Nazir Begum v. Province of West Pak.

Muhammad Gul, J

blue to shatter its prospects. Further, it is not denied that licence was granted to each petitioners Nos. 1 to 12 purely on compassionate grounds, and such ground cannot last for ever, nor can the Railways on any discoverable principle are placed under a perpetual disability to revoke the licence which was *ab initio* gratuitous. Grant of licence to each of petitioners Nos. 1 to 12 was not property and cannot be held assimilable to widow's estate under Customary or Hindu Law, so as to endure till her death or marriage. Any such suggestion would be untenable. Therefore, there is no force also in the fourth contention raised by petitioners' learned counsel.

13. The above discussion of the case leads us to conclude that the petitioners' case has no merit, whatever. That apart, this writ petition to enforce any supposed right under the licences granted to the petitioners is altogether misconceived. As recently held by their Lordships of the Supreme Court in *M. A. Nassar* v. *Chairman, P. E. R.* (1), a catering contract granted by the Railways is a mere licence under clause (*a*) or (*b*) of section 60 of the Easements Act, 1882 and is revocable at any time and therefore no injunction can issue to prevent its revocation. In our opinion this dictum of their Lordships of the Supreme Court is a complete answer to the petitioners' claim, even that be for a mere declaration. Petitioners' rights under the licences granted to them are not in the nature of property and if there is any violation of any term of the grant, then the petitioners' remedy is a suit for damages, and not the enforcement of the grant by a writ. *Memon Motor Co.* v. *R. T. A., Dacca* (2) is also in point.

14. For the aforesaid reasons, we dismiss the writ petition leaving the parties to bear their own costs.

K. B. A. *Petition dismissed.*

(1) P L D 1965 S C 83 (2) P L D 1962 S C 108

P L D 1966 (W. P.) Lahore 204

Before Muhammad Fazle Ghani, J

MUHAMMAD HUSSAIN—Petitioner

versus

(1) CHIEF SETTLEMENT AND REHABILITATION COMMISSIONER, AND

(2) MUHAMMAD IBRAHIM—Respondents

Writ Petition No. 1493/R of 1962, decided on 29th November 1965.

Mohd. Hussain v. Chief Settlement & Rehab. Commr.

Fazle Ghani, J

(*a*) *Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), Schedule, para. 1—(Transfer of house)—Number of house as originally transferred different from number as subsequently entered in P. T. O.—Difference immaterial so long as dispute between rival parties relates to "same" house.*

The house in dispute was originally transferred as property No. S. W. 101-R-41 but subsequently it was amended and the

P. T. O. was issued for property No. S. W. 101-R-35-A. It was alleged that the Deputy Settlement Commissioner acted illegally in changing the number of the property:

Held, that the difference of property number was of no consequence for the decision of the case. Both the parties had been contesting for the transfer of incomplete bungalow situate in an area of 2 *kanals* 3 *marlas* 117 sq. feet in specific locality and whether it bore one number or the other was immaterial.

[The claim of one party was that the said property stood transferred in his favour as a part and parcel of the area of 12 *kanals* 11 *marlas* 17 sq. feet of urban agricultural land under paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme, 1957, while the same had been transferred to the other party on evaluation basis under Displaced Persons (Compensation and Rehabilitation) Act of 1958]. [p. 206] *A*

(*b*) *Displaced Persons* (*Land Settlement*) *Act* (*XLVII of 1958*), *S. 2 (3)* — *"Land"* — *Entered as* "sakni" *in revenue records of 1944-45, 1947, 1951-52 but described as* "barani" *and* "chahi" *in 1960-61—Allottee not producing original allotment order, nor* khasra girdawari *from 1947 up to date*—"Sakni" *land not allotable as "agricultural land" under Displaced Persons* (*Land Settlement*) *Act, 1958—Inference drawn* (*in circumstances of case*) *that allottee was able to get classification of land changed in* Jamabandi *of 1960-61 "with fraudulent object"*, viz. *to get land allotted permanently under Displaced Persons* (*Land Settlement*) *Act, 1958*. [pp. 207, 208] *B & C*

