SMT. PUJARI BAI

v.

MADAN GOPAL

JULY 12, 1989

[G.L. OZA AND K. JAGANNATHA SHETTY, JJ.]

Displaced Persons (Compensation and Rehabilitation) Act, 1954/ Displaced Persons (Compensation & Rehabilitation) Rules, 1954: Section 10/Rule 68. Grant of proprietary rights by Rehabilitation authorities with issue of Sanad—Right of authorities under Consolidation Act to modify or cancel the proprietary rights.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948: Section 30—Transfer of property during consolidation proceedings—Has no reference and cannot have reference to transfer of Sanad issued by Rehabilitation Department.

Constitution of India, 1950: Article 226—Writ Petition—Dismissal in limine on grounds of laches or available of alternative remedy—Decision does not operate as res judicata.

Civil Procedure Code, 1908: Section 11—Res judicata—Does not apply where suit, writ petition is dismissed in limine.

The appellant who migrated from Pakistan in 1947 was allotted certain lands. On 29.12.1962 allotment was made quasi-permanent in character, but on 29.4.1963, the lands were transferred to her permanently, by a Sanad issued under Rule 68 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1954.

The respondent like the appellant had also migrated from Pakistan and on 29.12.1959 lands were also allotted to him but no entry could be made in the revenue record.

On 29.6.1960 during consolidation proceedings no tuk was however made for the respondent. He filed objections which were rejected. He unsuccessfully appealed to the Appellate Authority—The Settlement Officer (Appeals). In the second appeal, the Assistant Director Consolidation of Holdings remanded the matter to the Special Settlement Officer with the observation that because of the mistake of the Consolidation authorities there had been over-allotment, and the authorities

A will see that the first allottee is given the land first.

As nothing happened for about three years, the respondent filed a writ petition in 1966 and the High Court directed implementation of the order of the Assistant Director Consolidation. The appellant was not a B party to either of these proceedings.

Pursuant to the order of the High Court the Consolidation Officer started enforcing the observations of the Assistant Director, found that the land allotted to various persons was more than the land available for allottment, and in order to resolve this difficulty evolved a via-media procedure. He deprived some of the allottees of the land allotted to C them, and the appellant was one such person. He allotted all such lands to the respondent. This was the commencement of the instant litigation.

Against the aforesaid order of the Consolidation Officer the appellant preferred an appeal before the Assistant Director which was D dismissed and the writ petition against the said order was rejected by the High Court in limine with only one word, namely, 'dismissed'.

The appellant having no other alternative instituted a suit contending that it was impermissible for the Consolidation Officer to adjust the lands, or take away any part of it which became her absolute E property by virtue of the Sanad granted on 29.4.1963. The trial Court dismissed the suit. The Additional District Judge confirmed that judgment, and the second appeal to the High Court was also dismissed.

In the appeal to this Court on the question; whether the lands given to the appellants by permanent Sanad could be deprived of in F consolidation proceedings without giving them adequate alternate lands.

Allowing the appeal,

HELD: 1. The authorities under the Consolidation Act have no G jurisdiction or power to modify or cancel the grante of proprietary rights granted in the Sanad under s. 10. [392G]

2. From s. 10 of the Displaced Persons (Compensation & Rehabilitation) Act 1954, it is clear that the parties who were put in possession under initial allotment would continue to remain in possession even H after its acquisition by the Central Government. But it is open to the Central Government for the purposes of payment of compensation to

such displaced person, transfer to him such property on such terms and conditions as may be prescribed. Apparently this refers to a permanent transfer in lieu of compensation. [390D-E] A

3. Transfer of property referred to in s. 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 is either by a landowner or by a tenant, and it has no reference, and indeed cannot have a reference to transfer of Sanad under s. 10 of the Displaced Persons (Compensation & Rehabilitation) Act of 1954. The conferment of rights in lieu of compensation under s. 10 stands on a different footing which could not be contemplated within the language of s. 30 of the Consolidation Act. [391F] B

4. When a writ petition after contest is disposed of on merits by a speaking order, the question decided in that petition would operate as *res judicata,* but not a dismissal in limine or dismissal on the ground of laches, or availability of alternative remedy. [392E-F] C

Workmen of Cochin Port Trust **v.** *Board of Trustees of the Cochin Port Trust & Another,* **[1978] 3 SCR 971, referred to.** D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6012-13 of 1983.

