

Maqsoodan
Bibi
v.
Bhano

Sardar
Muhammad
Iqbal, J

passed by the Guardian Judge reviewing his earlier order is without jurisdiction.

6. In the view of the matter I take, the order, dated the 16th of December 1963, is set aside. It will be open for the respondent to take his petition back from the Guardian Judge at Lyallpur and present it to the Court of competent jurisdiction. The petition is accordingly accepted, but there shall be no order as to costs.

K. B. A.

Petition accepted.

P L D 1965 (W. P.) Lahore 188

Before Anwarul Haq and Muhammad Akram, JJ

DR. HASSAN DIN—Petitioner

versus

Syed MAHMOOD ALI SHAH AND OTHERS—

Respondents

Hassan Din
v.
Mahmood
Ali Shah

Anwarul
Haq and
Muhammad
Akram, JJ

Writ Petition No. 1630/R of 1963, decided on 26th October 1964.

(a) *Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 10 and First Schedule, para. 1—Transfer of house—Person cannot be deprived of his entitlement to transfer of premises in his occupation merely for having submitted KCH as well as KNCH Form simultaneously for transfer of same property—Mere mis-statement regarding extent of portion under his occupation cannot disentitle him to get portion he could legally claim.* [p. 190]A & B

(b) *Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 2(3)—Word “property” in latter part of definition—Includes agricultural property—Person abandoning agricultural property in India or in territory occupied by India—“Displaced person” within meaning of definition—Registration of Claims (Displaced Persons) Act (III of 1956), Ss. 2(1) & 2(2).* [pp. 191, 192]C & D

Imdad Ali Malik v. The Settlement Commissioner, Lahore P L D 1962 Lah. 502; Mrs. Keays Byrne v. The Settlement Commissioner, Rawalpindi and others P L D 1963 Lah. 88; Mahboob Ellahi v. Chief Settlement Commissioner, Pakistan, Lahore P L D 1963 Lah. 214 and Sayed Haider Shah v. Mukhtar Hussain Shah and others P L D 1963 Lah. 548 distinguished.

(c) *Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958) [as amended by Displaced Persons (Compensation and Rehabilitation) (Amendment) Ordinance (I of 1959)], Ss. 10 & 30 (5) and First Schedule, para. 1—House in occupation of persons displaced from Jammu & Kashmir—Cannot be transferred to persons other than such displaced persons.* [p. 192]E

Saeed Akhtar for Petitioner.

Ataf Sikandar for Respondent No. 1.

Nemo for Respondents Nos. 2 and 3.

Dates of hearing: 14th and 15th October 1964,

Hassan Din
v.
Mahmood
Ali Shah

Anwarul
Haq, J

1965

ANWARUL HAQ, J.—The dispute in this case concerns a portion of property bearing No. C/563 situated in Kucha Sethan, Langemandi, Water Works, Lahore. This property appears to consist of several units and is in the occupation of seven persons two of whom are the petitioner Dr. Hassan Din and respondent No. 1 Syed Mahmood Ali Shah. Out of the remaining five persons, it is stated, four are Jammu & Kashmir refugees while the fifth, *Mst. Sardar Begum* is a refugee from the other parts of India. When the Settlement operations started, all the occupants submitted various forms, prescribed under the law, for the transfer of the various portions of the property. However, on the 9th of March 1960, the Deputy Settlement Commissioner recorded an order showing that four J. & K. refugees, namely, *Mst. Bilqis Begum*, *Sardar Muhammad*, *Ghulam Hussain* and *Muhammad Hussain*, who had submitted KNCH forms had withdrawn their claims in favour of Dr. Hassan Din. Thus only three contestants were left in the field, namely, the petitioner, respondent No. 1 and *Mst. Sardar Begum*. *Mst. Sardar Begum* was transferred the portion in her possession, and that transfer is not disputed. Dr. Hassan Din was treated by the learned Deputy Settlement Commissioner as a non-claimant displaced person and the portion in his possession as well as the portions surrendered by the four J. & K. refugees were transferred to him, whereas the respondent No. 1 Syed Mahmood Ali Shah was transferred the portion which was in his possession. It may be stated here that the petitioner had submitted two kinds of forms, namely, KCH and KNCH as he was not certain whether he would be treated as a claimant, or a non-claimant, in view of the fact that he held a verified claim for some agricultural property only left in the occupied area of Jammu & Kashmir State.

