

18. It was then argued that the land may be resumed from the original fraudulent allottee or occupant, in case he was in occupation, but, confining to the facts of this case, it could not be resumed from his tenant, viz. the petitioner who according to the learned counsel was not a party to any fraudulent allotment of this land though his occupation may be derivative from his landlord. The contention has no force because the tenant here has no independent status inasmuch as he claims through the fraudulent landlord and not in any independent capacity of his own. Again his status is confined to that of a tenant whereas the resumption here is of rights of ownership, title or proprietary rights. In our opinion the plea raised should not detract a Court of law from giving effect to the provisions of the relevant statutes as they presently stand, and according to which, the land which is the subject matter of a fraudulent allotment can always be duly resumed, whether it is in the occupation of the defrauding allottee or in the occupation of his tenants, though the manner and procedure of resumption may vary depending on the facts of each case. We need not go into the same in detail though we may simply point out that law duly exists on the subject as to how possession of a land in occupation of tenants is given to the new owner/landlord.

19. The result is that this petition has no merit and is dismissed.

S. A. H.

Petition dismissed.

P L D 1980 Supreme Court 222

Present: Aslam Riaz Hussain and Karam Elahee Chauhan, JJ

Ch. SADIQ ALI—Petitioner

versus

IMTIAZ AHMAD KHAN AND OTHERS—Respondents

Civil Petitions for Special Leave to Appeal Nos. 486 and 487 of 1977, decided on 14th July, 1980.

(On appeal from the judgment and order of the Lahore High Court, dated 17-5-1977, in W. P. 6-R/68 and 908-R/76).

(a) Displaced Persons (Land Settlement) Act (XLVII of 1958)—

— S. 14 (1-A) [as inserted by Displaced Persons (Land Settlement) (Amendment) Act (LV of 1973)] — Informer — Transfer of evacuee property—Remand (civil)—Transfer of evacuee property to informer in lieu of *mukhbari*—To be made after first determining its nature in light of all relevant record including revenue record—Such exercise not consciously done in case and revenue record not kept under consideration while transferring property—Matter, *held*, needed proper adjudication and remand order passed by High Court quite just and fair—Civil Procedure Code (V of 1908), O. XLI, r. 25.— [Remand of case]. [p. 224]A

Syed Shaukat Hussain Rizvi v. Riaz Din and others P L D 1974 S C 276 ref.

(b) Displaced Persons (Land Settlement) Act (XLVII of 1958)—

— S. 14 (1-A) [as inserted by Displaced Persons (Land Settlement) (Amendment) Act (LV of 1973)] read with Displaced Persons Laws (Repeal) Act (XIV of 1975)—Informer—Right to transfer of evacuee property—Informer's right having been statutorily recognized by insertion of S. 14 (1-A) in Act XLVII of 1958, and continued by later enactments and pending cases of informer having been saved to continue as before by Repealing Act XIV of 1975, contention that

informer possessed no right to file any revision or writ petition, held, not tenable.—[Interpretation of statutes]. [p. 224]B

Shah Nawaz and others v. Member, Board of Revenue P L D 1979 S C 846 ref.

Muhammad Ismail v. Chief Settlement Commissioner and others 1974 S C M R 85 held not relevant.

A. R. Shaikh, Senior Advocate Supreme Court and Rana Maqbool Ahmad Qadri, Advocate-on-Record for Petitioner.

Ghulam Muhammad Bhatti, Advocate Supreme Court and Mushtaq Ahmad. Advocate-on-Record for Respondents.

Date of hearing: 14th July, 1980.

ORDER

KARAM ELAHEE CHAUHAN, J.—This order will dispose of two petitions being Civil Petitions for Special Leave to Appeal Nos. 486/77 and 487/77.

2. It is not necessary to go into the lengthy details of the stages and the forums through which the litigation of the property in dispute passed, and it will be sufficient for the purpose of the order that we propose to pass in these cases to state, that on the success of a *mukhbari* application filed by the private respondents herein, some area of land (involved in C. P. 486/77) which had been transferred to the petitioner along with property bearing No. P-157, Ward No. 10, Lyallpur (now Faisalabad), was proposed to the *mukhbars* as a reward of their *mukhbari* by the learned Additional Settlement Commissioner (Land) considering the same as agricultural land on 6-4-1967.

