

(1965) 01 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 500 of 1963

Jamna Bai and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 21-01-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33

Citation : AIR 1965 P&H 395

Hon'ble Judges : S.B. Capoor, J;I.D. Dua, J;H.R. Khanna, J

Bench : Full Bench

Judgement

H.R. Khanna, J.—The following question has been referred to the Full Bench in Civil Writ No. 500 of 1963 in pursuance of the order of my learned brother Dua J. and myself.

"What is the exact import of the word "occupation" as used in Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955? Does it denote occupation in one's own right, or would it also cover other case of persons in occupation as licensees at the sufferance of an allottee?"

(2) The dispute in the above writ petition relates to house No 181. B-IX situated in Ludhiana. The aforesaid house is indivisible and its different parts were allotted to Jamna Bai petitioner and respondents 4 to 8. They were however, all non-claimants. Bhagat Ram Dass, husband of Jamna Bai, happened to be claimant and as such claimed other transfer of the house on the ground that he was living in it along with his wife. The Settlement Officer held as per order dated February 17, 1962, that Bhagat Ram Das was not living with his wife and as such the eligibility of the parties for the transfer of the house should be determined under Rule 31 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules). An appeal was filed against the above order and the Deputy Chief Settlement Commissioner exercising the powers of the Chief Settlement Commissioner exercising the

powers of the Chief Settlement Commissioner accepted the appeal, set aside other order of the Settlement Officer and remanded the case with the direction that the eligibility be determined under Rules 30 or 31 as the case might be after recording evidence. After remand the Settlement Officer found that Bhagat Ram Das was also in occupation of the house along with his wife and as he was a claimant he was entitled to the transfer of the house in preference to the other occupants.

The matter was then taken up by respondents Nos. 4 and 5 to the Deputy Chief Settlement Commissioner who following a decision of my learned brother Capoor J. in *Ram Jawaya Kapoor v. Chief settlement Commr.* Civil Write No. 193-D of 1958, D/- 9-11-1962(Punj) held that Bhagat Tam Das could not be deemed to be in possession of the property as required by Rules 30 because he was not in occupation of the house in his own right. Bhagat Ram Das and his wife Jamna Bai thereupon filed this petition under Articles 226 and 227 of the Constitution of India, and the contention raised on their behalf was that the interpretation placed upon Rule 30 by the Deputy Chief Settlement Commissioner with delegated powers of Chief Settlement Commissioner as well as by Capoor J., in the above mentioned case was not correct. The matter initially came up before Dua, J. Who on account of other challenge to the correctness of the view taken in *Ram Jawaya Kapoor's* case, Civil writ No. 193-D of 1958, D/- 9-11-1962(Punj) held that it was desirable that the case be disposed of by a larger Bench. The case was then placed before Dua J., and myself. As it was pointed out to us that there was some conflict of opinion and we also felt that the matter was of importance, we directed that the case might be laid before my Lord the Chief Justice for referring the matter to the Full Bench.

(3)After we have passed the above order for reference to the Full Bench, Shamsheer Bahadur J, before whom Civil Writs Nos. 216, 217 and 448 of 1962 came up for hearing, passed an order on 11th September 1964 that as the question arising for determination in those petitions was identical with one which had been referred to the Full Bench in Civil Writ No. 500 of 1963, those three writ petitions be also placed before the Full Bench so that the counsel in those cases could also make submissions before the Full Bench.

(4) In Civil Writ No. 216 of 1962 Shrimati Sita Wanti petitioner and Shrimati Lila Wanti respondent No. 3 are the allottees of the property in question situated Sadar Bazar, Karnal. Sita Wanti is a claimant and the compensation payable to her is Rs. 999/- Lila Wanti respondent No. 3 is a nonclaimant but her husband Jiwan Dass respondent No. 4 who is living with her as a member of the family, is a claimant and the compensation payable to him is Rs. 2,088/- The Deputy Secretary to the Government of India, Ministry of Rehabilitation's passed an order on 24th November, 1961, holding Jiwan Dass to be occupant of the house and as such eligible for the transfer of the property. Sita Wanti has challenged the aforesaid order in the petition.