2. The respondent No. 1 went up in appeal to the Additional Settlement Commissioner, contending that Dr. Hassan Din was a local and as such not entitled to the transfer of the house which was admittedly more than Rs. 10,000 in value. In support of his contention respondent Syed Mahmood Ali Shah placed reliance on an order (Annexure G/1) passed by the Deputy Custodian of Evacuee Property, Lahore, on the 19th of March 1956, holding that Dr. Hassan Din was an old tenant of the lower portion of House No. C/563, i.e., the house now in dispute. The learned Additional Settlement Commissioner, by his order dated the 20th of July 1961, held that as Dr. Hassan Din had a verified claim relating only to agricultural land, he could not be treated to be a displaced person within the meaning of that term as used in the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (hereinafter referred to as the Act), as that Act was intended for the rehabilitation and settlement of persons who had abandoned urban properties. On this view of the matter he treated Dr. Hassan Din as a local and cancelled the transfer ordered in his name by the Deputy Settlement Commissioner, and instead gave the portions in dispute to the respondent No. 1.

3. Dr. Hassan Din and the four Jammu & Kashmir refugees who had abandoned their rights in his favour filed revision petitions against the appellate order of the Additional

Hassan Din
v.
Mahmood
Ali Shah
—
Anwarul
Haq, J

Settlement Commissioner. All these petitions were dismissed by Syed Ijaz Hussain Shah, Settlement and Rehabilitation Commissioner, Lahore Division, on the 17th of May 1963, observing that Dr. Hassan Din had not submitted a proper form for the transfer of the property, as in the first instance he had submitted a KCH form and later on converted it into KNCH form, and that he had made a wrong declaration in the first settlement form to the effect that he was in possession of the entire lower portion of the house, whereas he had, in fact, only one room in his possession. As regards the four J. & K. refugees who had abandoned their rights in favour of Dr. Hassan Din, the learned Settlement Commissioner dismissed their case on the short ground that "it is a trick to grab the property by Dr. Hassan Din. Surrender of rights by non-eligibles means nothing". The learned Settlement Commissioner did not record any positive finding on the question whether he regarded Dr. Hassan Din as a local or a displaced person, but apparently he agreed with the Additional Settlement Commissioner on this point.

4. Mr. Saeed Akhtar, the learned counsel for the petitioner, has rightly pointed out that the two grounds which have weighed with the learned Settlement Commissioner were not really such as could have been legally used to deprive the petitioner of his entitlement to the transfer of the property. The mere fact that the petitioner submitted KCH as well as a KNCH form does not mean that he had not applied properly. It was a mere technicality and the question was to be determined by the competent authority whether the petitioner was to be treated as a claimant or a non-claimant. By submitting both the forms the petitioner had clearly made an application for the transfer of the property and that was the only essential requirement for a consideration of his claim.

5. Similarly, even if it be assumed that the petitioner made a mis-statement regarding the extent of his possession in the lower portion of the building, that mis-statement did not amount to a fraud and could not have been used to deprive the petitioner altogether of any entitlement which may have accrued to him. We, therefore, agree with the learned counsel for the petitioner that the two grounds mentioned against him by the learned Settlement Commissioner are not sustainable in law.

6. But the question still remains whether the petitioner is to be treated as a displaced person or not for the purpose of the transfer of the property in dispute. The admitted facts are that he was residing at Lahore at the time of Partition of the sub-Continent, as he has been declared by the Deputy Custodian of Evacuee Property to be an old tenant of the lower portion of this very house. Further, it is also common ground between the parties that the petitioner has a verified claim for agricultural property abandoned by him in the occupied area of Jammu & Kashmir State.

