

**(1976) 01 DEL CK 0012**

**In the Delhi High Court**

**Case No :** Regular Second Appeal No. 230-D of 1966

Kishan Chand

APPELLANT

Vs

The Union of India and Another

RESPONDENT

**Date of Decision :** 20-01-1976

**Acts Referred:**

**Citation :** AIR 1976 Delhi 265 : (1976) ILR Delhi 457

**Hon'ble Judges :** T.V.R. Tatachari, C.J.; M.R.A Ansari, J

**Bench :** Division Bench

**Advocate :** D.N. Nijhawan, Urmila Kapoor and R.P. Kathuria, for the Appellant;

## Judgement

T.V.R. Tatacharj, C.J.

(1) This Regular Second Appeal has been filed against the judgment, dated January 27, 1966, of Shri M. L. Jain. A.dditional District Judge. Delhi, in Regular Civil Appeal No. 37 of 1965, dismissing the said appeal and confirming the judgment and decree of Shri Dev Raj Khanna, Subordinate Judge 1st Class, Delhi, dated January 21, 1965, whereby the learned trial Judge dismissed Suit No. 97 of 1962.

(2) The Regular Second Appeal came up for hearing originally before I. D. Dua, C.J, on January 19, 1968. One of the points raised in the second Appeal related to the virus of Rule 104 of the Displaced Persons (Compensation and Rehabilitation) Rules. 1955 (hereinafter referred to as "the Rules"). There was a decision of a Single Bench of this Court in W. C. Rahbar v. Union of India. C.W.P. No. 5S7-D of 1964, decided on May II. 1967(1), in which the aforesaid rule had been struck down as being ultra virus of Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954 (hereinafter referred to as "the Act"). It was submitted before the learned Chief Justice that the said decision was the subject matter of Letters Patent Appeal No. 22 of 1968 which was pending at that" time. In the circumstances, the learned Chief Justice directed that this Regular Second Appeal be posted before a Division Bench along

with the aforesaid Letters Patent Appeal from the Judgment in Civil Writ Petition No. 587-D of 1964. However, the said Letters Patent Appeal was heard and disposed of separately by a Division Bench, H. R. Khanna C.J. and S. N. Shankar J. on August 6, 1971, and the learned Judges referred the matter to a Full Bench. The case was then heard and disposed of by a Full Bench consisting of V. S. Deshpande, P. S. Safer and B. C. Misra JJ. on February 25, 1972 (vide) Union of India & Others v. M/s. Navin Bharat & others, 1972 P.L.R. (Delhi Section) 203(2) holding that the said rule was *infra* section 24 of the aforesaid Act. The Second Appeal has, Therefore, come up for hearing before us now on the other points raised therein.

(3) The appellant herein, Kishan Chand, claiming to be a displaced person with a verified claim and an allottee of the first floor of the House No. III/474/979, Katra Shafi, Phatak Habhash Khan. Delhi, filed the aforesaid suit, No. 97 of 1962, for a declaration to the effect that an order of the Managing Officer, dated November 22, 1957, an order of the Additional Settlement Commissioner in appeal, dated January 31, 1958, an order of the Settlement Commissioner in revision, dated December 28, 1959, and an order of the Central Government in revision u/s 33 of the Act, dated June 13, 1960, holding and ordering that Shrimati Attar Kaur, widow of Shri Ganesh Dass, was eligible for the transfer of the entire house in dispute, were all illegal, void, without jurisdiction, arbitrary, malicious, and against principles of natural justice, and hence inoperative and not binding on him. The Union of India through the Secretary Ministry of Rehabilitation, was impleaded as defendant I and Shrimati Attar Kaur was impleaded as defendant 2 in the suit,

(4) The house mentioned above was evacuee property was acquired by the Central Government u/s 12 of the Act on June 3, 1955, and had been placed in the Pool u/s 14 of the said Act. The whole house was valued at Rs. 6,727 and it is common ground that since the value was less than Rs. 10,000 the house was allottable and not salable.

(5) The case of Kishan Chand was that while he was allotted the first floor, Shri Ganesh Dass, husband of Shrimati Attar Kaur, who was also a holder of a verified claim, was allotted the ground floor of the aforesaid house, that on his death, the allotment, which was in the nature of a license, came to an end, and that the occupation of the ground floor by Attar Kaur thereafter thus became unauthorised occupation and, as such, could not be regularised by the Managing Officer or any other officer. Accordingly, Kishan Chand applied for transfer of the whole house to him, or in the alternative, for transfer to him of the first floor which, according to him, was an independent and separate unit, and for disposal of the ground floor according to law. He admitted that the verified claim was in the name of his father, but contended that the same was in respect of certain ancestral property to which he, as a member of the joint Hindu family, was also entitled, and that on the death of his father he became entitled to the same as an heir, and that in the circumstances it was incumbent and obligatory on the

Government to permanently transfer the whole of the house or in any case to transfer the first floor to him and dispose of the ground floor according to law.