(*c*) *West Pakistan Rehabilitation Settlement Scheme, 1957, para. 42—Urban land entered in revenue records as* "sakni" (*residential*) *from before 1947, and got entered "fraudulently" as* "barani" *and* "chahi" *in 1960-61; land having a building on it; and assessed to Property and House taxes—Cannot be allotted as agricultural land under paragraph 42 aforesaid, but as "house" under Displaced Persons* (*Compensation and Rehabilitation*) *Act* (*XXVIII of 1958*), *S. 2 (4) read with Schedule, para. 1—*[*Displaced Persons* (*Land Settlement*) *Act* (*XLVII of 1958*), *S. 2 (3)—Definition of "land"—Supplementary Scheme No. 2, paras. 3, 5*]. [p. 209] *D* et seq

(*d*) *Displaced Persons* (*Compensation and Rehabilitation*) *Act* (*XXVIII of 1958*), *S. 16(1) read with Settlement Scheme No. I, para. 21—Building incomplete but inhabited by a number of families since 1947—Not covered by para. 21*. [p. 211] *E*

Saeed Akhtar for Petitioner.

Major Ishaq Muhammad Khan, S. C. (L) for Respondent No. 1.

Nemo for Respondent 2.

Dates of hearing: 8th, 22nd and 23rd November 1965.

JUDGMENT

The petitioner claims that he is a temporary allottee of urban agricultural land measuring 12 *kanals* 11 *marlas* and 17 sq. feet, comprised in Khasras Nos. 4338/1539, 4340/1539-1540, 4341/1539-1540, 4344/1540-1541, 4346/1541, 4352/1543-1544-1554, 4368/1556, 4395/1549, 4398/1549 and 1553, 4405/1549 to 1552, 4645/1531. 4646/1531, 4607/1530, 4369/1554 to 1556, 4394/1549, 4371/1553 to 1557 situate in Revenue Estate of Rajgarh, Sanda Road, Lahore,

Mohd. Hussain v. Chief Settlement & Rehab. Commr.

Fazle Ghani, J

and the temporary allotment was confirmed in February 1960, when *parchi taqseem khatoni* was issued in his name by Additional Rehabilitation Commissioner (Land), Lahore, on 29th February 1960. The said confirmation order includes Khasras Nos. 4405/1549-1552 measuring 2 *kanals* 3 *marlas* and 117 sq. feet "*chahi*" land also. The above Khasra numbers contained residential accommodation, which, according to the petitioner, stands transferred to him as urban agricultural land, and have wrongly been transferred as a house under the Displaced Persons (Compensation and Rehabilitation) Act, 1958, in favour of respondent No. 2, on valuation basis under Settlement Scheme No. 1.

2. The facts giving rise to the transfer of the property in favour of respondent Muhammad Ibrahim are that: on 28th October 1960, a report was made to Deputy Settlement Commissioner, Lahore, by one of his Inspectors to the effect that the property in dispute is an incomplete building and various families were in its occupation, but except Muhammad Ibrahim respondent No. 2 no person had filed CH form for its transfer. He was reported to be a refugee from Nabha and was allotted this property since 1948 and claimed the transfer of the said bungalow against the adjustment of his verified claim. The Deputy Settlement Commissioner by his order dated the 29th of October 1960, agreed with the proposal of the Inspector and ordered its transfer in favour of said Muhammad Ibrahim.