(5) In Civil Writ No. 217 of 1962 (Punj). Dula Singh V. Union of India, the dispute

relates to property situated in Ludhiana. The property was allotted to Lakhmi Chander, Gurbaksh Singh and Dula. Compensation payable to Lakhmi Chander is Rs. 1,700/- while that payable to Dula Singh is Rs. 2,395/- Durbara Singh, father of Lakhmi Chander, to whom compensation payable was Rs. 4,947/- sought transfer of the house on the ground that he was the occupant of the house. The Settlement commissioner with delegable powers of Chief Settlement Commissioner ordered the transfer of the house in favour of Darbara Singh. Application u/s 33 of the Displaced Persons (Compensation and Rehabilitation) Act filed by Dula Singh against that order was dismissed. Dula Singh, accordingly, filed this petition under Articles 226 and 227 of the Constitution of India to challenge the aforesaid order.

(6) In Civil Writ No. 448 of 1962, Arjan Singh V. Union of India, the property in dispute is a house situated in Hussainpur Amritsar, Different parts of that house were allotted to Arjan Singh and Shrimati Chhano Devi, both of whom were non-claimants. Harbans Lal son of Chhano Devi was, however, claimant and claimed transfer of the house on the ground that he was in occupation of the same along with his mother. The house was transferred to Harbans Lal. Arjan Singh thereupon filed the present writ petition challenging the order about the transfer of the house in favour of Harbans Lal.

(7) Rule 30 at the relevant time read as under: "30 Payment of compensation where an acquired evacuee property which is an allotable property, is in occupation of more than one person.

"If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property shall be offered to the person whose gross compensation is the highest and other persons may be allotted such other acquired evacuee property which is allotable as may be available.

Provided that in calculating the gross compensation, the compensation due for agricultural lands, shall not be taken into consideration.

Explanation:--The provisions of the rule shall also apply where some of the persons in occupation of annoy acquired evacuee property which is an allotable property hold verified claims and some do not hold such claims."

The matter, which needs determination and on which the parties are at variance, is as to what is the meaning of the word "occupation" used in the above rule, and whether it denotes occupation in one's own right or whether it also covers the case of occupation as a licensee. The view canvassed one side is that the word used is "occupation and not "occupation in one's own right", and to hold that it contemplates occupation in one's own right would be reading words in the rule which in fact are not there. It is, however, conceded that occupation by a trespasser is not contemplated by the rule but it is urged that occupation by the close relatives of the allottee would bring the case within the ambit of the rule. As against that the contention advanced on behalf of the opposite side is that the

word "occupation" used in the rule means lawful occupation in one's own right and not at the sufferance of some one else. To hold otherwise, it is pointed out, would lead to mischief because an allottee of a portion of a house might defeat the claim to transfer of the house of the other allottees by asking a relative having a higher claim to come and reside with him.

(8) before proceeding further it would be patient to refer to some of the decided cases to see as to what view has been taken in the matter. In Civil Writ No. 193D of 1958(Punj) decided by my learned horthers Capoor J, on 9th November, 1962, the petitioners were Ram Jawaya Kapur and his son Shanti Swarup. The question related to eligibility for transfer of a property part of which had been allotted to Shanti Swarup and part to Devki Devi and Daulat Ram respondents 3 and 4. The petitioners as well as respondents 3 and 4 were displaced persons, but only Ram Jawaya Kapur petitioner held a verified claim in his own name. It was contended on behalf of the petitioners that even though the allotment order of a part of the house was in favour n of Shanti Swarup Kapur, Ram Jawaya Kapur should be deemed to be in occupation of the property for the purpose of rule 30 and as such entitled to the transfer of the property.

This contention was repelled in the following words.

"It must, therefore, be held that it was the occupation of Shanti Swarup which was regularised and recognized by the department, and his relations were living in the premises merely as members of his family and by mutual arrangement. It was, therefore, only Shanti Swarup and not any other member of his family who was to be treated as being "in occupation" for purposes of eligibility to transfer of the property under rule 30. Explanation II to rule 30 on which Mr. Sawhany placed his reliance merely gives a concession that if any other member of a family holding a verified claim was living there, the compensation payable to him could be allowed to be adjusted against the value of the property and I am of the view that the Deputy Chief Settlement Commissioner was correct when he held that the Explanation had no bearing on the question of eligibility for transfer of the property. It would indeed be introducing confusion in the admit nitraton of rule 30 if each member of the numerous families which may be residing in a certain evacuee property was to be separately considered for eligibility apart from the individual member of each family who was recognized as being in occupation of the property and with whom the department was dealing."