(6) On November 22, 1957, the Managing Officer passed an order (Exhibit P. 30) that the entire house be transferred to Shrimati Attar Kaur as the compensation due to her viz. Rs. 5,629 was nearer to the value of the house viz. 6,727. Against that order, Kishan Chand filed an appeal u/s 22 of the Act- The appeal was heard by Mr. K. S. Kane, Additional Settlement Commissioner, who dismissed the same by his order, dated January 31, 1958 (Exhibit P. 5). Against that appellate order, Kishan Chand filed a revision on October 8, 1959, u/s 24 of the Act, Along with an application for condensation of the delay In filing the same. Shri G. B. Lalwani, Settlement Commissioner, with delegated powers of the Chief Settlement Commissioner, by his order (Exhibit P. 6) dated December 28, 1959, held that there was no sufficient ground for condensation of the delay" and that the revision which had to be filed within thirty days under rule 104 of the Rules, was clearly barred by limitation. Kishan Chand then preferred a revision to the Central Government u/s 33 of the Act, and the same was rejected by Shri S. Prasada, Deputy Secretary to the Government of India, Ministry of Rehabilitation, by an order (Exhibit P. 17) dated May 6. 1960."

(7) Kishan Chand thereupon filed the suit, No. 97 of 1962. for a declaration that all the aforesaid orders were illegal and without jurisdiction and were not binding on him. The trial Court framed the following issues :

"1. Whether the defendant No. 2 was lawful occupant of the portion in question at the time of allotment in her favor ? O.P.D. 2.

2. Whether the first floor of the house was allottable and divisible property as alleged in para 6 of the plaint ? O.P.P.

3. Whether the order of the Managing Officer, dated January 22, 1957, that of the Additional Settlement Commissioner, dated January 31, 1958, that of the Settlement Commissioner, dated December 28, 1959, and the Deputy Secretary, dated June 13, 1960, are illegal, void, without jurisdiction and as such inoperative against the plaintiff on the grounds mentioned in para 10 of the plaint ? O.P.P.

(NOTE: This issue will also include as to whether the said ground exist in fact ?)

4. Whether the jurisdiction of the civil court is barred in view of the provisions of Act 44 of 1954 ? O.P.D.

5. Whether the plaintiff has no locus standi to file the suit? O.P.D.

6. Whether the notice u/s 80 CP.C. was served upon the defendant No. 1 ? If not. to what effect ? C.P.D,

7. Whether the suit in the present form is hit by the proviso to Section 42 of the Specific Relief Act and as such the suit is not maintainable ? O.P.P. (Onus objected to).

## 8.Relief."

(8) By his judgment dated January 21, 1965, Shri Dev Raj Khanna, Subordinate Judge 1st Class, Delhi, held that Shri" mati Attar Kaur was lawful occupant of the ground floor at the time of the allotment in her favor, that there was no ground to interfere with the view taken by the officers concerned that the house in question was not divisible, and they were, Therefore, justified in allotting the entire house to Shrimati Attar Kaur, that the impugned orders were neither illegal nor without jurisdiction nor mala fide, that the jurisdiction of the Civil Court was barred u/s 36 of the Act, that the plaintiff, Kishan Chand, had locus standi to sue on the ground that the impugned orders were illegal and without jurisdiction, that notices u/s 80 of the CPC were duly served on the first defendant, and that the suit was not hit by the proviso to Section 42 of the Specific Relief Act and as such was maintainable^ In the result, he dismissed the suit.

(9) Against that judgment and decree, Shri Kishan Chand preferred an appeal, R.C.A. No. 37 of 1965. By his judgment and decree, dated January 27, 1966, Shri M. L, Jain, Additional District "Judge, Delhi, dismissed the said appeal. It is against that appellate judgment and decree that the present Regular Second Appeal has been filed by Kishan Chand.

