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March 10

SHRI MITHOO SHAHANI AND ORS.

v.

UNION OF INDIA AND ORS.

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.]

Evacuee Property—Land Allotted to respondents—Subsequently the same land allotted to appellants—Sanad issued to appellants under the Act—Allotment in favour of the appellant set aside—Can sanad subsist when allotment set aside—Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act XLIV of 1954), s. 33.

The appellants and the five respondents were displaced persons. The Deputy Custodian of Nizamabad District allotted about 60 acres of land to the five respondents. The allotment was by way of lease. There was no condition imposed upon them that they should cultivate the lands personally. While the lease was continuing in force, the Government of India issued a Press Note on November 13, 1953 by which they announced that they had decided to allot evacuee agricultural land in Hyderabad State to displaced persons whose claims for agricultural land had been verified under the Displaced Persons (Claims) Act, 1950. The appellants made an application in pursuance of this notification and on May 4, 1954 the land now in dispute, though under a subsisting lease in favour of the respondents, was allotted to them.

In the mean time the Displaced Persons (Compensation and Rehabilitation) Act, came into force on October 9, 1954. Under Section 20 of this Act, the Regional Settlement Commissioner issued Sanads in favour of appellants in respect of these lands. Both the appellants and the respondents claimed these disputed plots. The matter went up to the Deputy Chief Settlement Commissioner. He referred the case of both parties to the Government of India for action under s. 33 of the Act. The matter was considered under s. 33 of the Act by the Deputy Secretary in the Rehabilitation Ministry who upheld the contentions of these respondents. The result was that the allotment made in favour of the appellants was set aside. It is the legality of this order that is challenged in this appeal.

Held—(i) The order of the Central Government was covered by s. 33 of the Act as one dealing with and rectifying an error committed in relation to a "thing done or action taken" with respect to a rehabilitation grant to a displaced person. Not merely the order of the Regional Settlement Commissioner but the entire question as to whether the respondents as origional allottees by way of lease were entitled to the relief of restoration was referred to the Central Government by reason of the order of the Deputy Chief Settlement Commissioner. Both the parties were heard on all the points by the Central Government before the orders were passed and it would not therefore be right to consider that the matter in issue before the Central Government was namely the correctness of the order of the Regional Settlement Commissioner, which read *in vacuo* might not be comprehended within s. 39 of the Act.

(ii) It is manifest that a *Sanad* can be lawfully issued only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made

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is set aside it would follow, and the conclusion is inescapable that the grant cannot survive, because in order that grant should be valid, it should have been effected by a competent officer under a valid order. If the validity of that order is effectively put an end to, it would be impossible to maintain unless there were any express provision in the Act or in the rules, that the grant still stands. On the facts of this case it was held that where an order making any allotment was set aside the title which was obtained on the basis of the continuance of that order also fell with it.

Partumal v. *Managing Officer, Jaipur,* I.L.R. 11 Raj. 1121, distinguished.

Balwant Kaur v. *Chief Settlement Commissioner (Lands),* I.L.R. [1964] Punjab 36, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 552 of 1963. Appeal by special leave from the order dated April 28, 1960 of the Deputy Secretary to the Government of India, Ministry of Rehabilitation, New Delhi, purporting to exercise the powers of Revision under s. 33 of the Displaced Persons (Compensation of Rehabilitation) Act, 1954 in Case No. 38(894)/59 Neg. A.

With

Writ Petition No. 108 of 1960.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

Achhru Ram and *N. N. Keswani,* for the appellants and the petitioners.

N. S. Bindra and B. R. G. K. Achar, for respondents Nos. 1 and 2 (in both the appeal and petition).

M. C. Setalvad, K. Jairam and *R. Ganapathy Iyer,* for the respondents Nos. 3 to 7 (in both the appeal and petition).

March 10, 1964. The Judgment of the Court was delivered by

Ayyangar, J.

AYYANGAR, J.—The appeal, by special leave, is directed to question the correctness of an order passed by the Deputy Secretary to the Government of India, Ministry of Rehabilitation under s. 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Central Act XLIV of 1954) which for convenience will be referred to hereafter as the Act.