While arriving, at the above conclusion Capoor J. Placed reliance upon The Upper Ganges Sugar Mills Ltd. Vs. Khalil-ul-rahman and Others, . This was a case relating to Section 20 of U. P. Zamindari Abolition and Land Reforms Act. According to that section every person who was recorded as occupant of certain categories of land shall unless he has become Bhumidar be called an Adhivasi of the land, Question arose as to what was the meaning of the word "occupant" and it was held by the majority that it must be given its ordinary dictionary meaning. It was further observed that the word "occupant" was not a term of art and the only limitation that had been placed by judicial decisions on the meaning of that

word was that the person should be in occupation in his own right and not on behalf of some one else.

(9) In Civil Writ No. 83 of 1960(Punj), Kunj Lal V. Union of India, decided by Dulat J. on 24-1-1961, the point was agitated as to whether under rule 30 a whole joint family should be considered to be the allottee and in occupation if a member of that family was allotted or in occupation of a portion of a building. The Chief Settlement Commissioner in that case had taken the view that only the actual allottee was to be considered in occupation and only his claim could be taken into account. The aforesaid view was challenged in the writ petition. Dulat J. while dismissing the writ petition observed that though two views of rule 30 were possible he was unable to accept the argument that the Chief Settlement Commissioner had committed an apparent error of law in taking the view which he had taken. A similar view was taken by Grover J. In Tirath Dass V. Union of India, Civil Writ No. 1112 of 1961, D/- 9-3-1962(Punj).

(10) For the opposite side reliance has been placed upon a Division Bench Case of this Court in Atma Singh V. Chief Settlement Commr. 65 PLR 746 : AIR 1964 87 decided by Capoor and Pandit JJ. There was a dispute in that case between Atma Singh petitioner and Ajit Singh respondent regarding eligibility for transfer a house. A part of the house in question had been allotted to Atma Singh while another part had been allotted to Mohinder Singh who was claimed by Ajit Singh to be his son. It was found that Ajit Singh had been living along with Mohinder Singh in the house in dispute. The rehabilitation authorities directed the transfer of the house to Ajit Singh. Atma Singh thereupon filed a writ petition under Articles 226 and 227 of the Constitution of India challenging the transfer of the house to Ajit Singh but the petition was dismissed. Perusal of that judgment, however goes to show that though a number of other contentions were advanced and a reference was made to rules 30 and 31 the precise point which is now before us was not agitated before the Bench. In the circumstances, the above Bench decision can be deemed to be no authority for the view opposite to that enunciated by Capoor J in Ram Jawava Kapoor's case, Civil Writ No. 193D of 1958, D/- 9-11-1962(Punj).

(11) In Harnam Singh V. Govt. of India, Ministry of Rehabilitation, New Delhi 66 PLR 1055 decided by Shamsheer Bahadur J, the house in question was partly allotted to Harnam Singh petitioner and party to Shrimati Budhwanti mother of Son Raj respondent. The house was ordered to be transferred to Son Raj respondent on the ground that the compensation payable to him was nearest to the value of the property assessed. It may be mentioned that rule 30 was amended by notification date 24th March, 1961, published in the Gazette of India dated 1st April, 1961. As a result of that amendment the words "nearest to the value of the property". which were there previously in the rule were substituted by the words "the highest" The Settlement Officer took the view that Son Raj being a co-occupant with his mother was entitled to the allotment on the ground that his compensation was nearest to the assessment of the value of the

property. When the matter came up in the writ petition before Shamsher Bahadur J., reference was made on behalf of the respondents to the Bench decision in Atma Singh's case 65 PLR 746 : AIR 1964 P&H 87 while on behalf of the petitioner reliance was placed upon the decisions of Dulat J. In Kunj Lal's case civil writ No. 83 of 1960, D/- 24-1-1961(Punjab) and Grover J. In Tirath Dass case civil writ No. 1112 of 1961, D/- 9-3-1962(Punjab). The learned judge merely observed that the Bench authority of this Court in Atma Singh's case 65 PLR 746: AIR 1964 P&H 87 was more to the point and must be followed. There was no other discussion on the point.