(10) The house in question, which is situate in an area of about 80 square yards, consists of a, ground floor and a first floor. Admittedly, it was evacuee property and was acquired by the Central Government and placed in the pool u/s 14 of the Act. It is common ground that it was valued at Rs. 6,727 and being less than Rs. 10,000 it was allottable and not salable. It appears from Exhibit P. 30 that the father of the appellant Kishan Chand held a verified claim in respect of certain ancestral property alleged to have been left in Pakistan, that as per statement given by Kishan Chand there were five legal heirs to his father, and that Kishan Chand thus became entitled to a 1/5th share of the compensation viz. Rs. 2.630/8.00 on his father"s death. It is not disputed that Kishan Chand was an allottee of the first floor of the house. As regards Shrimati Attar Kaur, the case of Kishan Chand in his plaint was that the ground floor was allotted to her husband Ganesh Dass who held a verified claim, and that on the death of Ganesh Dass Shrimati Attar Kaur who continued to be in occupation of the ground floor was only an unauthorized occupant and as such was not entitled to the transfer of the ground floor. This aspect was the subject matter of Issue No. 1, and: both the trial Court and the lower appellate Court, on a consideration of the oral and documentary evidence adduced by the parties, held that Ganesh Dass had died long before the partition of the country in 1947, that it was Shrimati Attar Kaur herself who was the allottee of the ground floor and not her husband Ganesh Dass, and that she was a lawful occupant of the ground floor. Shri Nijhawan, learned counsel for the appellant, sought to question the said finding by pointing out that in Exhibit P.30 which is a, note in the departmental file of the date November 22, 1957, it was observed that "Shri Ganesh Dass, the allottee, is dead". This description of Ganesh Dass as allottee was considered by both the

trial Court and the appellate Court, and it was held that the said observation was obviously a mistake in view of the evidence on the record. In view of the concurrent finding that Ganesh Dass had died long before the partition of the country, the lower courts were justified in considering that the description of Ganesh Dass as an allottee of the ground floor of the house was clearly a mistake. We find no valid ground for interfering with the concurrent findings of the lower Courts on Issue No. 1 that Shrimati Attar Kaur was herself the allottee of the ground floor and was in lawful occupation thereof.

(11) Shri Nijhawan next contended that the house was divisible and the first floor was an independent and separate unit having a separate stair-case, and that the officers of the Rehabilitation Department were not justified in holding that the house was indivisible. This aspect was the subject matter of Issue No. 2 in the suit. Dealing with the said issue, the trial Court referred to Exhibits P. 25 to P. 29 which are Government instructions from time to time about the division of evacuee property according to which the question of horizontal division of property is to be determined by the officers concerned under the Act. The trial Court observed that those officers have held that the house in dispute was not divisible and as such have allotted the same to Shrimati Attar Kaur as a whole, that the civil court would not substitute its own judgment in the place of the view taken by the officers, that u/s 27 of the aforesaid Act, the orders of those officers are made final and u/s 36 of the Act, the jurisdiction of a civil court to entertain any challenge to those orders has been taken away, that the determination as to whether a particular property is divisible or not should be left to the officers concerned unless some palpable and arbitrary discretion had been exercised by them or their order was otherwise mala fide or in breach of rules, and that considering the small nature of the property in question, it was unable to hold that the view taken by the officers of the department was in any manner capricious or arbitrary. The appellate court also took the same view placing reliance on the decisions in *Sobha Ram v. Union of India*, 1964 P.L.R. 4, (3) and *Jetha Ram v. State of Punjab*, 1965 P.L.R. 8. (4) The appellate court also observed that no circumstance was pointed out to it which could lead it to hold that the view of the Rehabilitation authorities that the house was indivisible was illegal in any manner.

(12) Shri Nijhawan sought to argue that although the question as to whether the house in question was divisible or not was to be decided by the officers under the Act and the decision by the said officers was final u/s 27 of the Act, and although u/s 36 of the Act, the jurisdiction of a civil court to entertain any suit of proceeding in respect of any matter which the Central Government or any officer or authority appointed under the Act is empowered by or under the Act to determine was excluded, it has been well settled that a civil court would still have jurisdiction to entertain a challenge against the decision of an officer under the Act if he had acted without jurisdiction, that in the present case, it was the Managing Officer who decided that the house was indivisible, while the proviso to rule 30 of the Rules empowered only the Settlement Commissioner to determine

whether the house could be suitably partitioned, and that since the Managing Officer's determination was without jurisdiction, the lower courts erred in observing that they could not interfere with the determination by the Managing Officer. This argument cannot be accepted for the following reasons. In the first place, the proviso to Rule 30 does not state in so many words that it is only the Settlement Commissioner that can determine whether the property in question can be suitably partitioned. Shri Nijhawan was not able to point out any

(13) We are unable to see any infirmity in the reasoning of the lower courts. We have, Therefore, to proceed on the basis that the house was not divisible.