3. For the first time, after a lapse of more than 13 years, petitioner Muhammad Hussain came in the forefront and filed an appeal against the order of the Deputy Rehabilitation Commissioner, Lahore. The learned Additional Settlement Commissioner, by his order dated 17th January 1961, set aside the order of the Deputy Rehabilitation Commissioner on the ground that the building standing on the land is to go to the allottee concerned under para. 42 of the West Pakistan Rehabilitation and Settlement Scheme. It will be pertinent to mention here that right from the very beginning, there was some dispute about the number of the property in question. In the grounds of appeal before the Additional Settlement Commissioner, the petitioner had urged that the house in dispute was originally transferred as property No. S. W. 101-R-41 but consequently it was amended and the P. T. O. was issued for property No. S. W. 101-R-35-A. It was alleged by the petitioner-appellant that the Deputy Settlement Commissioner acted illegally in changing the number of the property. The difference of property number is of no consequence for the decision of this case. Both the parties have been contesting for the transfer of incomplete bungalow situate in an area of 2 *kanals* 3 *marlas* 117 sq. feet in Rajgarh, Lahore, and whether it bears one number or the other is immaterial. The petitioner's claim is that the said property stands transferred in his favour as a part and parcel of the area of 12 *kanals* 11 *marlas* 17 sq. feet of urban agricultural land under Paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme 1957, while the same has been transferred to respondent Muhammad Ibrahim on evaluation basis under Displaced Persons (Compensation and Rehabilitation) Act of 1958.

1966

Mohd. Hussain v. Chief Settlement & Rehab. Commr.

Fazle Ghani, J

4. Muhammad Ibrahim respondent went in revision and the matter came up before the Settlement and Rehabilitation Commissioner, Rawalpindi camp at Lahore, on 25th of September 1961. The learned Settlement Commissioner, while accepting the revision observed as follows:—

"It has been shown to me by the learned counsel for the petitioner that this building was assessed to tax by the Excise and Taxation Department as also by the Corporation of the City of Lahore. This distinctly proves that this is to be treated as residential property as distinct from forming part of the urban agricultural land."

5. When this petition came up for hearing on 8th of November 1965, respondent Muhammad Ibrahim was not present in spite of service and since the questions raised in the petition were likely to affect the right of the said respondent, I considered it expedient to issue another notice to him for an actual date but he has not turned up in spite of service. I, therefore, proceeded to hear the petition *ex parte* against him.

6. Note, explaining the facts of the case, and parawise comments have been filed on behalf of respondent No. 1 under the signature of Mr. Muhammad Nawaz Cheema, Additional Deputy Rehabilitation Commissioner, Lahore, and Major Ishaq Muhammad Khan, appearing on behalf of respondent No. 1 informs that this officer enjoys the powers of the Settlement Commissioner (Land), and this statement of facts has not been controverted on behalf of the petitioner. According to this Note, it is clear that classification of Khasra No. 4405/1549-1552 was recorded as *sakni* in the Revenue Record of the year 1947. The same classification existed in the *jamabandi* of the years 1944-45 and 1951-52. It is pointed out by the Additional Deputy Commissioner, that the classification of these Khasra numbers was wrongly recorded as *barani* and *chahi* in the *jamabandi* for the year 1960-61. Similarly 2 *kanals* of this Khasra number were wrongly shown as under cultivation in the Khasra Girdawari for the year 1960-61 and *kharif* 1962. I called upon the learned counsel for the petitioner to show if there was any *khasra girdawari* in his possession to prove that the land allotted to his client, from the year 1947 has ever been used for agricultural purposes but the learned counsel has nothing to rely upon except *parchi taqseem khatoni* which was issued to his client on 29th of February 1960, by Additional Rehabilitation Commissioner (Land), Lahore. He has not been able to show the original temporary allotment order by which the land under dispute was allotted in favour of his client as culturable land. Mr. Ishaq Muhammad Khan has argued that the entire land allotted to the petitioner is situated in a densely populated urban area of Rajgarh and, in fact, this land could not have been allotted as agricultural land under the Displaced Persons (Land Settlement) Act, 1958 as it was a "*sakni land*" according to the Revenue Records and does not fall under the definition of land within the meaning of the said Act. The non-production of original allotment order and the *khasra girdawari* from 1947 up to this time on the part of the petitioner creates a reasonable doubt about the genuineness of entries in *parchi taqseem khatoni* (Annexure "A") and keeping in

B

Mohd. Hussain v. Chief Settlement & Rehab. Commr.