The facts necessary to appreciate the points urged before us are briefly these: The property in dispute is agricultural land of an extent of about 60 acres situated at Nizamabad in the former State of Hyderabad and now in the State

of Andhra Pradesh. On September 7, 1950 the Deputy Custodian of Nizamabad District allotted 44 acres of this land to five persons who are the respondents before us. All these five were displaced persons and were entitled to this allotment. By a further order dated July 21, 1951 the balance of the 16 acres and odd was also allotted to them. The allotment was by way of lease and one of its stipulations was that the terms of the lease would be revised only after five years. The only point that needs to be stated about the terms of this lease is, that there was no condition imposed upon the lessees that they should cultivate the lands personally. While the lease was continuing in force, the Government of India issued a press note on November 13, 1953 by which they announced that they had decided to allot evacuee agricultural land in Hyderabad State to displaced persons whose claims for agricultural lands had been verified under the Displaced Persons (Claims) Act, 1950. It further stated that the allotments would be towards the settlement of claims in respect of their agricultural lands. The allotment was to be on the same terms as under the quasi-permanent allotment scheme in the Punjab and applications for allotment were invited from persons residing *inter-alia* in Hyderabad State whose verified claims included a claim for agricultural lands. The press note prescribed the 31st of December as the last date for the receipt of these applications. The appellants made an application in pursuance of this notification and on May 4, 1954 the land now in dispute, though under a subsisting lease in favour of the respondents, was allotted to them on quasi-permanent tenure. It is not disputed that the appellants satisfied the qualifications for making applications under the press note and for being allotted evacuee property thereunder. The order of allotment, a copy of which was forwarded to the Collector of Nizamabad district, contained a request that the allottees may be put in possession of the land and the fact intimated to the office of the Regional Settlement Commissioner. The revenue authorities acting on this request or direction dispossessed the respondents from the lands leased to them and put the appellants in possession thereof.

Thereafter, the respondents made a representation to the Regional Settlement Commissioner, Bombay pointing out that they were displaced persons who having been rehabilitated by the allotment by way of lease were now being uprooted. They also pointed out that they had incurred large expenses in improving the land and bringing it into proper cultivation. These applications were considered by the Regional Settlement Commissioner who by his order dated July 10, 1954 rejected their application. It is not necessary

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to set out the reasons for making this order except to say that one of them was the failure on the part of the lessees to personally cultivate the lands. The respondents, then, moved the Regional Settlement Commissioner requesting him to review his order and they also sought relief from the Government of India seeking intervention in their favour.

Subsequent to this date the Act was enacted and it came into force on October 9, 1954. Section 12 of the Act empowered the Central Government to acquire evacuee property for rehabilitation of displaced persons and in pursuance thereof the properties now in dispute were acquired by Government by a notification dated January 18, 1955. During the pendency of the proceedings by which the respondents sought to obtain a reversal of the order dated July 10, 1954 and without reference to them, the Regional Settlement Commissioner issued *sanads* in favour of appellants 1 to 4 on January 12, 1956 acting under s. 20 of the Act.

The Deputy Chief Settlement Commissioner who dealt with the representations made by the respondents passed an order on August 22, 1958 after obtaining a report from the Regional Settlement Commissioner. He pointed out in his order that there was no indication from the papers on the file that the land was originally leased to the respondents on condition that they should cultivate the lands personally. He therefore set aside the order of the Regional Settlement Commissioner dated July 10, 1954 and remanded it for further enquiry directing the passing of fresh orders after a thorough enquiry. Thereafter a report was called for and obtained from the Collector who conducted this enquiry and in his report dated June 13, 1959 he recorded a finding that there had been personal cultivation of the lands by the respondents. He pointed out that of the 60 acres comprising the entire extent, 26 guntas were allotted on a quasi-permanent basis to other displaced persons in 1954 and this extent was therefore out of the controversy. It ought to be mentioned that the order of the Deputy Chief Settlement Commissioner which was of the date August 22, 1958 was apparently by inadvertance passed without notice to the appellants. When this was brought to his notice after the remand he issued notice to them and after hearing them, referred the case to the Government of India for action under s. 33 of the Act. The matter was considered by the Deputy Secretary in the Rehabilitation Ministry who heard all the parties and recorded the following findings: (1) that the order dated July 10, 1954 refusing to transfer the lands to the respondents was wrong, and (2) that there was no justification for terminating the lease and depriving the respondents of possession of the

property now in dispute and on these findings directed the *sanads* granted to the appellants to be revoked and the respondents be put in possession of the property. It is the legality of this order that is challenged in this appeal.