(14) The third contention of Shri Nijhawan was that the valuation of the house in dispute was made by the Valuation Officer, whereas it should have been determined by the Settlement Commissioner. This argument was addressed before the lower courts under Issue No. 3, but in a different manner. The judgments of the two courts show that the argument before them was that the valuation was made by the Valuation Officer whereas it should have been made by the Managing Officer under the law. The learned Subordinate Judge rejected the argument pointing out that according to the testimony of Public Witness 3. Anand Prakash, a clerk of the Regional Settlement Commissioner, it was the Managing Officer who directed the valuation of the property by him, the valuation was done by a Valuation Officer, who was specially qualified for the purpose, and thereafter the Managing Officer approved that valuation. He also pointed out that D.W- 1. Ram Chand, Section Officer, deposed that it was the Managing Officer who approved and as such fixed the valuation. The learned Additional District Judge also rejected the argument pointing out that the appellant (plaintiff) Kishan Chand himself admitted in his statement that he never raised any objection with regard to the valuation of the house in dispute before any officer of the Rehabilitation Rehabilitation Department, that even otherwise no objection was found to have ever been made by him regarding valuation, that as held in Balvant Singh and others, v. Deputy Chief Settlement Commissioner and others. 1965 P.L.R. 1072,(5) it was not necessary for the statutory authority to call the occupant at the initial stage before fixing the value in every case and it was necessary only if the occupant was found eligible for allotment of the house, that if the party had any objection to the valuation he could prefer his objection, and that Kishan Chand having not done so was not entitled to challenge the valuation made by Valuation Officer and approved by the Managing Officer. We find that the appellant (plaintiff) merely pleaded in his plaint that the value of the property in question had not been assessed by a competent authority, and did not specify who, according to him, was the competent authority. In the grounds of appeal in the lower appellate court, the grievance made in ground No. 6 was that the valuation was not fixed by the Managing Officer. When the plaintiff Kishan Chand (Appellant herein) had thus taken a definite stand in the lower courts that the valuation should have been made by the Managing Officer and not by the Valuation Officer, it would not be fair to the opposite party if he is allowed to take a different stand in the second appeal and contend that the

valuation should have been made by the Settlement Commissioner. If the said contention had been urged before the lower courts, the opposite party would have had the opportunity to meet the contention by showing that the approval of the Managing Officer was sufficient by itself because of some authorization in that behalf or that there was in fact a valuation by the Settlement Commissioner himself by producing the necessary record. So far as the Managing Officer is concerned, both the courts have concurrently found that the valuation was initially made by the Valuation Officer and the same was approved by the Managing Officer. The proceedings before the Rehabilitation Department proceeded on the basis of the said valuation and the appellant (plaintiff) did not question either the quantum or the validity of the fixation of the valuation at any stage before the departmental authorities. It was of course open to him to challenge the quantum or the validity in the suit filed by him. But, as stated above, he did not put forward any specific plea that the valuation should have been determined by the Settlement Commissioner. On the other hand, he took the stand that it was the Managing Officer that had to determine the valuation. and the lower courts have found that the Managing Officer had in fact approved of the valuation made by the Valuation Officer and thus determined the valuation. We are, therefore; unable to accept the contention of the learned counsel.

(15) The fourth contention of Shri Nijhawan was that in the case of claimants who have verified claims, it is the Regional Settlement Commissioner or the Settlement Commissioner who has the power to determine the compensation and not the Managing Officer, "the learned counsel referred us to Exhibit P. 30. It appears to be a departmental note by some Assistant. It was stated therein that he was called by the Regional Settlement Commissioner and ordered to report the eligibility to the property, that the property in question was declared evacuee property, that there were two occupants viz Shrimati Attar Kaur and Kishan Chand, that the balance of compensation due to Shrimati Attar Kaur was Rs. 5,629.00 , that Kishan Chand was himself a non-claimant, but his father was a claimant to the tune of Rs. 1,06,320.00 or which compensation due was Rs. 21.151.00 , that after some adjustments the balance due was Rs. 13,151.00 , that as per statement given by Kishan Chand there were five legal heirs (Le. widow and four sons) and so the share of Kishan Chand would be Rs. 2.6308.00 only, that the Managing Officer might see that Shri Kishan Chand being an allottee, only his share had to be taken into account for determining eligibility, and if so, Shrimati Attar Kaur's compensation was nearer to the value of the property and she was thus eligible for allotment. The Managing Officer, Shri R. N. Malhotra, approved the said suggestion by writing the word "yes" at the bottom of the note" Relying on the said document, the learned counsel argued that the Managing Officer had no jurisdiction to determine the net compensation due to a claimant because under sections 7 and 8 of the Act, it is the Regional Settlement Commissioner or the Chief Settlement Commissioner that has the jurisdiction to determine the compensation. Exhibit P. 30 does not read like determination of

compensation by the Managing Officer. An Assistant just reported setting out the facts including the amounts of compensation due to the two occupants, and making a suggestion that since Attar Kaur's compensation was nearer to the value of the property in question she would be eligible for the allotment. The said suggestion was approved by the Managing Officer by writing the word "yes" at the bottom of the note. Be that as it may, the point about want of jurisdiction or power to determine the compensation was not raised in the plaint specifically, no issue was got framed, and no such contention was urged before the trial court or before the lower appellate court. The point involves consideration of facts and is not a pure question of law, and, as such, cannot be allowed to be raised for the first time in this second appeal.