7. The term "displaced person" has been defined in clause (3) of section 2 of the Act as follows:—

"Displaced person means any person, who, on account of the setting up of the dominions of Pakistan and India, or on account

of civil disturbances or the fear of such disturbances in any area now forming part of or occupied by India, has, on or after the first day of March 1947, left or been displaced from, his place of residence in such area and has subsequently become a citizen of Pakistan, or is residing therein, and includes any person who being a resident of any territory outside India, is for that reason unable to manage, supervise or control any property belonging to him in India or in any area occupied by India, and also includes the successors-in-interest of any such person."

Hassan Din
v.
Mahmood
Ali Shah
—
Anwarul
Haq J

This term has come up for interpretation at least in four reported cases, namely, *Imdad Ali Malik v. The Settlement Commissioner, Lahore* (1), *Mrs. Keays Byrne v. The Settlement Commissioner, Rawalpindi and others* (2), *Mahboob Ellahi v. Chief Settlement Commissioner, Pakistan, Lahore* (3) and *Syed Haider Shah v. Mukhtar Hussain Shah and others* (4), but in all these cases the Court was concerned mainly with the first part of the definition with a view to discovering the true meaning of the phrase "his place of residence". In none of these cases the meaning of the term "property" employed in the second part of the definition, which is relevant in the present context, was discussed. These authorities are, therefore, of no direct assistance in the instant case.

8. The term "property" has not been defined in the Act, but it has been defined in the Registration of Claims (Displaced Persons) Act, 1956, and clause (c) of the definition refers to "land situated outside the limits referred to in clause (a) above (i.e. urban areas) and occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture". Now the definition of the term "displaced person" as given in the Registration of Claims (Displaced Persons) Act, 1956, is substantially the same as that adopted in the Displaced Persons (Compensation and Rehabilitation) Act, 1958. It is, therefore, clear that the intention of the Legislature in both these enactments was to include agricultural property in the term "property" as used in the second part of the definition of the term "displaced person". There is no indication in the Displaced Persons (Compensation and Rehabilitation) Act, 1958, to show that agricultural property was to be excluded while determining whether a person falls within the second part of the definition of this term. There is no doubt that the Displaced Persons (Compensation and Rehabilitation) Act, 1958, is intended to provide for settlement and rehabilitation of persons in urban areas, but that fact, by itself, is not enough to hold that the term "property" as used in the definition of the expression "displaced person" is also to be restricted to mean urban property. If indeed that was the intention of the Legislature, we see no reason why it should not have been made clear in the definition itself as, for instance, has been done while defining the terms "claim" and "claimant" in clauses (1) and (2) of section 2 of the Displaced

(1) P L D 1962 Lah. 502

(2) P L D 1963 Lah. 88

(3) P L D 1963 Lah. 214

(4) P L D 1963 Lah. 548

192 LAHORE

Hassan Din
v.Mahmood
Ali Shah—
Anwarul
Haq, J

Persons (Compensation and Rehabilitation) Act, 1958. In these two clauses express words have been used to say that the claim shall not include a claim in respect of agricultural land. According to this definition a claimant, for the purposes of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 means a person who has a claim, excluding claim in respect of agricultural land. We are thus of the view that the second part of the definition of the terms "displaced person" covers the case of a person who has abandoned even agricultural property in India or any territory occupied by India. On this view of the matter, the term "displaced person" appears to us to have the same meaning in both the enactments, namely, the Registration of Claims (Displaced Persons) Act, 1956 and the Displaced Persons (Compensation and Rehabilitation) Act, 1958.