Three points were urged by Mr. Achhru Ram—learned Counsel for the appellant: (1) that the Central Government had no power under s. 33 of the Act to revise the order of the Regional Settlement Commissioner dated July 10, 1954, (2) that even assuming that that order was capable of revision, the land in dispute had been transferred to the appellants irrevocably by way of quasi-permanent allotment and *sanads* issued and that thereafter the title under the *sanads* which had been granted in the name of the President of India could not be disturbed except in accordance with the terms of the *sanads*, (3) that the Deputy Secretary in the Government of India had no materials before him on the basis of which he could find that the order dated July 10, 1954 was erroneous and required to be revised.

We shall deal with these points in the same order. Section 33 under which the order under appeal was made reads:

> "The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act or the rules made thereunder."

In considering the argument addressed to us under this head there are two points to be borne in mind. If the order dated July 10, 1954 passed by the Regional Settlement Commissioner was "a proceeding under this Act" then obviously there is no limitation on the power of the Central Government to pass "such order as in the circumstances of the case was required". Of course, the Central Government cannot pass an order which is inconsistent with any of the provisions contained in the Act or the Rules made thereunder and subject to the objection made that after the transfer of property and the grant of a *sanad* under s. 20 of the Act read with r. 91(8) in the form specified in Appendix XXIV to the Rules which is the second point raised by learned Counsel, it was not suggested that the order now impugned was inconsistent with any of the provisions of the Act or the Rules made thereunder. Whether the opinion which the Central Government entertained was correct or incorrect on the evidence would, of course, not fall for consideration by this Court in an appeal under Art. 136 but as regards the contention that

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the order is illegal or invalid as distinct from its being incorrect, we shall deal with it in considering the last of the arguments submitted to us by learned Counsel.

It was urged that the order of the Regional Settlement Commissioner which the Central Government revised under s. 33 was not "a proceeding under the Act" having been passed before the Act came into force and was therefore outside its jurisdiction under s. 33 of the Act. The answer to this is, however furnished by s. 39 of the Act. That section deals with orders passed prior to the commencement of the Act and renders "all things done" or "action taken" in the exercise of powers conferred by or under this Act as if the Act were in force on the date when such thing was done or action taken. Section 39 enacts:

> "Anything done or any action taken (including any order made) by the Chief Settlement Commissioner, Settlement Commissioner, Additional Settlement Commissioners or Settlement Officers for the purposes of payment of compensation or rehabilitation grants or other grants to displaced persons shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the date on which such thing was done or action was taken."

It was then suggested that since the order dated July 10, 1954 had merely rejected an application filed by the respondents for restoring them to possession of lands from which they complained they had been unjustly dispossessed, it was not "a thing done" or "action taken for the purpose of payment of compensation or rehabilitation grants to displaced persons" so as to be deemed to be taken under the provisions of this Act. The same point was urged in a slightly different form by saying that even if the Central Government could interfere and set aside the order of the Regional Settlement Commissioner dated July 10, 1954 still they could not direct the cancellation of the sales and grants of *sanads* to the appellants and that as this was not a matter pending before them, the order in so far as it directed the cancellation of the *sanads* and the dispossession of the appellants from the disputed property was without jurisdiction. We do not see any substance in the points stated in either form. In the first place, even if learned Counsel is right in submitting that the Central Government should have stopped with setting aside the order dated July 10, 1954 the result would have been the same, because the prayer which was rejected by the Regional Settlement Commissioner when he

passed that order was that contained in an application by the respondents that they should be restored to the possession of the lands from which they had been dispossessed. If that prayer had to be granted on the reversal of the order dated July 10, 1954 it would inevitably have meant that the appellants should have been deprived of possession which is exactly what the order now impugned has directed. As the dispossession of the appellants was consequential on the setting aside of the order dated July 10, 1954 the appellants do not obtain any advantage by raising the contention that the Central Government should have confined itself to setting aside that order and doing nothing more. Besides, this submission proceeds from not appreciating the matters that were the subject of consideration before the Central Government and were considered by them at the time when the impugned order was passed. The facts were that there had been an allotment by way of lease as a rehabilitation grant to persons who were admittedly displaced persons in 1950-51. It was "this thing done" that had been upset in 1954 and which was restored by the order of July, 1954 being set aside by the order under s. 33 of the Act. In substance and effect therefore the impugned order was dealing with and rectifying an error committed in relation to a "thing done or action taken" with respect to a rehabilitation grant to a displaced person. Not merely the order dated July 10, 1954 but the entire question as to whether the respondents as original allottees by way of lease were entitled to the relief of restoration was referred to the Central Government by reason of the order of the Regional Settlement Commissioner dated November 3, 1959. Both the parties were heard on all the points by the Central Government before the orders were passed and it would not therefore be right to consider that the matter in issue before the Central Government was technically merely the correctness of the order of the Regional Settlement Commissioner dated July 10, 1954, which read *in vacuo* might not be comprehended within s. 39.

