

(1969) 12 DEL CK 0001

In the Delhi High Court

Case No : Estate Duty Reference Appeal No's. 1 of 1967 and 2 of 1963

Labh Chand and Another

APPELLANT

Vs

Controller of Estate Duty, New Delhi

RESPONDENT

Date of Decision : 02-12-1969

Acts Referred:

Citation : (1969) ILR Delhi 1130 : (1972) 83 ITR 538

Hon'ble Judges : V.S. Deshpande, J; Narain Andley, J; M.R.A Ansari, J

Bench : Full Bench

Advocate : B. Kirpal and Roshan Lal, for the Appellant;

Judgement

S.N. Andley, J. (Concurring)

(1) The main question for consideration is whether the compensation payable under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter referred to as "the 1954 Act", is property passing on the death of the deceased under the Estate Duty Act.

(2) Estate Duty Reference No. 1 of 1967 has been referred to this Bench by a Division Bench of this Court and Estate Duty Reference No. 2 of 1963 has been heard along with it. Both these references are being disposed of by this common judgment. Both these cases have come up before this Court on statements of case submitted in one case by the Central Board of Direct Taxes, New Delhi, and in the other by the Central Board of Revenue, New Delhi.

(3) In 1947 there had been large scale displacement of persons who were residents in territories which are known as West Pakistan and these persons, leaving their properties behind, had migrated to this country. In 1950 the Displaced Persons (Claims) Act was enacted. This Act, hereinafter referred to as the "1950 Act", provided for the registration and verification of claims of displaced persons in respect of immovable property in Pakistan. Section 2(a) of this Act defined "claim" as the assertion of a right to the ownership of or to any interest in any immovable property in West Pakistan. Section 5 of this Act

entitled a "displaced person to submit his claim to a Registering Officer for the registration of his claim to such property. Such claims were dealt with by Claims Officers u/s 6. The Claims Officers were to hold summary inquiry and to pass such orders as they thought fit in relation to the verification and valuation of such claims. After this verification and valuation had taken place, the displaced person held what is called a "'verified claim". This verified claim did not confer any rights upon the displaced person in relation to the properties left in West Pakistan and it only amounted to the acceptance of the assertion of the displaced person as to the ownership of the properties left in West Pakistan and the valuation of such properties. This Act was made in pursuance of the scheme of rehabilitation which was being worked "out by the Indian Government and which contemplated quasi permanent allotment of evacuee property to such of the displaced persons as owned immovable property in West Pakistan.

(4) Then came the 1954 Act which provided for the payment of compensation and rehabilitation grants to displaced persons and for the matters connected therewith. This Act came into force on October 9, 1954. Rules contemplated by this Act were framed on May 21, 1955 but they were published in the Official Gazette only on June 27, 1955. I will deal in greater detail with the provisions of this Act later after giving the facts of the two cases before us.

(5) Estate Duty Reference No. 1 of 1967 concerns the estate of Col. D. H. Rai, who was a displaced person, who died on June 3, 1955, that is, after the coming into force of the 1954 Act but before the publication of the Rules made there under. A return under the Estate Duty Act, 1953, was filed. Col. D. H. Rai had a verified claim for a sum of Rs. 6,38,038.00 An amount of Rs. 1,01,274.00, stated to be the compensation payable by the Government of India in respect of the verified claim, was added to the return as being dutiable under the Estate Duty Act by the Assistant Controller. On appeal, the contention of the Assistant Controller was upheld by the Central Board of Revenue. Upon an application, the Central Board of Direct Taxes, New Delhi, has referred the following two questions for the opinion of this Court :-

"(1)Whether, on the facts, and in the circumstances of the case, the compensation payable under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) in respect of the verified claim in the name of the deceased, was liable to estate duty as property passing on the death of the deceased under the Estate Duty Act ?

(2)If the answer to Question No. (1) is in the affirmative, whether on the facts and in the circumstances of the case and in view of the provisions of section 36 of the Estate Duty Act the valuation of compensation at Rs.1,01,274.00 was correct in law ?"

(6) Estate Duty Reference No. 2 of 1963 concerns the estate of late Bhagat Lachbmi Narain, who was a displaced person, and who died on May 15, 1956, that is, after the coming into force of the 1954 Act as also the Rules framed there

under. He had a verified claim for a sum of Rs. 12,42,960.00 in respect of the properties left in West Pakistan. In the return filed under the Estate Duty Act, a sum of Rs. 1,67,330.00 was added by the Assistant Controller on the ground that this amount represented the compensation payable to the deceased by the Government of India under the 1954 Act and the Rules framed there under and was dutiable under the Estate Duty Act. This decision was upheld in appeal by the Central Board of Revenue, New Delhi. Upon an application, the Central Board of Revenue has referred the following question for the opinion of this Court :-

"WHETHER, on the facts and in the circumstances of the case, the amount of Rs. 1,67,330.00 was correctly included in the principal value of the estate of the deceased for purposes of Estate Duty ?"

(7) The main question in both the references, as stated above, is whether the inclusion of the aforesaid two amounts was correct. These amounts have been included as property passing on the death of the deceased within the meaning of the Estate Duty Act. The contention of the assesseds in both the cases is that the compensation payable was not "property" which passed on death while the contention on behalf of the Revenue is that it is.