(16) The fifth contention was "that no notice was issued and no hearing was given to either of the parties before deciding the question of eligibility as was done in Exhibit P. 30, and, Therefore, the determination of eligibility in Exhibit P. 30 was invalid. In support of his contention the learned counsel referred us to certain observations of Anand J. in paragraphs 51,71 and 89 of his judgment in Suit No. 687 of 1967, pronounced on January 8, 1973, and also to the decision in Karnam Singh v. Government of India, Ministry of Rehabilitation, New Delhi and others 1964 P.L.R. 1055.(6). This point again was not specifically pleaded in the plaint nor made the subject matter of an issue nor urged before the lower courts. It cannot, Therefore, be allowed to be raised for the first time in Second Appeal.

(17) The sixth contention of the learned counsel was that u/s 22 of the Act, it is the Settlement Commissioner who can hear an appeal against an order of the Managing Officer under the Act, that Shri K. S. Kane, who heard the appeal filed by Kishan Chand against the order (Exhibit P. 30) of the Managing Officer, dated November 22, 1957, was only Additional Settlement Commissioner, and was not, Therefore, competent to hear the appeal, and that his order, dated January 31, 1958, (Exhibit P. 5) was one passed without jurisdiction. This contention was urged before the lower courts and .was rejected by them. in our opinion rightly. It is true that u/s 22 of the Act, the appeal was to be heard by the Settlement Commissioner. Exhibit D. 3 is a memorandum, dated April 3, 1957, issued by the Central Government. stating that it has been decided that Shri K. S. Kane, Assistant Settlement Commissioner, should be designated as Additional Settlement Commissioner, that he will be responsible for the various items of work enumerated In the said memorandum under the over-all supervision of the Custodian-cum-Regional Settlement Commissioner, and that he will also dispose of appeals and revisions from the orders of the Managing and settlement Officers under the provisions of the Act. Exhibit D. 2 (same as Exhibit P. 14) r-" a Gazette notification, dated April 15.. 1957. issued by the Central Government in exercise of the powers conferred by sub-section ( I ) of Section 3 of the Act appointing Shri Kane as Additional Settlement Commissioner for the purpose of performing the functions assigned to such Commissioner by or under the said Act with effect from the date he took over charge of his office. Subsequently, another Gazette notification, Exhibit D. I was issued on May 29, 1957. by which Shri Kane,



Assistant Settlement Commissioner, in the Office of the Regional Settlement Commissioner, Delhi, was appointed as Additional Settlement Commissioner in the same office with effect from April 1, 1957. until further orders. The argument of Shri Nijhawan was that Section 34(3) of the Act empowers a Settlement Commissioner to delegate all or any of his powers under the Act to an Additional Settlement Commissioner, that no such order of delegation had been made in favor of Shri Kane who was only an Additional Settlement Commissioner, and that he was not, Therefore, competent to hear the appeal filed by Kishan Chand u/s 22 of the Act. There is no force in the argument. Sections 3(1) and 34(3) of the Act read as follows :

"3Appointment of Chief Settlement Commissioner, etc.

(1)The Central Government may, by notification in the Official Gazette, appoint a Chief Settlement Commissioner, a Joint Chief Settlement Commissioner, a Deputy Chief Settlement Commissioner and as many Settlement Commissioners. Additional Settlement Commissioner, Assistant Settlement Commissioners. Settlement Officers, Assistant Settlement Officers and Managing Officers as may be necessary for the purpose of performing the functions assigned to them by or under the Act and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

(2).....

"34.Delegation of powers

(1).....

(2).....

(3)Subject to the provisions of this Act and of the rules and orders made there under, a Settlement Commissioner may, by general or special order, delegate all or any of his powers under this Act to an Additional Settlement Commissioner, an Assistant Settlement commissioner, a Settlement Officer or an Assistant Settlement Officer, subject to such conditions, if any, as may be specified in the order."

