PETITIONER:
BIHARI LAL BATRA

Vs.

RESPONDENT:
THE CHIEF SETTLEMENT COMMISSIONER & ORS

DATE OF JUDGMENT:
12/03/1964

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1965 AIR 134 1964 SCR (7) 192

ACT:
Evacuee property-Land allotted to a refugee in urban area-Allotment is invalid under the rules-Displaced Persons Compensation and Rehabilitation Rules, 1955, Rule 2(h).

HEADNOTE:
The father of the appellant owned considerable agricultural property in Pakistan and he with the members of his family moved over to India on partition. The appellant's father had some unsatisfied claim for allotment and on December 29. 1955 he was allotted some plots in Urban area within a certain municipality. The appellant's father died in 1952 and the allotment made was actually to the appellant in lieu of the claim of his father. On the allotment being made, a sanad was issued to the appellant by the Managing Officer. When the appellant tried to take possession of these lands, disputes were raised by respondents Nos. 4 and 5. These respondents moved the Assistant Settlement Commissioner for cancellation of the allotment on the ground that these disputed plots were within an "urban area" within the meaning of r. 2(h) of the Displaced Persons, Compensation and Rehabilitation Rules, 1955 and, therefore, the allotment to the appellant was contrary to law. The Assistant Settlement Commissioner accepted the contention of the respondents and allowed the appeal and cancelled the allotment. The appellant then applied to the Chief Settlement Commissioner in revision. He rejected the petition. Then the appellant moved a petition under Arts. 226 and 227 of the Constitution before the High Court. This petition was also dismissed. the High Court granted certificate of fitness under Art. 133 of the Constitution and hence the appeal.
Held:(i) Where an order making an allotment was set aside by the Assistant Commissioner or Settlement Commissioner the title which was obtained on the basis of the continuance of that sanad or order also fell with it.
Shri Mithoo Shahani v. Union of India, [1964] 7 S.C.R. 103, relied on.
(ii)The contention of the appellant that r. 2(h) of the Displaced Persons Compensation and Rehabilitation Rules,

1955, was unconstitutional as contravening Art. 14 of the Constitution must fail. This contention is based on the basis of the proviso to Rule 2(h). Rule 2(h) was framed under s. 40 of the Act. This rule along with other rules came into force on May 21, 1955. The allotment was made to the appellant on December 29, 1955 and the Sanad was issued two days later. In other words the allotment in favour of the appellant was after the rule came into force and was not one "already made" as stated in the proviso to r. 2(h). Therefore, if on the date of the allotment the land was in an urban area, the allotment would be governed by the main para of the definition and the proviso, had no application.
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The discrimination is said to consist in the rule having drawn a dividing line at the date when it came into force, for determining whether the allotment was valid or not. Such a contention is patently self-contradictory. Every law must have a beginning or time from which it operates, and no rule which seeks to change the law can be held invalid for the mere reason that it effects an alternation in the law. It is sometimes possible to plead injustice in a rule which is made to operate with retrospective effect, but to say that a rule which operates prospectively is invalid because thereby a difference is made between the past and the future, is one which cannot be accepted.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 543 of 1962.
Appeal from the judgement and order dated November 26, 1959 of the Punjab High Court in Civil Writ No. 678 1957.
Bishan Narain and N. N. Keswani, for the appellant.
B. K. Khanna and B. R. G. K. Achar, for respondent Nos. 1 to 3.
D. N. Mukherjee, for respondent No. 4.
R. V. S. Mani and T. R. V. Sastri, for respondent No. 5.
March 12, 1964. The Judgment of the Court was delivered by-
AYYANGAR, J.-This is an appeal on a certificate of fitness granted under Art. 133 by the High Court of Punjab against the order of that Court dismissing the appellant's petition to it under Art. 226 of the Constitution.
The point in controversy lies within a narrow compass and hence of the voluminous facts we propose to set out only those which are relevant for appreciating the contentions urged before us. The father of the appellant owned considerable agricultural property in Pakistan and he with the members of his family moved over to India on partition. The appellant's father was allotted a considerable extent of land in village Kharar, District Ambala, but we are not concerned with that. He had still some unsatisfied claim for allotment and on December 29, 1955 he was allotted by the Managing Officer on quasi-permanent tenure Khasra Nos. 880, 881 and 882 which were within the municipal area of Kharar with the regularity of which allotment alone this appeal is concerned. It may be mentioned that the appellant's father had died in 1952 and the allotment made was actually to the appellant in lieu of the claim of his father. On the allotment being made, a sanad was issued to the appellant on December 31, 1955 by the Managing Officer. When the appellant tried to take possession of these lands, disputes were raised by respondent&
L/P (D) ISCI-7 .....
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Nos. 4 and 5. They were not displaced persons but they claimed that they had been in possession of this property from a long anterior date from which they could not be disturbed and also that the property could not be the subject of a valid allotment. These respondents moved the Assistant Settlement Commissioner for cancellation of the allotment and this appeal was allowed by the officer who found that the land comprised in these three khasra numbers were within an " urban area" within the meaning of r. 2(h) of the Displaced Persons Compensation and Rehabilitation Rules, 1955 and consequently that the allotment to the appellant was contrary to law. He, therefore, cancelled the allotment. The appellant thereafter applied to the Chief Settlement Commissioner in revision and not being successful there moved the High Court by a, petition under Arts. 226 and 227 of the Constitution.. As stated earlier, this petition was dismissed and it is the correctness of this dismissal that is challenged in the appeal before us.