From the Judgment and Order dated 31.1.1983 of the Punjab & Haryana High Court in C.R.S.A. No. 1871 of 1975 and R.S.A. No. 1611 of 1980. E

Shiv Dayal Srivastava, S.K. Bagga and Mrs. Bagga for the Appellant.

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Kapil Sibal, S. Markandeya, Mrs. C. Markandeya, O.P. Ahluwalia, G. Seshagiri Rao and Km. U. Saraswat for the Respondents.

The Judgment of the Court was delivered by

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OZA, J. This appeal arises out of a judgment of the Punjab & Haryana High Court delivered in Civil Regular Second Appeal No. 1871 of 1975 dated 31.12.1983.

This second appeal before the High Court of Punjab & Haryana was taken against the judgment of Additional District Judge, Patiala H

A who affirming the judgment of the trial Court i.e. sub-Judge 1st class, Rajpura, maintained the dismissal of the suit filed by the plaintiff-present appellant.

The suit was filed for a declaration that the appellant plaintiff is the owner in possession of agricultural lands measuring 100 Bighas 10 B Biswas comprising Khasra Nos. 54-1-2-3-8/3-9-11-19/2, 55 3-4-5-6-7-15, 55/16, 20 situated in village Urdan, Tehsil Rajpura with the consequential relief of permanent injunction restraining the defendant from interfering with the possession of the plaintiff and dispossession thereof in any manner.

C The appellant—Pujari Bai, it is alleged, migrated from Pakistan in 1947 after the partition of the country and she left behind in Pakistan a large areas of agricultural land. In 1949 Government in order to settle such refugees adopted certain measures and gave land to the displaced persons for the purpose of cultivation. The displaced persons claims were examined by the claims organisation set up by the D East Punjab Government at some places and the lands were given individually to those who had left behind agricultural lands in the West Punjab which become Pakistan after 1947. As Smt. Pujari Bai, was one of such claimants, she was allotted certain lands in village Urdan. On 29.12.1962 allotment made was quasi permanent in character, but on 29.4.1963 the lands were transferred to her permanently. The trans-E fer was right, tiltle and interest in ownership by a Sanad issued in the name of the President (the Central Government) under Rule 69 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1954. This was the basis of her claim.

It appears that the defendant—respondent had also migrated F from Pakistan like the appellant and on 29.12.1959 some lands were also allotted to him but no entry could be made in the revenue record and it was not certain whether possession was taken by the respondent. On 29.6.1960 during the consolidation proceedings, no tuk was however, made for the respondent. He filed objections and to these objections Pujari Bai was not a party. The objections were rejected. It G appears that against this order he appealed to the Appellate Authority—The Settlement Officer (Appeals) and this appeal also was dismissed. He took up the matter in second appeal to the Assistant Director Consolidation of Holdings who remanded the matter to the Special Settlement Officer with certain observations. He observed "that there have been over allotment and authorities will see that first H allottee is given land first". He also observed that it all happened

because of the mistake of the Consolidation authorities. This order was passed on 2.12.1963. A

In spite of this remand order made by the Assistant Director Consolidation, nothing happened for about three years. In 1966 the respondent filed a writ petition before the High Court of Punjab & Haryana. Even to this writ petition the present appellant Pujari Bai was not a party. In this writ petition a direction was sought to implement the aforesaid order of the Assistant Director Consolidation. The High Court by the order dated 25.11.1966 directed that the observations contained in the order passed by the Assistant Director should be complied with. B

After the direction of the High Court the Consolidation Officer became active. He started enforcing the observations contained in the remand order of the Assistant Director and in so doing, he found that the land allotted to various persons in the village was more than the land available for allotment. In order to resolve this difficulty he evolved a via-media. He deprived some of the allottees of the part of land allotted to them, and the appellant was one such casualty. He allotted all such lands to the respondent and it is this which was the starting point of the trouble. It is, however, significant to note that before this order was passed by the Consolidation Officer so far as the appellant is concerned she had already obtained a permanent Sanad in respect of her lands from the Government of India. C D E

Against the order of the Consolidation Officer, the appellant preferred an appeal before the Assistant Director, Punjab & Haryana, Chandigarh. The appeal was dismissed with an observation that he was bound by the remand order and the right acquired by the appellant by the Sanad should have been brought to the notice when matter was disposed of earlier by the Assistant Director, Patiala. Against this order of the Assistant Director, the appellant preferred a writ petition which was rejected by the High Court in limine with one word 'dismissed' by order dated 14.4.1969. F

After the rejection of the writ petition, the appellant had no other alternative and therefore instituted the suit out of which this appeal arises. Her case in the suit was that it was impermissible for the Consolidation Officer to adjust the lands or take away any part of it which became her absolute property by virtue of the Sanad granted on 29.4.1963. However, she became unsuccessful in all Courts. On 5.9.1975, the trial Court dismissed the suit. The Additional District G H

A Judge confirmed that judgment. The High Court of Punjab & Haryana dismissed the Second Appeal by the judgment dated 31.1.1983 which is now under appeal before us.