(12) It would appear from the above resume that the only case decided by this Court, in which there has been a discussion and the matter now arising for determination by the Full Bench has been thrashed, is the decision of Kapoor J. In Ram Jawaya Kapoor's case, civil writ No 2193-D of 1958, D/- 9-11-1962(Punjab). Although the learned counsel for the parties have addressed us at some length, nothing has been urged before us to shake the correctness or assail the validity of other reasoning in Ram Jawaya Kapoor's case, civil writ No. 193-D of 1958, D/- 9-11-1962(Punjab) Rule 30 finds place in Chapter V of the Rules which deals with payment of compensation by transfer of evacuee properties. These Rules have been framed of by the Central Government in exercise of the powers conferred by section 40 of the Displaced Persons conferred obey section 40 of the Displaced Persons (Compensation and Rehabilitation) Act 1954(Act No. 44 of 1954). The aforesaid Chapter comprises Rules 22 to 34. Rule 22 gives the classification of acquired evacuee property which may be allotted, while Rule 23 provides that all evacuee properties which are allotable should ordinarily be sold. Rule 24 prescribes the mode of the valuation of acquired evacuee allotable property. Rule 25 makes provision for transfer of acquired evacuee allotable property to persons in sole occupation there of who holds a verified claim. While Rule 26 prescribes for the transfer of acquired evacuee allotable property in sole occupation of a person who does not hold a verified claim. According to rule 27 the balance of the value of a property may be paid in instalments while Rule 28 gives the rate of interest on the amount payable by instalments. Rule 29 deals with the contingency where a person eligible for the transfer of the property refuses to accept transfer.

Rules 30, with which we are directly concerned, provides for payment of compensation wherein acquired evacuee allotable property is in occupation of more than one person while Rule 31 deals with the transfer of acquired evacuee property in occupation of displaced persons none of whom holds a verified claim, Rule 32 was deleted in 1959. According to rule 33 a deed of transfer shall be executed after transfer of the property while Rules 33-A and 33-B provide for the forms of transfer and lease deeds. Rule 34 mentions the date from which the transfer shall be operative. It would appear from the scheme of the above rules that they have been framed with a view to rehabilitate the displaced persons who were uprooted from their original homes because of the partition of the country and to make provision for transfer of evacuee allotable property. Perusal of the

Rules also makes it plain a that special importance has been attached to the occupation of the property in considering the eligibility for transfer, the idea being that as far as possible the persons in occupation should become the owners there of so that there is the least dislocation of persons in occupation on consequence of the transfer.

It is provided in rule 30 that if more persons than one holding verified claims are in occupation of any acquired evacuee allotable property, it shall be offered to the person whose gross compensations is the highest. The words "in occupation" in the above Rule in my opinion refer to the person to whom part of the property has been allotted or who is otherwise recognized by the rehabilitation authorise to be in occupation thereof and do not cover the case of a person who resides or stays in the property because of his relationship with or at the sufferance of the actual allottee or authorized occupant of that property. To hold otherwise would open the doors for all kinds of mischief because a person in occupation of a part of the property might defeat the claim of another occupant to whom higher compensation is payable by asking a friend or relative with a claim for still higher compensation to come and reside with him in the property in question. This would not only create complications but may also result in number of cases in defeating the real object of the Rule according to which out of the different persons occupation of a property, the one having the highest claim for compensation shall be entitled to the transfer of the property. In construing the rule, in my opinion at construction should be adopted which shall be in lines with the general scheme of the rules and effectuate the object for which they have been framed and would also result in suppressing any mischief as also subtle inventions and evasions.

I may in this context refer to the observations in Heydon's case (1584) 3 CR 7a which hold the field even today and read as under:

"..... For the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the common wealth, and.

4th. The true reason of the remedy and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy and to suppress subtle inventions and evasions for continuance of the mischief and "proprivato commodo" and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, "provisions bono publico" ".

These observations were quoted with approval by Das, Acting C. J (as he then

was) in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, .

(13) It has already been mentioned above that rule 30 was amended by notification dated 24th March, 1961, as a result of that amendment, Explanation II, which was part of that Rule, was deleted. The explanation read as under:

"Explanation (I if any acquired evacuee property has been allotted to a member of a family as defined in sub-rule (3) of rule 7 who does not hold any verified claim and if another member of the family holding a verified claim is in occupation of such property the compensation payable to such other members of the family may be adjusted against the value of the property."