(18) Section 3(1) of the Act empowers the Central Government to appoint various officers, infer alia, Additional Settlement Commissioners, and also to provide, by general or special order, for the distribution or allocation of work to be performed by them under the Act. It has to be noted that while Section 3(1) provides or requires appointments of the various officers to be made by notification in the official Gazette, it provides that the distribution or allocation of work be made general or special order. It is obvious that it was in the exercise of the said power u/s 3(1) that the Central Government issued a memorandum (Exhibit D. 3) dated April 3, 1957, allocating to Shri Kane the work of disposal of appeals and revisions from the orders of the Managing and Settlement Officers under the provisions of the Act. Thus, Shri Kane, who was appointed as Additional Settlement Commissioner by a notification (Exhibit D. 2) published in

the official Gazette, was duly allocated the work of disposal of appeals from the orders of the Managing Officer by an order. When such allocation was made by the Central Government itself u/s 3(1), there was no need for any delegation by the Settlement Commissioner u/s 34(3). u/s 3(1), the Central Government can allocate work to the Settlement Commissioner as well as to the Additional Settlement Commissioner, and u/s 34(3) the Settlement Commissioner can delegate what has been allocated to him u/s 3(1) to an Additional Settlement Commissioner. Section 34(3) clearly states that the said delegation is subject to the provisions of the Act, and, Therefore, the delegation u/s 34(3) is subject to the allocation of work by the Central Government u/s 3(1) of the Act. It is thus clear that by reason of the allocation by the Central Government Shri Kane was quite competent to dispose of the ^appeal filed by Kishan Chand u/s 22 of the Act against the order (Exhibit P. 30) passed by the Managing Officer.

(19) The seventh contention was that the revision filed by Kishan Chand u/s 24 of the Act was to be heard by the Chief Settlement Commissioner, that Shri G. B. Lalwani, who disposed of the revision, was only Settlement Commissioner and was, Therefore, not competent to hear and dispose of the revision, and that his order (Exhibit P. 6), dated December 28, 1959, was consequently one passed without jurisdiction. It is true that Section 24(1) confers revisional power on the Chief Settlement Commissioner. Exhibit P. 15 is a Gazette Notification, whereby Shri L. J. Johnson, the then Chief Settlement Commissioner, in exercise of the powers conferred on him by Section 34(2) of the Act, delegated with immediate effect to various marginally noted officers, including Shri G. B. Lalwani, Settlement Commissioner, the power to hear revisions u/s 24 of the Act. The power to hear revisions u/s 24 were thus duly delegated to Shri G. B. Lalwani by the Chief Settlement Commissioner by the aforesaid Gazette Notification in exercise of the power u/s 34(2) of the Act. He was, Therefore, quite competent to dispose of the revision filed by Kishan Chand. Shri Nijhawan pointed out that in signing his order (Exhibit P. 6)- Shri Lalwani described himself as Settlement Commissioner and not as Chief Settlement Commissioner. Shri Lalwani did the right thing in signing as Settlement Commissioner as Exhibit P. 15 only empowered him to hear revisions and did not appoint him as Chief Settlement Commissioner. There is thus no force in the contention of the learned counsel.

(20) The eighth contention of the learned counsel was that Section 33 of the Act empowered the Central Government to exercise revisional powers, that the revision filed by Kishan Chand u/s 33 of the Act was disposed of by Shri S. Prasada, Deputy Secretary to the Government of India, that the Central Government had not delegated its powers u/s 33 to him as provided in Section 34(1) of the Act, that Shri Prasada was not. Therefore, competent to exercise the power of revision u/s 33, and that his order (Exhibit P. 17), dated May 6, 1960, was consequently one passed without jurisdiction. There is no force in this contention also. Exhibit P. 18 is an Office Order, dated June 23, 1959, issued by the Secretary, Ministry of Rehabilitation, Government of India, whereby Shri S. Prasada, Deputy Secretary, Ministry of Rehabilitation, was authorised to deal with