Learned counsel for the appellant contended that after the Sanad was granted to the appellant on 29.4.1963 she became the absolute B owner of the land. The land was given to her in lieu of settlement of her claim of compensation and the Sanad specifically provided that all rights and interest in the property were transferred to the appellant under the authority of the President. It was, therefore, not open to any consolidation authority to cancel this Sanad. It was also contended that the Consolidation authorities and the civil courts did not examine C the legal consequences of the Sanad and the scope of Section 10, and without taking that into consideration the allotment made was illegal and could not be sustained.

The other limb of the argument of learned counsel relates to the question of *res judicata* on which ground also the appellant was non-D suited. It may be recalled the appellant being aggrieved by the order of the Consolidation Officer which was confirmed by the Assistant Director Consolidation apprcached the High Court in a writ petition. That writ petition was rejected in limine and therefore the courts below held that the question of *res judicata* operates and there was no scope for the civil court to go into the question once again. It was E argued that the High Court committed an error since apparently the writ petition filed by the appellant was dismissed in limine and it could not operate as *res judicata* since it was not a decision on merits deciding anyone of the issues arising in the litigation.

Learned counsel for the respondent, on the other hand conten-F ded that the allotment made in favour of the respondent was very much before the allotment made in favour of the appellant. The allotment to the respondent was on 29.12.1959 and whereas the allotment to the appellant was on 29.12.1962. But unfortunately as there was no entry made in the revenue record about the allotment to the respondent. No land was earmarked in the consolidation proceedings G which ultimately had to be brought to the notice of Assistant Director. The later remanded the matter with a direction to the consolidation officer "to see that the first allottee is accommodated first and the later allottees who have been accommodated before the respondent shall not be given their allotment." Learned counsel contended that when this order of the Assistant Director was not complied with, the respon-H dent had no option but to approach the High Court for a direction for

enforcement of the said order. But learned counsel had to concede that even before the order of the Assistant Director by which he remanded the matter, the allotment in favour of the appellant had been converted into a permanent transfer by a Sanad granted by the President.

The main argument of the learned counsel for the respondent was that in view of the fact that the respondent was allotted earlier in 1959 whereas the allotment in favour of the appellant being in December 1962 and if there was no adequate land available for allotment to the appellant, the authorities should find an alternative land somewhere else but the respondent could not be deprived of the land which was allotted to him. He, however, frankly conceded that there is nothing on record to indicate that the same land which was allotted to the respondent was allotted to the appellant. He, however, said that it was a case of over allotment and the authorities were justified in taking the land proportionately from all allottees and adjusting all the allottees with the available lands.

From all the facts and documents, one thing appears to be clear that although certain allotment was made in favour of the respondent in 1959, he was not put in possession of the allotted lands. It is also clear that the survey Nos. of lands allotted in 1959 to the respondent are not the same survey Nos. allotted to the appellant in December, 1962. It is further clear that the appellant was given possession of those properties allotted to her and even permanent Sanad was granted to her.

The main question that arises for consideration therefore, is whether the lands given to the appellants by permanent Sanad could be deprived of in the consolidation proceedings without giving them adequate alternate lands. Section 10 of the Displaced Persons (Compensation & Rehabilitation) Act of 1954 provides:

> "10. Where any immovable property has been leased or allotted to a displaced person by the Custodian under the conditions prescribed:
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> (a) by the notification of the Government of Punjab in the Department of Rehabilitation No. 4891-S or 4892-S, dated the 8th July, 1949; or
>
> (b) by the notification of the Government of Patiala and

A East Punjab States Union in the Department of Rehabilitation No. 8R or 9R, dated the 23rd July, 1949, and published in the Official Gazette of that State, dated the 7th August, 1949.

B and such property is acquired under the provisions of this Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition, and the Central Government may, for the purpose of payment of C compensation to such displaced person, transfer to him such property on such terms and conditions as may be prescribed."