The next point that was urged was that the appellant had been granted *sanads* on January 12, 1956 and that their *sanads* could not be cancelled and the title acquired thereunder displaced except in accordance with the terms of the *sanads*. The term of the *sanad* which is relevant and which was referred to as the sole ground on which it could be set aside and the title of the appellants displaced reads:

> "It shall be lawful for the President to resume the whole or any part of the said property if the Central Government is, at any time, satisfied and records a decision in writing to that effect (the decision of the Central Government in this behalf

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being final) that the transferee or his predecessor-in-interest had obtained or obtains any other compensation in any form whatsoever under the said Act by fraud or misrepresentation."

It is not disputed that this condition has not been fulfilled but the question, however, is whether when the order of allotment on the basis of which the property was granted to the appellant and the *sanad* issued, is itself reversed or set aside can the *sanad* and the title obtained thereunder survive? On this point there are two decisions to which our attention was invited—the first is a decision of the High Court of Rajasthan in *Partumal* v. *Managing Officer, Jaipur*(1), being a decision of a Full Bench of that Court. That case was concerned with the construction of s. 24 of the Act which deals with the power of the Chief Settlement Commissioner to revise orders passed by a Settlement Officer, Assistant Settlement Officer, Assistant Settlement Commissioner, Additional Settlement Commissioner etc. The relevant part of the head-note brings out the point of the decision. It reads:

> "Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, no doubt confers very wide powers of revision on the Chief Settlement Commissioner, but it does not authorise cancellation of sales after they are completed. No doubt, allotments can be set aside under s. 24 of the Act, but after such allotments ripen into sales, they cannot be cancelled. The Chief Settlement Commissioner, but it does not authosioner exercising his power has no authority to cancel sale of property and an order of cancellation of sale of property is without jurisdiction and invalid. It would be too much to read in s. 24 of the Act to hold that it extends to cancellation of sales by expressly providing for cancellation of allotments. The execution of a sale deed cannot be regarded as only a formal expression of an order of allotment dependent on its subsistence."

Subsequent to this decision a case arose before the High Court of Punjab: *Balwant Kaur* v. *Chief Settlement Commissioner (Lands)*(2) and a Full Bench of that Court by a majority dissented from this view and held that where an order making an allotment was set aside the title which was obtained on the basis of the continuance of that order also fell with it. We are clearly of the opinion that the judgment

(1) I.L.R. 11 Rajasthan 1121. (2) I.L.R. [1964] Punjab 36.

of the Punjab High Court is correct. The relevant provisions of the Act and the Rules have all been set out in the decision of the Punjab High Court and we do not consider it necessary to refer to them in any detail. It is sufficient to say that they do not contain any provision which militates against the position which is consistent with principle and logic. It is manifest that a *sanad* can be lawfully issued only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made is set aside it would follow, and the conclusion is inescapable that the grant cannot survive, because in order that that grant should be valid it should have been effected by a competent officer under a valid order. If the validity of that order is effectively put an end to it would be impossible to maintain unless there were any express provision in the Act or in the rules that the grant still stands. It was not suggested that there was any provision in the Act or in the rules which deprives the order, setting aside an order of allotment, of this effect. We do not therefore consider that there is any substance in the second point urged by learned Counsel.

The last of the points urged was that the Deputy Secretary who passed the impugned order had no materials upon which he could find that the order dated July 10, 1954 was erroneous or justified being set aside. Learned Counsel is not right in this submission because if the respondents were entitled to remain in possession of the property originally leased to them by way of allotment and their leasehold interest had not been validly terminated—a fact which on the materials the Deputy Secretary was competent to find—the order that he passed restoring them to possession could not be said to lack material. We consider therefore that there is no merit in this submission.

The result is that the appeal fails and is dismissed with costs.

Writ Petition 108 *of* 1960:

This petition under Art. 32 of the Constitution has been filed by the appellants in Civil Appeal 552 of 1963 and seeks the issue of a writ of *certiorari* to quash the same order of the Deputy Secretary to the Union Government as that whose legality is challenged in the appeal. Both the Writ Petition as well as the application for special leave came on for preliminary hearing on November 30, 1960 and while the leave prayed for was granted, rule nisi was also issued in the petition and the two matters have been heard together. In view of our decision in the appeal, the writ petition will stand dismissed, but there will be no order as to costs.

Appeal and Writ petition dismissed.