The above explanation goes to show that the framers of the Rules were not unmindful of the aspect as to whether the clubbing together of the claims of the occupant of a property and other members of his family should or should not be allowed. In the circumstances if it had been the object of the framers of the Rules that for the purpose of Rule 30 the occupation of not only the allottee or other occupant recognized by the department should be taken into account but also of his relatives and others residing in the property at his sufferance, there was nothing to prevent the framers from inserting a provision to that effect. The fact that no such provision has been inserted would go to show that the framers of the Rule intended that the person in occupation should mean the actual allottee or one whose occupation has been recognized by the department. The words "occupation" or "occupant" are not terms of art and as observed by Wanchoo J, who spoke for the majority in *The Upper Ganges Sugar Mills Ltd. Vs. Khalil-ul-rahman and Others*, while dealing with S. 20 of U. P. Zamindari Abolition and Land Reforms Act, the only limitation that has been placed by judicial decisions on the meaning of the word "occupant" is that the person should be in occupation in his own right and not on behalf of some one else.

Dealing with the same provision it was observed in *Amba Prasad Vs. Abdul Noor Khan and Others*, that the word "occupant" signifies occupancy and enjoyment, and mediate possession (except where the immediate possessor holds on behalf of the mediate possessor) is of no consequence. Although *Ram Singh V. Sita Ram* 61 PLR 132 was a case under S. 13 of the East Punjab Urban Rent Restriction "Act, certain observations were made by Dua J. in the case with regard to the meaning of the word "occupation" which have a bearing. It was held that the word "occupation" must mean occupation in exercise of a right and not dependent on other persons" mere sweet will or sufferance even though that other person be his close relative.

(14) It has been argued before us that whatever might be the position of other relatives of an allottee or recognized occupant of a house, in class the relative happens to be the wife or husband of the allottee or recognized occupant, such wife or husband because of the nature of the relationship should be deemed to be in occupation of the property for the purpose of the rule. This contention, in

my opinion, cannot be accepted we are concerned with the meaning of the words "in occupation"" and having come to the conclusion that those words refer to the allottee or recognized occupant of the property, on principle it becomes difficult to carve out exception to that meaning because such an exception is not warranted by the language of the Rule. Apart from that, once the Courts start making exception because of some consideration of hardship, it would be not merely construing the rules but would also be encroaching upon the domain which essentially belongs to the Legislature or the rule making authority. It is also obvious that once the process of creating exception is started it is not rationally possible to draw a line for husband and wife the face of the words used in the rule and to exclude such categories of relatives who are related to the allottee or recognized occupant as father and son or mother and son and vice versa. All these are matters for the rule-making authority and need not detain us because we are only concerned with the construction of the rule.

(15) The argument that it is the duty of the wife to live with the husband or that the husband is bound to provide a marital home for the wife cannot affect the above conclusion. Likewise, whatever might be the poetic connotation, or religious significance of the description of the wife as "better half" in the eye of law the husband and wife constitute two different persons. It is also obvious from the trend of all modern legislation that a wife can be owner of property in her own right and that husband and wife can hold separate properties Reference has been made to case, *Eve V. Garland* 1934 Ch 620. In that case a testator bequeathed to his wife any house of which he might at the time of his death be the owner and occupier. At the date of his death his wife was in occupation of a house which he had bought and in which his furniture had been placed but in which he had never resided as shortly after the purchase of the house, he became of unsound mind and was removed to a mental home. It was held that the testator was the occupier of the house at the time of his death and that his widow was entitled to the proceeds of the sale of the house. The question involved in that case was entirely different and in any case it is no authority for proposition which may militate against the conclusion at which I have arrived earlier. On the contrary this case goes to show that occupation and residence cannot be treated as synonymous.

(16) I would, accordingly, hold that the word "occupation" used in Rule 30 refers to the case of a person to whom part of the property has been allotted or who has otherwise been recognized by the rehabilitation department as occupant of that property. It denotes occupation in one's own right and would not cover the case of persons in occupation as licensees at the sufferance of an allottee. The reference is answered accordingly.

(17) At the hearing before the Full Bench it has been brought to our notice that Rule 30 has since been deleted. It is also pointed out that the question as to whether the deletion of the Rule would have a retrospective effect and how far it would affect the pending writ petitions, would still have to be gone into. These

are matters which are beyond the scope of this reference. Civil Write No. 500 of 1963 would, accordingly, go back to the Division Bench, while the other three civil writs would go back to the learned Single Judge for decision in accordance with law. Looking to all the facts, I would leave the parties to bear their own costs of this reference before the Full Bench.

S.B. Capoor, J.

18 I agree.

Inder Dev Dua, J.

(19) So do I.

20. Reference answered.