to impose a time fetter on the Custodian-General''s power. We do not find any such power

conferred on the Central Government under s. 56 of the Act. So the rule can only be read consistent with the power conferred on the Custodian-

General under s. 27 of the Act. That must have been the reason why rule 31(5) does not prescribe any limitation on the Custodian-General to

exercise suo motu his revisional power. Even in the case of an application for revision filed before him it is said that ordinarily it shall be filed within

sixty days. The use of the word ""ordinarily"" indicates that the period of sixty days is not a period of limitation but only a rule of guidance for the

petitioners as well as for the Custodian-General. It is within the discretion of the Custodian-General to entertain revision petitions after sixty days,

but the rule indicates to him that the reasonable period for entertaining a revision is sixty days. The difference in the phraseology of sub-rules (1)

and (5) of rule 31 of the Rules also leads to the same conclusion, for in the matter of appeals a period of limitation of thirty days when made to the

custodian and sixty days when it lies to the Custodian-General is prescribed whereas no such rigid period has been laid down in the case of a

revision. If rule 31(5) is so read, its provisions will not conflict with those of s. 27 of the Act; and in that event they would be valid. The

construction suggested by learned counsel for the appellant may lend scope to the argument that the rule is ultra vires the statute, for when a section

says that there is no time limit for entertaining a revision, a rule cannot say that it shall be filed within a particular time. The argument that the

principle under lying s. 5 of the Limitation Act applies to a petition for revision under s. 27 of the Act has no force. Section 5 of the Limitation Act

applies to an appeal for which a period of limitation is prescribed and it empowers the court to admit the appeal after the period of limitation, if the

applicant satisfied it that he has sufficient reason for not preferring the appeal within the prescribed time. The principle thereunder cannot be made

applicable to a revision petition under s. 27 of the Act in respect of which no period of limitation is prescribed. At the same time we must make it

clear that the powers of the Custodian-General under s. 27, read with rule 31(5), are not intended to be exercised arbitrarily. Being a judicial

power, he shall exercise his discretion reasonably and it is for him to consider whether in a particular case he should entertain a revision beyond the

period of sixty days stated in rule 31(5). In this case we cannot say that the Custodian-General had acted perversely or unreasonably in

entertaining the revision. The revision was filed in time. The Dhawan Group was made party at the subsequent stage as the Custodian-General

rightly thought that any order would make in favour of the appellant might prejudice the Dhawan Group. After giving them a reasonable opportunity

of being heard within the meaning of the proviso to s. 27(1) of the Act, he made the order. The Custodian-General, therefore, acted reasonably

within his powers. This objection is overruled.

9. The second contention of learned counsel for the appellant is that the Custodian-General had no power to cancel an allotment made on or

before July 22, 1952. Let us recapitulate the relevant facts. The original order of allotment was made in favour of the appellant''s group and of the

first respondent on September 1, 1949. There was re-allotment on December 2, 1949. The re-allotment was cancelled by the Deputy Custodian-

General by his order dated September 29, 1954. The question is whether the Deputy Custodian-General can set aside the allotment made on

December 2, 1949. The question raised falls to be decided on the relevant provisions of the Act and the rules made thereunder. Section 11 of the

Act confers on the Custodian the power to cancel any allotment made by him, whether such allotment was made or entered into before or after the

commencement of the Act. Rule 14 of the Rules narrates the grounds on which an allotment can be cancelled and also the procedure to be

followed for cancelling such an allotment. If a custodian makes an order either cancelling or refusing to cancel an allotment, the Custodian-General

can, under s. 27 of the Act, set aside that order, if he is satisfied that it is not legal or proper, and he may pass such order in relation thereto as he

thinks fit. But it is said that rule 14(6) limits the power of the Custodian-General in respect of allotments made under the Act. As the argument turns

upon that rule, it would be convenient to read the material parts of it.

Rule 14. (6) ""Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in the State of Punjab shall not exercise the

power of cancelling any allotment of rural evacuee property on a quasi-permanent basis, or varying the terms of any such allotment, except in the

following circumstances : ....."".

10. After narrating the circumstances, with which we are not now concerned, the sub-rule contains a proviso which reads,

Provided further nothing in this sub-rule shall apply to any application for revision, made u/s 26 or section 27 of the Act, within the prescribed

time, against an order passed by the lower authority on or before 22nd July, 1952.

11. Under this sub-rule there is ban on the exercise of the power of the Custodian to cancel an allotment of a rural evacuee property on a quasi-

permanent basis except under certain circumstances. This sub-rule was substituted for the old sub-rule by S.R.O. 1290 of July 22, 1952. A

Custodian under the Act cannot set aside an allotment except under the circumstances mentioned in the sub-rule. But the second proviso to that

sub-rule lifts the ban in the case of an application made for revision under s. 26 or s. 27 of the Act. It may be mentioned that the words ""or section

27"" after the words ""section 26"" were added in the sub-rule on August 26, 1953 i.e., before the order of the Custodian-General in the present

case. Section 26 of the Act, as it then stood, conferred revisional jurisdiction on the Custodian, Additional Custodian or Authorized Deputy

Custodian against the orders of subordinate officers. Section 27, as we have already noticed, confers a similar power of revision on the Custodian-

General. By reason of the proviso, the Custodian-General can, in exercise of his powers under s. 27 of the Act, cancel an allotment made by a

lower authority on or before July 22, 1952. The only limitation on that power is that he must do so in a revision filed within the prescribed time.

What is the prescribed time for a revision under s. 27 of the Act ? ""Prescribed"" has been defined in the Act to mean ""prescribed by rules made

under this Act"". Rule 31(5) prescribes that a revision to the Custodian-General shall ordinarily be made within sixty days of the order sought to be

revised. In considering the first point, we have explained the scope of the rule and we have held that the said rule is only a rule of guidance and that

in law a revision can be entertained at any time even after sixty days if the Custodian-General in his discretion thinks fit to entertain it. The

prescribed time in the context of a revision to the Custodian-General can only mean sixty days or such other time within which the Custodian-

General in his discretion thinks fit to entertain the revision. As the allotment in the present sent case was made before July 22, 1952, the Custodian-

General was within his rights in cancelling the same.

12. Before we close, it is necessary to notice another contention raised by learned counsel for the respondents. The argument was that there was

no allotment made in favour of the appellant and, therefore, there was no scope for invoking the provisions of rule 14 the Rules. The basis of the

argument is the following observations of the Deputy Custodian-General in his order dated September 29, 1954 :

The petitioner has rightly contended that the Dhawan Group had no verified claim for the allotment of this excess area and in spite of an

opportunity afforded by me to them to produce the copies of their Parcha Claim, they have failed to do so. The reports of the Land Claims Officer

dated 7th August 1952, and 11th August 1952, on pages 147 and 151 of the record, show that although the allotment had been made to Dhawan

Group but a search had been made for their claims which were not traceable. On page 129 of the record, a record by the Department dated 21st

August, 1952, shows that no order of allotment to Dhawan Group was forthcoming.

13. These observations do not record a clear finding that there was no allotment in favour of the appellant. Indeed the factum of allotment to the

appellant was never questioned throughout the proceedings. In the circumstances, we must dispose of this appeal on the basis that there was an

allotment in favour of the appellant. This contention, is, therefore, rejected.

14. No other point was raised before us. In the result, the appeal fails and is dismissed with costs.

15. Appeal dismissed.