cases u/s 33 of the Act, with effect from March 12, 1959. When the aforesaid order was pointed out, the learned counsel sought to argue that it was only an office order and had not been gazetted as required by the provision in Section 34(1) of the Act. It is true that Section 34(1) empowers the Central Government to direct by notification in the Official Gazette that any power exercisable by it under the Act may be exercised by such officer subordinate to it as may be specified in the notification. But, the plea that the authorization was not gazetted was not taken specifically in the trial court. In his plaint, Kishan Chand merely pleaded in a general manner that the Deputy Secretary had not the delegated powers of the Central Government. In reply there to, it was averred in paras 8, 9(h) and 10 of the Written statement filed on behalf of the Union of India (defendant 1) that the order u/s 33 was rightly made, that the Deputy Secretary rightly exercised his power in dismissing the revision u/s 33, and that the officer who passed the order was fully competent to do so. The Office Order (Exhibit P. 18) appears to have been produced and marked on behalf of the plaintiff Kishan Chand. He also got A marked another order, Exhibit P.20, passed by Shri Prasada in another case u/s 33 of the Act. Yet, the objection that the authorization was only by an Office Order and not by a Gazette notification was not raised or urged in the trial Court and consequently the same was not considered by the learned Subordinate Judge in his judgment. If the aforesaid objection had been specifically put forward at the earliest stage in the trial court, the opposite party would have had the opportunity to adduce necessary evidence and meet the objection. It was raised in the grounds of appeal but does not appear to have been urged before the lower appellate court. It is an established principle that objection as to competency or jurisdiction of an officer or a court should be specifically put forward at the earliest stage in the proceedings so that the opposite party would be able to explain or rectify the defect, if any. Raising it at the appellate stage would place the opposite party at a disadvantage, and courts do not permit the same in the interest of justice and fair play to the opposite party. The plea that there was no gazette notification is not entirely one of law, but involves an inquiry into the fact as to whether there was such notification or not. In the circumstances, the learned counsel for the appellant cannot be permitted to plead that the authorization of Shri Prasada was not by a Gazette Notification.

(21) The ninth contention was that for the purposes of transfer, the first floor and the around floor should have been valued separately. "This plea was not urged in the lower courts. Even otherwise, in view of the finding that the house was indivisible for purposes of transfer, the aforesaid contention does not arise.

(22) The tenth contention on behalf of the appellant was that notice ought to have been given to the appellant before the valuation of the property was determined, and that no such notice was given to him. "This contention has no force. As pointed out by the lower courts, the appellant had not challenged in any manner the quantum or the validity of the valuation before the Departmental authorities under the Act. Even if the valuation had been fixed without notice to

the parties concerned, there was nothing to prevent the appellant from questioning the valuation before the authorities if he had any objection thereto. But, he did not do so. Apparently, he was satisfied with the valuation fixed by the authorities and therefore- the objection that no prior notice was given to the parties has no significance or bearing on the ultimate decision of his case as pointed out by the lower courts.

(23) The eleventh contention was that the order (Exhibit P.6) of Shri Lalwani in the revision filed u/s 24(1) of the Act rejecting the said revision as barred by time was erroneous inasmuch as rule 104 of the Rules does not apply to revisions filed u/s 24(1) of the Act as held by the Full Bench of this Court in *Union of India and others v. M/s. Navin Bharat and others*, 1972 P.L.R. (Delhi Section) 203(2). The Full Bench held in the said case that the period of limitation of 30 days prescribed by rule 104(1) does not apply to an application for revision presented u/s 24(1) at all, but applies only to an application for revision filed u/s 24(4). In view of the said decision, the order of Shri Lalwani (Exhibit P. 6). dated December 28, 1959, whereby he rejected the revision filed by Kishan Chand u/s 24(1) of the Act, was incorrect and erroneous. However, even if the order (Exhibit P. 6) of Shri Lalwani is bad, it does not help the appellant Kishan Chand, because he preferred a revision against that order to the D Central Government, which, by its order (Exhibit P. 17), dated May 6, 1960, rejected the said revision filed by Kishan Chand u/s 33. The order (Exhibit P. 17) v the Central Government was made u/s 33. The said section empowers the Central Government to call for the record of any proceedings under the Act at any time and pass such order in relation thereto as in its opinion the circumstances of the case require and is not inconsistent with any of the provision contained in the Act or of any order made there under. As pointed out by the Full Bench referred to above, even though Section 33 empowers the Central Government to act suo motu, in actual practice, the knowledge that some order of the officers under the Act has to be reviewed or revised would be obtained only from some interested person, and the usual method by which the information would be given by such a person would be by way of an application. Thus, the revision application filed by Kishan Chand u/s 33 was only by way of furnishing information that the orders of the lower officers under the Act required to be revised. On receiving information in that manner u/s 33, the Central Government considers the entire case on merits and passes such order as it thinks fit in the circumstances of the case. Its scrutiny is not limited to the correctness or validity of the order of the officer immediately below, namely, the order in the revision u/s 24(1). Its order is made on a scrutiny of the entire case and not merely the order made u/s 24(1). It, Therefore, follows that even if the order (Exhibit P. 6) passed by Shri Lalwani in the revision u/s 24(1) was bad, the order (Exhibit P. 17) of the Central Government in the revision u/s 33 does not fall with it, but continues to hold good between the parties.