Fazle Ghani, J

view the explanatory Note of facts and parawise comments submitted on behalf of respondent No. 1 it can safely be inferred that petitioner was able to get the classification of land changed in the *jamabandi* of 1960-61 with an object to get the allotment of this land in his favour as an urban agricultural land.

7. The petitioner invokes in his aid paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme of 1957. This paragraph was introduced in the "Rehabilitation Resettlement Scheme Punjab" on the 25th of June 1951, and if the building in question formed part and parcel of the petitioner's tenement it seems difficult to understand as to why did he not take any effective steps to take its possession from 1947 to 1960. To my mind it is clear that the petitioner was successful in obtaining the classification of land as *barani chahi* against the existing entries in 1960 and it was after this change that he filed an appeal against the order of the transfer made by the Deputy Rehabilitation Commissioner, Lahore. According to parawise comments submitted by the Department, it is explained that Khasra No. 4405/1549-1552 contains an old bungalow and its two doors on Northern side open towards Sanda Road. There is one *marla* only between the doors on the Sanda Road and the rest is built up area. Major Ishaq Muhammad Khan has pointed out that according to parawise report, at present 17 families are putting up in this building and respondent No. 2 has also constructed about 7 or 8 rooms there. In para. 3 of the parawise comments it is pointed out that Khasra numbers in dispute were temporarily allotted to petitioner in 1947 when their classification was *sakni* and Major Ishaq Muhammad Khan has correctly observed that there were no provisions for the temporary allotment of "*sakni* land" in urban area and the temporary allotment made in favour of the petitioner was not legal. There is a compound wall of 7/8 feet height in the building in dispute, and, I have no manner of doubt, that the classification given in *parchi taqseem khatoni* (Annexure "A") for this khasra number measuring 2 *kanals* 3 *marlas* and 117 sq. feet, as *barani chahi*, is not correct and has been incorporated with fraudulent object to give the petitioner a right to claim the said building as an urban agricultural land. It was contended by the learned counsel for respondent No. 1 that no allotment, whether temporary, provisional or permanent was envisaged of the *sakni* land by the West Pakistan Rehabilitation Settlement Scheme, therefore, the temporary allotment made in favour of the petitioner in 1947, and, as well as the permanent allotment, made on 29th of February 1960, on the basis of *parchi taqseem khatoni*, in favour of the petitioner, was a nullity and Paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme is of no avail to the petitioner. The argument of the learned counsel for the respondent No. 1 has great force. According to the Rehabilitation Re-settlement Scheme (Punjab), prepared in 1951, the Central Government authorised the Rehabilitation Commissioner (Land) Punjab, to pool and allot land as defined under section 4 (1) of the Punjab Tenancy Act, XVI of 1887, which reads as follows:—

"Land means land which is not occupied as the site of *any building in a town or village* and is occupied or has been let

for agricultural purposes or for purposes subservient to agriculture, or for the pasture, and other structures on such land."

8. From this definition it is clear that the land in dispute which is shown as "*sakni*" from 1944 according to *jamabandi* could not be allotted temporarily to the petitioner under the said scheme. According to West Pakistan Rehabilitation Settlement Scheme the definition of land is:—

"Land means evacuee property consisting of land held for agricultural purposes or for purposes subservient to agriculture or for pasture . . . . . "

and the Rehabilitation Commissioner, West Pakistan was authorised to pool and allot on permanent basis that land only which fell under this definition of the Scheme. Major Ishaq Muhammad Khan has urged that the entire allotment in favour of the petitioner for the total area of 12 *kanals* 11 *marlas* and 17 sq. feet is a nullity because it is not a land. In these proceedings, I am not concerned with the legality of the rest of the area allotted in favour of the petitioner and will deal with the allotment of the residential bungalow in favour of respondent No. 2 only, therefore, I decline to give any finding on this contention.

