A STATE OF HARYANA & OTHERS

v.

PRADUMAN SINGH (D) BY LRS

(CIVIL APPEAL NO. 356 OF 2007)

FEBRUARY 15, 2011

B

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

DISPLACED PERSONS (COMPENSATION AND REHABLITATION) ACT, 1954:

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s.20(1) (c) – Allotment of land to persons displaced as a result of partition of the country – Letter dated 21.6.1996 by State Government putting a stop to such allotments – Writ petition before High Court challenging the letter and for a D *direction for allotment of land in lieu of that left in Pakistan – Direction by the High Court to allot 20 acres of land and deliver possession thereof to writ petitioner – Held: High Court could not have ordered for allotment of land without even directing an inquiry into the claim – Besides, the plea was a* E *pure question of fact which could not have been entertained straightway by the High Court – Further, High Court could not have ordered allotment and possession of land without quashing and setting aside the letter dated 21.6.1996 and without giving reasons for the same – If the writ petitioner had already been allotted land in 1952, this aspect was also* F *required to be examined before any order was passed in favour of writ petitioner – Order of High Court set aside – Constitution of India 1950 – Article 226.*

A writ petition was filed before the High Court by the G **predecessor-in- interest of respondents, seeking to quash the letter dated 21.6.1996 issued by the Rehabilitation Department of the State Government containing a direction to stop allotment of land, and to direct the Tehsildar (Sales)-cum-Managing Officer to allot**

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him land in lieu of the land left by him in Pakistan. The High Court directed the State authorities to allot the writ-petitioner 20 standard acres of land and to deliver him possession of the same.

Allowing the appeal filed by the State Government, the Court

HELD: 1.1 The Division Bench of the High Court could not have ordered for allotment and delivery of possession of 20 standard acres of land in lieu of the land, which the respondents claimed by way of rehabilitation, without even directing an enquiry as to whether the predecessor-in-interest of the respondents in fact, had left 20 acres of land in Pakistan or not when they migrated to India. However, this plea was a pure question of fact which could not have been entertained straightway by the High Court, nevertheless, when the petitioner himself had filed a writ petition in the High Court for quashing of the letter of instructions dated 21.6.1996 issued by appellant No.2 by which the allotment of land for rehabilitation had been ordered to be stopped forthwith, the order for allotment and delivery of possession could not have been passed legally by the High Court without even quashing and setting aside the letter dated 21.6.1996. [Para 5] [936-E-H]

1.2 It may be that the letter issued either by the State Government or by the Central Government cannot be given effect to in case it is contrary to the provisions of a statute, yet, consequential relief could not have been granted by the High Court to the writ petitioner/ respondents without even quashing the impugned letter and recording a finding and giving out reasons as to why the letter should not have been given effect to. However, without doing so, the consequential relief of allotment of land and the delivery of possession has been ordered

A straightway which, smacks of arbitrariness. [para 7] [937-C-E]

2.1 If, however, the respondents have any other alternative remedy or forum to claim allotment of the land, they obviously will have to first of all get the letter dated B 21-6-996 quashed and set it aside. Unless the respondents succeed in doing so, no allotment of the land could have been made specially without any enquiry as to whether the predecessor-in-interest had left any land at all in Pakistan when he migrated to India. Besides, C the Court has been informed that the writ petitioner, the predecessor-in-interest of the respondents, had already been allotted land under the rehabilitation scheme way back in the year 1952 and, therefore, claim for allotment for the second time should not have been allowed by the D High Court contrary to the government instructions. This aspect was also required to be examined and enquired before any order was passed in favour of the respondents-claimants. [Para 7 and 8] [937-F-G-H; 938-A-B]

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2.2 The impugned judgment of the High Court directing the State of Haryana to make allotment of the land in favour of the writ petitioner as also delivery of possession is set aside. [para 9] [938-C-D]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 356 of 2007.

From the Judgment & Order dated 13.07.2000 of the High Court of Punjab & Haryana at Chandigarh in C.W.P. No. 14050 G of 1998.

Anoop G. Chaudhari, Manjit Singh, AAG, Harikesh Singh (for Kamal Mohan Gupta) for the Appellants.

Jasbir Singh Malik, Ekta Kadian, Devender Kumar H Sharma (for S.K. Sabharwal) Meenakshi Grover, Sanjeeb

Panigrahi, Siddhartha Chowdhury for the Respondents. A

The Judgment of the Court was delivered by

GYAN SUDHA MISRA, J. 1. This Appeal has been preferred by the State of Haryana against the judgment and order dated 13th July, 2000 passed by a Division Bench of the B High Court in Civil Writ Petition No. 14050 of 1998, whereby the writ petition filed by the predecessor-in-interest of the respondents herein was disposed of by directing the respondent-State-appellant herein, to allot land to the extent of 20 standard acres under the rehabilitation scheme for C displaced persons who claim to have been displaced after the partition of this country in the year 1947.