From this provisions, it will be clear that the parties who were put in possession under initial allotment would continue to remain in D possession even after its acquisition by the Central Government. But it is open to the Central Government for the purposes of payment of compensation to such displaced persons transfer to him such property on such terms and conditions as may be prescribed. Apparently this refers to a permanent transfer in lieu of compensation. It is not in dispute that the appellants were the only allottees in whose favour E permanent transfer was made on 29.4.1963 and 15.6.1964 respectively.

A perusal of the terms of Sanad clearly indicate that it conveys absolute title and it could be cancelled only by the authority which granted the Sanad. Sanad (Ex. p 2) granted to the appellant on 29.4.1963 reads:

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"The President is hereby pleased to transfer the right, title and interest acquired by the Central Government in the said property to Pujari Bai wife of Bihari Lal (hereinafter referred to as the transferee) subject to the following terms and conditions."

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It was perhaps for this reason, as contended for the appellant that after the Sanad was granted in favour of the appellant, the respondent went on with the proceedings before the consolidation authorities and also before the authorities under the Displaced Persons (Compensation & Rehabilitation) Act, 1964, but did not implead the appellant H and only impleaded the other allottees who were not granted Sanad till

then. Quite naturally, the authorities had no opportunity to examine the effects of the Sanad granted to the appellant.

Learned counsel for the respondent next contended that the consolidation proceedings had started when the Sanad was granted to the appellant on 29.4.1963 and Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 prohibits a transfer during the consolidation proceedings.

We do not think that Section 30 has any application to the facts of the case.

Section 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, provides:

> "Sec. 30. Transfer of Property during consolidation proceedings—After a notification under sub-section (1) of Section 14 has issued and during the pendency of the consolidation proceedings no land owner or tenant having a right of occupancy upon whom the scheme will be binding shall have power without the sanction of the Consolidation Officer to transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of any other landowner or tenant having a right of occupancy therein under the scheme of consolidation."

Transfer of property referred to in this Section is either by a landowner or by a tenant, and it has no reference and indeed cannot have a reference to transfer of Sanad under Section 10 of the Displaced Persons (Compensation & Rehabilitation) Act of 1954. The conferment of rights in lieu of compensation under Section 10 stands on a different footing which could not be contemplated within the language of Section 30 of the aforesaid Act. This contention advanced by learned counsel for the respondent is, therefore, rejected.

This takes us to the question of *res judicata*. The question is whether the suit of the appellant was barred by *res judicata* in view of the summary dismissal of her writ petition earlier. It is not disputed that the writ petition filed by the appellant against the order of the Assistant Consolidation Officer was dismissed in limine. This order dated 14.4.1969 was passed by the Division Bench of Punjab & Haryana High Court. It was a one word order. The question or *res*

A *judicata* apparently arises when a controversy or an issue between the parties has been heard and decided. This Court in *Workmen of Cochin Port Trust* v. *Board of Trustees of the Cochin Port Trust & Another,* [1978] 3 SCR 971 considered this principle and observed (at 977):

B "But the technical rule of **res judicata** although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceedings merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of *res judicata* to such an extent so as to found it on mere guess work. To illustrate our view point, we may C take an example. Suppose a writ petition is filed in a High Court for grant of a writ ot Certiorari to challenge some order or decision on several grounds. If the Writ Petition is dismissed after contest by a speaking order obviously it will operate as *res judicata* in any other proceeding, such as, of D suit, Article 32 of Article 136 directed from the same order or decision. If the Writ Petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the availability of an alternative remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be barred on the principle of *res judicata.*" E

It thus becomes clear that when a writ petition after contest is disposed of an merits by a speaking order, the question decided in that petition would operate as *res judicata,* but not a dismissal in limine or dismissal on the ground of laches or availability of alternative remedy. F The High Court and the courts below, therefore, were not right in throwing out the suit of the appellant on the ground of *res judicata.*

It is, therefore, plain that all the three courts have omitted to consider the material question, that is, the impact of the grant of Sanad under Section 10 and its effect on the jurisdiction of the authoG rities under the Consolidation Act. The authorities under Consolidation Act have no jurisdiction or power to modify or cancel the grant of proprietary rights granted in the Sanad under Section 10.

In the connected Civil Appeal No. 6013 of 1983 the Sanad was also granted on 15.6.1964 in accordance with Section 10 and, there- H fore, the same principle applies to that case also.

The appeals are therefore allowed. The judgment and decree passed by all the three courts below are set aside and the suit filed in each case is decreed with costs. The appellant shall be entitled to costs in this Court. Costs quantified at Rs.5,000 in each of the two appeals.

N.V.K. Appeals allowed.