Mr. Bishan Narain, learned Counsel for the appellant urged in the main two contentions in support of the appeal. The first was (1) that after the Managing Officer granted a sanad on December 31, 1955 in the name of the President of India, the appellant obtained an indefeasible title to the property and that this title could not be displaced except on grounds contained in the sanad itself even in the event of the order of allotment being set aside on appeal or revision. We have considered this point in Shri Mithoo Shahani and Ors. v. The Union of India and Ors.(1) which was pronounced on March 10, 1964 and for the reasons there stated this submission has to be rejected.

The second point that he urged was, and this was in fact the main contention raised before the High Court, that rule 2(h) of the Displaced Persons Compensation and Rehabilitation Rules, 1955 was unconstitutional as contravening Art. 14 of the Constitution and so the original allotment to the appellant must be held to be lawful. We consider that there is no substance in this argument. In fact, we are unable to appreciate the ground on which the contention is being urged. Section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 enables the Central Government by Notification in the Official Gazette to make rules to carry out the purposes of the Act, and in particular on an elaborately enumerated list of matters. It was not suggested that the rules of 1955 were not competently made under s. 40. These rules were published on May 21, 1955 when they came into force. Rule 2(h) the validity of which is impugned in these proceedings is a rule containing the definitions. Rule 2(h) reads, to extract what is material:

(1) [1964] 7 S.C.R. 103.

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> "2. In these rules, unless the context otherwise requires-
> (a) to (g).....
> (h) 'Urban area' means any area within the limits of a corporation, a municipal committee, a notified area committee, a town area committee, a small town committee, a cantonment or any other area notified as such by the Central Government from time to time;
> Provided that in the case of the quasi-permanent allotment of rural agricultural lands already made in the States of Punjab and Patiala and East Punjab States Union, the

limits of an urban area shall be as they existed on the 15th August, 1947."

The words 'of rural agricultural lands' occurring in the proviso to this rule were replaced by an amending Notification of 1957 by the words 'in rural area', but this amendment is obviously of no significance. "Rural area" is defined by rule 2(f) to mean 'any area which is not an urban area'.

Pausing here, it would be useful to state two matters which are not in dispute: (1) that the allotment to the appellant was made on December 29, 1955, the sanad being issued two days later. It was therefore an allotment which was made after May 21, 1955 when the rules came into force; (2) the other matter is that Khasra Nos. 880, 881 and 882 were included in urban limits on February 10, 1951 by the municipal area of Kharar being extended to cover these plots. It would, therefore, be obvious that on the date when the allotment was made, the allotted land was in an "urban area" and therefore it could not have been validly allotted.

We must confess our inability to comprehend what precisely was the discrimination which the rule enacted which rendered it unconstitutional as violative of Art. 14. So far as we could understand the submission, the unreasonable discrimination was said to exist because of the operation of the proviso. Under the proviso in regard to quasipermanent allotments 'already made, i.e. made before May 21, 1955 in the States of Punjab and PEPSU, the test of what was to be considered an "urban area" was to be determined on the basis of the state of circumstances which obtained on 15th August, 1947. The allotment in favour of the appellant was after the rules came into force and was not one "already made". Therefore if on the date of the allotment the land was in an urban area, the allotment would be governed by the main para of the definition and so could not have been validly made and that was the reason why it was set

L, P(D) 1 SCI-, (a)..

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aside. The discrimination is said to consist in the rule having drawn a dividing line at the date when it came into force, or determining whether the allotment was valid or not. It is the discrimination that is said to be involved in this prospective operation of the rule that we find it difficult to appreciate. It is possible that before the rules were framed the land now in dispute could have been allotted, but because of this it is not possible to suggest that the rule altering the law in this respect which ex concessis is within the rule-making power under the Act, is invalid. Such a contention is patently self-contradictory. Every law must have a beginning or time from which it operates, and no rule which seeks to change the law can be held invalid for the mere reason that it effects an alteration An the law. It is sometimes possible to plead injustice it', a rule which is made to operate with retrospective effect, but to say that a rule which operates prospectively is invalid because thereby a difference is made between the past and the future, is one which we are unable to follow.

There are no merits in this appeal which fails and is dismissed with costs.

Appeal dismissed.

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