2. The predecessor-in-interest of the respondents herein had filed a writ petition in the High Court of Punjab & Haryana D at Chandigarh praying to issue a writ of certiorari for quashing the impugned letter dated 21.6.1996 (Annexure P/4 to the writ petition) issued by the respondent No.2/appellant herein, i.e.,Joint Secretary to Government of Haryana, Rehabilitation Department, Chandigarh which contained a decision/instruction E of the State Government to the effect that the allotment of land for rehabilitation against such claim of land, should be stopped forthwith. The writ petitioner had further sought a writ of mandamus for a direction to the respondent No.3/appellant herein, i.e., Tehsildar (Sales)-cum-Managing Officer, Karnal to make allotment of land in lieu of the land left by the respondent- F writ petitioner in Pakistan in exercise of his powers under Section 20 (1)) of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (for short 'the Act') and the rules made thereunder and to confer propriety rights upon the petitioner/ respondents herein in respect of the land. G

3. The learned Judges of the Division Bench, after hearing the parties concerned, were pleased to practically allow the writ petition with costs of rupees five thousand, although the operative portion indicates that it was only disposed of, as the H

A High Court directed the State authorities to allot land to the writ petitioner to the extent of 20 standard acres within three months and a further direction was also issued to deliver possession of the land to the writ petitioner. Curiously, the learned Judges of the Division Bench did not consider appropriate even to B quash the letter dated 21.6.1996 issued by the appellant No.2 herein and yet were pleased to direct not only the allotment of land as per his claim but also a direction for delivery of the possession within three months to the writ petitioner/ respondents herein. The respondents in the writ petition/the C appellant-State of Haryana herein, therefore, has preferred this appeal which was heard by us at length.

4. Mr. Anoop G. Choudhari, learned counsel for the appellants-State of Haryana in substance contended that the High Court could not have issued a direction to the State to D straightaway allot the land and at the most it could have directed the State authorities to consider the claim of the respondents herein for allotment of the land under the rehabilitation scheme.

E 5. While, we find sufficient force in the argument advanced, we are further of the view that the Division Bench of the High Court could not have ordered for allotment and delivery of possession of the land in lieu of the land which the respondents claimed by way of rehabilitation for 20 standard acres without F even directing an enquiry as to whether the predecessor-in-interest of the respondents herein, in fact, had left 20 acres of land in Pakistan or not when they migrated to India. However, this plea was a pure question of fact which could not have been entertained straightway by the High Court, nevertheless, when the petitioner himself had filed a writ petition in the High Court G for quashing of the letter of instructions dated 21.6.1996 issued by the appellant No.2 herein by which the allotment of land for rehabilitation had been ordered to be stopped forthwith, the order for allotment and delivery of possession could not have been passed legally by the High Court without even quashing H

and setting aside the letter dated 21.6.1996. A

6. Learned counsel for the respondents, however, has sought to protect the interest of the respondents and hence submitted that the letter issued by the appellant No.2 herein stopping the allotment of rehabilitation land was contrary to the B statute, which is Displaced Persons (Compensation & Rehabilitation) Act, 1954 and, therefore, the letter issued by the appellant No.2 herein being contrary to the provisions of the statute could not have been given effect to in order to negative the claim of the respondents herein.

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7. Learned counsel for the respondents-claimants although may be correct in submitting to the extent that the letter issued either by the State Government or by the Central Government cannot be given effect to in case it is contrary to the provisions of a statute, yet, consequential relief could not have been D granted by the High Court to the writ petitioner/respondents herein without even quashing the impugned letter by recording a finding and giving out reasons as to why the letter should not have been given effect to. However, when we perused the impugned judgment of the High Court, we did not find any E reason even remotely in the impugned order for quashing and setting aside the letter dated 21.6.1996 issued by the appellant NO.2 herein, and yet the consequential relief of allotment of land and the delivery of possession has been ordered straightway which, in our opinion, smacks of arbitrariness. F

8. It is, therefore, difficult for us to uphold the impugned judgment and order of the Division Bench of the High Court and hence we quash and set aside the same. If, however, the writ petitioner, respondents herein, has/have any other alternative remedy or forum to claim allotment of the land, they obviously G will have to first of all get the letter of the State Government quashed and set aside which has ordered stopping the allotment of rehabilitation land forthwith. Unless the respondents succeed in doing so, no allotment of the land could have been made specially without any enquiry as to whether the H

A predecessor-in-interest had left any land at all in Pakistan when he migrated to India. Besides this, learned counsel for the appellants-State further informed that the writ petitioner, predecessor-in- interest of the respondents herein had already been allotted land under the rehabilitation scheme way back
B in the year 1952 and, therefore, claim for allotment for the second time should not have been allowed by the High Court contrary to the government instructions. We find force in this submission also, and, therefore, this aspect was required to be examined and enquired before any order was passed in favour
C of the respondents-claimants.

9. For the reasons given hereinabove, we allow this appeal and set aside the impugned judgment of the High Court directing the State of Haryana to make allotment of the land in favour of the writ petitioner/respondents herein as also delivery
D of possession with cost of Rupees five thousand. However, the parties herein are left to bear their own costs.

R.P. Appeal allowed.