(24) The twelfth contention was that the order of the Central Government (Exhibit P. 17) did not give any reasons and was, Therefore, invalid. There is no

force in this contention. The orders of the Managing Officer, the Additional Settlement Commissioner, and the Settlement Commissioner, were all in favor of Shrimati Attar Kaur and upheld her claim for transfer of the entire house to her. The Central Government confirmed the same. The orders of the Managing Officer (Exhibit P 30) and the Additional Settlement Commissioner (Exhibit P.5) contained the reasons for which they upheld the claim of Shrimati Attar Kaur and rejected the claim of Kishan Chand. The Central Government affirmed the same by rejecting the revision presumably accepting those reasons. In the case of such affirmation, there was no need for the Central Government to repeat the reasons in its order. As pointed out by the Supreme Court In Bharat Raja Vs. The Union of India (UOI) and Others, , if detailed reasons had been given in the orders of the lower officers, the higher authority which accepts those reasons may affirm the orders of the lower officers without repeating the reasons. There is thus no force in the contention of the learned counsel.

(25) The thirteenth and the last contention on behalf of the appellant was that in any event the entire house should not have been directed to be transferred to Shrimati Attar Kaur as Kishan Chand was entitled to the first floor in view of the provision in Rule 30 of the Rules. This contention has to be considered on the basis of the following findings of fact. Both Kishan Chand and Shrimati Attar Kaur are holders of verified claims and are allottees of the first floor and the ground floor respectively. The house in question has been found to be indivisible. Its value was determined as Rs. 6,727, i.e. less than rupees ten thousand. It is thus acquired evacuee property, the value of which does not exceed ten thousand rupees and hence ordinarily allottable and not salable within the meaning of Rule 22(1)(a). The balance of compensation due at the relevant time to Kishan Chand was Rs. 2,630/8.00 , while the balance of compensation due to Shrimati Attar Kaur was Rs. 5,629. Rule 30 is the rule which deals with payment of compensation where an acquired evacuee property which is an allottable property is in occupation of more than one person as in the present case. It reads as follows:

"30.Payment of compensation where an acquired evacuee property which is an allottable 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 allottable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and the other persons may be allotted such other ac- quired evacuee property which is allottable as may be available:

PROVIDED that where any such property can suitably be partition- ed, the Settlement Commissioner shall partition the property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation- corporation payable to him.

Explanation i -The provisions of the rule shall also apply where some of the

persons in occupation of any acquired evacuee property which is an allottable property hold verified claims and some do not hold such claims.

Explanation ii 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 member of the family may be adjusted against the value of the property."

(26) The rule consists of the main part, a proviso and two Explanations. The two Explanations are clearly not applicable to the present case, and we need consider only the main part and the proviso. The main part provides that if more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allottable property, it should be offered to the person whose net compensation is nearest to the value of the property, and the other persons may be allotted such other allottable acquired evacuee property as may be available. The proviso deals with a situation where such property can suitably be partitioned, and states that such property should be partitioned and a portion allotted to each of the occupants having regard to the net compensation payable to him. In the present case, the house in question has been held to be indivisible, and so the proviso is not attracted.

(27) Shri Nijhawan pointed out that Shri Oheroi, Managing Officer, who was examined as D.W. 7, had stated in examination-in-chief that the house was not divisible, but it was elicited from him in cross-examination that there were separate kitchens and lavatories in the two floors and that the two occupants were paying separate rents, and then contended that the house should in view of the said evidence be held to be suitably partible, and that the proviso was. Therefore, applicable. As stated earlier by us in dealing with the second contention, the two lower courts accepted the view taken by the Rehabilitation Authorities that the house was indivisible. The said concurrent finding of fact is binding in second appeal, and it is not open to the appellant to ask for a re-assessment of the evidence relating to the said concurrent finding of fact. In view of the said finding, the contention of the learned counsel for the appellant that the proviso to Rule 30 is attracted cannot, Therefore, be accepted.

(28) We are thus left with the main part of the rule which squarely applies to the facts of the present case. More than one person, namely, Kishan Chand and Shrimati Attar Kaur, are in occupation of the house which is an acquired evacuee property and is also an allottable property. Both of them hold verified claims. The balance of compensation due to Shrimati Attar Kaur (Rs. 5.629.00) is nearer to the value of the property (Rs. 6.727.00) than the balance of compensation due to Kishan Chand (Rs. 2.630/8.00). Consequently, the house has to be offered to Shrimati Attar Kaur as required by the main part of the rule. This is exactly what had been done by the Managing Officer, and the same had been affirmed by the

Additional Settlement Commissioner, the Settlement Commissioner, and the Central Government. The contention of the learned counsel that the entire house should not have been directed to be transferred to Shrimati Attar Kaur cannot be accepted.

(29) For the foregoing reasons, the Second Appeal fails and is dismissed. In the circumstances of the case, we direct the parties to bear their own costs.