9. Learned counsel for the petitioner has urged that his client was a temporary allottee of the land and it has been rightly confirmed in his favour under supplementary Scheme No. 2 of the West Pakistan Rehabilitation Settlement Scheme. In that context he has drawn my attention to paragraph 6 of the Supplementary Scheme No. 2 wherein it is laid down that "unless specifically provided to the contrary in this Scheme, the provisions of the West Pakistan Rehabilitation Settlement Scheme shall apply *mutatis mutandis* to all allotments made under the provisions of this Scheme", and with this provision he relies on paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme, claiming the transfer of the building and structure in favour of his client. But, as pointed out earlier, it has to be established that the allotment in favour of the petitioner was 'land' as defined under the Displaced Persons (Land Settlement) Act of 1958, and Schemes made thereunder, otherwise the petitioner cannot be considered to be eligible for the transfer of superstructure as an agricultural land. It will be of advantage to reproduce the various definitions given under the Supplementary Scheme No. 2. Paragraphs 3 and 5 are as follows:—

"(3) Rural agricultural land, hereinafter called, 'rural land' shall mean such land as is defined in clause (*i*), Part I, Chapter I of the West Pakistan Rehabilitation Settlement Scheme, situate outside the limits of a Corporation, Municipal Committee . . . . as these limits existed on the 14th August 1947."

"(5) Urban agricultural land means land other than rural agricultural land as defined in clause (*iii*) of this section."

For the purpose of allowing the petitioner to take the advantage of paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme of 1957, it should first be treated urban agricultural land as defined above because urban land has been excluded from allotment under para. 4, Chapter II of Supplementary Scheme No. 2. In para. 5 (*c*) of the same Scheme it is laid down "land which constitutes potential building sites or

Mohd. Hussain v, *Chief Settlement & Rehab. Commr.*

Fazle Ghani, J

may be declared as building site under section 2 (3) of the Displaced Persons (Land Settlement) Act of 1958 or such other land that has been reserved for expansion or treated as built up area" shall be specifically excluded from allotment. In this case it is obvious that 2 *kanals* 3 *marlas* and 117 sq. feet of land is not only a potential building site but, in fact, has a building which is inhabited by 17 families and surrounded by a wall of 7/8 feet height. Even assuming that it is land as defined in Punjab Tenancy Act, XVI of 1887 (which argument is not correct) it is otherwise specifically excluded from the operation of the Schemes made for the allotment of land under the Displaced Persons (Land Settlement) Act of 1958. There is nothing in the Supplementary Schemes No. 2 to support the contention of the learned counsel that his client should be deemed to have been transferred the superstructures on the land by virtue of para. 6 of the Supplementary Scheme No. 2 read with paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme of 1957.

10. Learned counsel for the petitioner has drawn my attention to para. 29 of the West Pakistan Rehabilitation Settlement Scheme of 1957, and it is contended that according to his *parchi taqseem khatoni*, the classification of the land was shown as *barani chahi*, therefore, it could not have been changed without the permission of the Settlement Commissioner under section 2 (3) (*b*) of the Displaced Persons (Land Settlement) Act of 1958. Paragraph 29 of the West Pakistan Rehabilitation Settlement Scheme is not applicable to the petitioner's case, because according to this paragraph, classification of evacuee land has to be taken in account according to the entries in the special *jamabandi* prepared for exchange with India and subsequent variations of soil has to be ignored. No special *jamabandi* of 1946 has been placed on record to show that the land in dispute was shown as *barani chahi* on the 14th August 1947, and the question of changing its classification does not arise in this case. The departmental report and parawise comments show that the land was "*sakni*" right from 1944 and the change in its classification as "*barani chahi*" in 1960 without the permission of the Settlement Commissioner is a nullity. This argument is, therefore, of no avail and goes against the petitioner.