3. The petitioner filed an appeal which was accepted by the learned Settlement Commissioner on 23-9-1967 and the order of the learned Additional Settlement Commissioner was set aside.

4. The *mukhbars* (respondents) then filed a constitutional petition being W. P. 6-R/68. During the pendency of that petition the learned Deputy Settlement Commissioner made certain other order in favour of the present petitioner giving him some more area treating the same as part and parcel of the bungalow aforesaid on 7-4-1976. The private respondents in C. P. 487/77 who had been proposed the said area as agricultural land and who were aggrieved of the aforesaid order of the learned Deputy Settlement Commissioner then filed constitutional petition being W. P. 903-R/76. Both these petitions were heard together and accepted by the High Court by its order dated 17-5-1977, whereby the case was remanded to the learned Chief Settlement Commissioner to attend to the points which according to the High Court needed a fresh and proper adjudication, viz. as to whether the land involved was an agricultural land (if we can state) in order to verify as to how it was to be transferred, viz. whether under the Displaced Persons (Land) Settlement Act XLVII of 1958, or under the Displaced Persons (Compensation and Rehabilitation) Act XXVII of 1958, and whether the same was to be transferred as part of the above-mentioned bungalow and to what extent and as to what was its relevant value.

5. Against the aforesaid orders of remand of the High Court dated 17-5-1977 the petitioner has come up in respective petitions for leave to appeal.

6. Learned counsel for the petitioner argued his case in quite some detail in order to show, that the area involved herein was part and parcel of the bungalow and was rightly transferred to his client along with the bungalow as "three times the plinth area", etc. and that there was no excess with him. For this purpose he referred to certain transfer orders passed at various stages and some other material contained in the paper book. From the side of the caveators similarly reference was made to the Revenue Record to show that the particular area involved herein was an agricultural land inasmuch as it was being irrigated at the relevant time by canal water and had remained with tenants who used to cultivate the same on usual *batai* system, and agricultural crops used to be grown thereon. He also referred to *Syed Shaukat Hussain Rizvi v. Riaz Din and others* (1), to show that where an area transferred as a part of a building or an industrial concern (which was the position in that case) without applying mind and without taking note of the revenue record (special *jamabandi* for 1946-47), the said transfer was illegal and that the same should be transferred after first determining its nature in the light of all relevant record including the revenue record. As this exercise was not conscientiously done in this case and as the revenue record was not kept under consideration and the matter needed proper adjudication, therefore, we think that the remand ordered by the High Court in the circumstances was quite just and fair because during the course of the inquiry aforesaid both sides will have ample opportunity to present their points of view and to lead evidence on the subject. Any expression of opinion on our part, it is obvious, is likely to prejudice one side or the other, especially when the complaint of the petitioner is that he was not associated by the learned Additional Settlement Commissioner in the relevant proceedings before him.

7. When confronted with this situation learned counsel for the petitioner with reference to *Muhammad Ismail v. Chief Settlement Commissioner and others* (2), argued that an informer has no right to file any revision and according to him should consequently have no right to file any Writ Petition in the High Court. He submitted that for this reason the High Court should have rather dismissed the writ petitions of the respondents instead of remanding the case at their instance. The contention has no merit. The right of the informants was statutorily recognized by insertion of section 14(1-A) in the Displaced Persons (Land) Settlement Act XLVII of 1958, by the Displaced Persons (Land) Settlement (Amendment) Act LV of 1973, (gazetted 30-7-1973) and was continued by Ordinance VI of 1974, (gazetted 22-3-1974); and Act XXXVI of 1974 (gazetted 15-1-1974). Later the Displaced Persons (Land Settlement) Act XLVII was repealed by the Evacuee Property and Displaced Persons Laws (Repeal) Act XIV of 1975 (gazetted 28-1-1975) but pending cases (of informers) were saved to continue as before. This is a later legislative development and as such the precedent relied upon by the learned counsel for the petitioner in the context of the present case is not relevant. See *Shah Nawaz and others v. Member, Board of Revenue* (3), where rights of informants qua agricultural land were recognized and enforced.

8. The result is that this is not a fit case for grant of leave to appeal. The two petitions are therefore dismissed hereby.

S. A. H.

Petition dismissed.

(1) P L D 1974 S C 276

(2) 1974 S C M R 85

(3) P L D 1979 S C 846