9. The argument that, if, such an interpretation is adopted, the purpose of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 would be defeated, overlooks the fact that although the Act treats as a displaced person a person who has abandoned agricultural property, yet it gives a preferential right to a person who has abandoned urban property, by treating him as a claimant, as against a person who has abandoned merely agricultural property, as the latter is to be treated as a non-claimant. The provisions embodied in the Schedule to the Act clearly treat a claimant, as defined in the Act, to have a superior right as compared to a non-claimant in the matter of entitlement to transfer of properties dealt with under the Act.

10. For the reasons given above, we consider that the learned Additional Settlement Commissioner, and the Settlement Commissioner were in error in regarding the petitioner as a local. He is clearly a displaced person for the reason that he holds a verified claim in respect of agricultural property abandoned by him in that part of the State of Jammu & Kashmir which is now occupied by India, property which he is unable to manage, and supervise due to the Partition of the sub-Continent. The declaration of the Deputy Custodian (General) of Evacuee Property is only in respect of the petitioner being an old tenant of a portion of the house in dispute. It is not a declaration holding the petitioner to be a local as distinguished from a displaced person. Such being the case, the learned Deputy Settlement Commissioner was within his jurisdiction in transferring the portions in dispute to the petitioner.

11. We may also take note of the fact that the portions in dispute having been in the occupation of J. & K. refugees could not, in any case, have been transferred to a non-Jammu & Kashmir refugee like respondent No. 1 in view of the prohibition contained in subsection (5) of section 30 of the Act which lays down that "except for the purpose of implementing any scheme prepared under section 16-B, houses and shops in possession of persons displaced from such part of the State of Jammu & Kashmir as is under the occupation of India and are residing in Pakistan shall not be transferred under the provisions of this Act and possession of such persons shall not be disturbed till their repatriation to the aforesaid State, provided that such persons

1965

do not contravene or have not contravened any of the terms and conditions on which such houses and shops are held by them or such terms and conditions as may be determined by the Chief Settlement Commissioner from time to time".

12. The result is that the orders passed by the Additional Settlement Commissioner and the Settlement Commissioner on the 20th of July 1961, and the 17th of May 1963, respectively, are declared to be without lawful authority and of no legal effect. The portions in dispute shall stand transferred to the petitioner as ordered by the Deputy Settlement Commissioner in his order dated the 9th of March 1960. The petition is, therefore, accepted, but there will be no order as to costs in view of the legal questions involved.

K. B. A.

Petition accepted.

P L D 1965 (W. P.) Lahore 193

Before Sardar Muhammad Iqbal, J

Syed ALI MOAZZAM—Appellant

versus

M. A. EFFANDI AND OTHERS—Respondents

Regular Second Appeal No. 374 of 1963, decided on 26th June 1964.

Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), Ss. 22 & 25—Finality of orders of Settlement and Rehabilitation Authorities—Ouster of jurisdiction of civil Courts—Jurisdiction of civil Courts not barred where parties do not challenge orders of Settlement Authorities—Each party transferred one of two adjacent plots of land having a pathway between—Suit by one party for declaration that the pathway belonged to him—Civil Court entitled to determine dispute—Bar of jurisdiction not to be readily inferred—Burden on defendant to establish such bar—Civil Procedure Code (V of 1908), S. 9.

Where none of the parties challenges the correctness or validity of an order passed by the Settlement Authorities and in fact both the parties claim their respective rights based on the orders passed by the Settlement Authorities, and do not in any way question the finality attached to them under section 22, Displaced Persons (Compensation and Rehabilitation) Act, 1958:

Held, that jurisdiction of the civil Courts to hear and determine the suit cannot be questioned. [p. 196]A

Where plot A was transferred to plaintiff and adjacent plot B was transferred to defendant but the dispute related to a pathway between the two plots, plaintiff claiming the path as belonging exclusively to him which the defendant denied:

Held, that by the fact of transfer the parties were vested with rights in the respective properties. Subsequent to the creation of

*Hassan Din
v.
Mahmood
Ali Shah*

*Anwarul
Haq, J*

*Ali
Moazzam
v.
M. A.
Effandi*

*Sardar
Muhammad
Iqbal, J*