11. Under section 2 (4) of the Displaced Persons (Compensation and Rehabilitation) Act of 1958, 'house' has been defined "as an evacuee residential premises of any value in an urban area or of the value of Rs. 10,000·00 or more in a rural area ....." The house in dispute has been transferred in favour of respondent No. 2 for a sum of Rs. 22,000·00 on evaluation basis and as such it is 'house' within the meaning of Displaced Persons (Compensation and Rehabilitation) Act of 1958, being a house in urban area of Rajgarh, Lahore. Even houses beyond the urban limit carrying a value of more than Rs. 10,000·00 are transferable under the Displaced Persons (Compensation and Rehabilitation) Act of 1958 and Scheme No. VII has been made for regulating such transfer. By no stretch of imagination the bungalow in question, which is assessed to tax both by Municipal Corporation and Excise and Taxation Department, can be termed or can be called "urban agricultural land".

12. The learned counsel for the petitioner has urged that since it was an incomplete bungalow, therefore, it could not be allotted under Scheme No. I, made under this Displaced Persons (Compensation and Rehabilitation) Act of 1958, and has drawn my attention to para. 21 of Scheme No. I which reads as follows:—

"If the building of a house or a shop was incomplete and un-inhabitable on 14th August 1947, or was rendered un-inhabitable on account of natural calamity, incendiarism or decay, subsequent to that date, it shall be transferred under this Scheme even though it may have been completed or repaired subsequently."

But the house in question although may be incomplete is not un-inhabitable and, in fact, rights from independence, 17 families are living in it, therefore, para. 21 of Scheme No. 1 is not applicable to the petitioner's case, even if this para. applies, the petitioner has no *locus standi* to challenge its transfer in favour of respondent Muhammad Ibrahim. In fact, the claim of the petitioner is based on paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme of 1957. He is neither allottee of the house nor in its occupation, while the respondent No. 2 fulfils all these qualifications and the house has rightly been transferred in his favour. With these observations I dismiss the petition with no order as to costs.

A. H.

Petition dismissed.

Mohd. Hussain v. Chief Settlement & Rehab. Commr.

Fazle Ghani, J

P L D 1966 (W. P.) Lahore 211

Before Muhammad Akram, J

ASGHAR HAMID—Appellant

versus

Mst. NASEEM AKHTAR—Respondent

Execution Second Appeal No. 217 of 1962, decided on 10th February 1964.

Asghar Hamid v. Naseem Akhtar

Muhammad Akram, J

(*a*) *West Pakistan Relief of Indebtedness Ordinance* (*XV of 1960*), *Ss. 2*(*c*) *& 7—No evidence to prove that judgment-debtor earned livelihood "mainly by agriculture"—Mere fact of being landowner in estate—Not sufficient to hold him to be a "debtor"—House belonging to such judgment-debtor not exempt from attachment and sale under S. 7—Civil Procedure Code* (*V of 1908*), *S. 60.* [p. 213]*A*

(*b*) *Civil Procedure Code* (*V of 1908*), *S. 60* (*1*), (*b*), (*c*) — *"Agriculturist"—Term used in restricted sense and carries same meaning in both clauses* (*b*) *& (c)—Does not include person said to be agriculturist merely by reason of caste—Person to fall within meaning of term to be agriculturist by profession and solely dependent on agriculture for his livelihood.* [p. 214]*B*

Sant Ram v. *Buta Khan* A I R 1938 Lah. 72 ; *Balwant Singh* v. *Anjaman Imdad Bahami Qarza and another* A I R 1939 Lah. 40; *Nihal Singh* v. *Siri Ram and others* A I R 1939 Lah. 388 and *Shrimant Appasabeb Tuliaram Desai and others* v. *Bhalchandra Vithalrao Thube* A I R 1961 S C 589 *ref.*

(*c*) *Punjab Alienation of Land Act* (*XIII of 1900*), *Ss. 2*(*3*) *& 16—"Land" not shown to have been "let or occupied for agricultural purpose or purposes subservient to agriculture"—Protection of S. 16 not available against sale of such land—Civil Procedure Code* (*V of 1908*), *S. 60.* [p. 216]*C*