(8) The Estate Act Duty contains only an inclusive definition of "property" in sub-section (15) of section 2 which provides that "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method. The two Explanations to this sub-section are not relevant to the controversy. Sub-section (16) of section 2 speaks of "property passing on the death" as including property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation. The charging section is section 5 and it provides that "in the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property..which passes on the death of such person, a duty called "estate duty".....". Section 6 of the Act provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. The only other relevant section is section 36 which provides for the estimation of the principal value. Sub-section (1) provides that the principal value of any property shall be estimated to be the price which, in the opinion of the controller, it would fetch if sold in the open market at the time of the deceased's death.

(9) It is, Therefore, clear that it is property and property alone passing on the death of a deceased which would be subjected to estate duty and that what passes must be property at the time of death. If it is property which has passed, it will attract estate duty upon its principal value estimated on the basis of the value that it would have fetched if it had been sold in the open market at the time of the deceased's death.

(10) The contention on behalf of the Revenue has gone to the extent of saying that even a verified claim under the Displaced Persons (Claims) Act, 1950, is property within the meaning of the Estate Duty Act. This question came up before a Division Bench of the Punjab High Court in Murat Singh's case reported in (Estate Duty Cases). The scheme of the said 1950 Act was examined as also the objects and reasons of the relevant Bill. These objects empowered the Government to receive, register and verify claims of displaced persons in respect of immovable properties which they left behind in West Pakistan. The learned Judges came to the conclusion that the verification of the claim itself would not clothe the claimant with any interest in or right to any property in the form of compensation and the verified claim could not be considered to be "property" within the meaning of section 2(15) of the Estate Duty Act. The Punjab High Court relied, *infer alia*, upon the decision of the Supreme Court in *re. Amar Singh v. Custodian Evacuee Property, Punjabi*, where the incidents of a quasi-permanent allotment in pursuance of the East Punjab Evacuees (Administration of Property) Act, 1947, and the Administration of Evacuee Property Act, 1950 were examined. The Supreme Court took into consideration the fact that the quasi-permanent allotment was liable to cancellation at the hands of the Government. Taking the incidents of such allotment under the said Evacuee Acts into consideration, it was observed that a displaced land-holder to whom evacuee agricultural land has been allotted was in a definitely better legal position than the allottee of other kinds of property under the 1950 Evacuee Act but even so it was far short of what can be considered as being in itself "property" either in the widest sense or in a limited sense. The Supreme Court then took into consideration the 1954 Act and the Rules and the Sanad which is granted to a quasi-permanent allottee under rule 72(2) of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. They then observed:-

"THIS Sanad is the culmination of the hopes and expectations of allottees held out under the Press Communique dated 7th February, 1948, and confirms, if any, the view that until such stage has been reached the allottee has no such interest in the evacuee lands which can by itself constitute "property" within the meaning of the protected fundamental rights."

THE Supreme Court, Therefore, held that until the grant of the Sanad the allottee had no property "in the land allotted".

(11) I am in respectful agreement with the view expressed in Murat Singh's case that a mere verified claim under the 1950 Act is not "property". An observation is made, however, in this case that it was only when the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was enacted that any legal rights came into being in the matter of receiving compensation by displaced persons who had left their properties in West Pakistan and it is on this observation that counsel for Revenue has relied.

(12) "PROPERTY" in its wider sense may be described as something which is the subject-matter of a right and includes anything in action and any interest in real

or personal property, which includes a debt or an actionable claim. The legal conception of property involves the legal conception of existence somewhere and incorporeal property has no existence in nature and has, physically speaking, no locality at all. Even in Amar Singh's case. the right- to-possess of a quasi-permanent allottee was not held to be "property" so as to attract the protection of fundamental rights under the Constitution. In a Full Bench decision of the Allahabad High Court reported in re. Umrao Singh v. Kacheru Singh and others, the following meaning was given to "property" u/s 5 of the Transfer of Property Act :-

"THE word "property" may be used in the objective sense of a concrete thing which is the subject of ownership or other rights; or it may be used in the sense of the rights and interests of the owner or other person in that property. It is in the latter sense that the term is used in the Transfer of Property Act."

(13) In my view, it is in this sense that one has to determine "property" with reference to the Estate Duty Act. In other words, "property" is a concrete thing which is the subject of ownership or other rights. The interest of a person in such property will also be included in "property" by reason of section 2(15) of the Estate Duty Act. Although it is necessary that the property must have existence, it is not necessary that it should be definite, ascertained or determined.

(14) Now coming to the provisions of the 1954 Act, section 4 provides for the making of an application for payment of compensation within the time prescribed by it which is three months of the publication of a notification in that behalf. This section merely entitles a displaced person having a verified claim under the 1950 Act, hereinafter referred to as "the verified claimant", to make a claim for the payment of compensation under the 1954 Act. The only right conferred by this section is the right to claim or, in other words, the right to sue. A mere right of suit is not property, but a title to recover future property as has been observed by the Privy Council in (1871-72) in re : Syad Tuffuzzool Hossein Khan v. Rughoonath pershad. Before any compensation is paid to the verified claimant, the Settlement Officer has to determine u/s 5 the amount of Public dues recoverable from the verified claimant. After this has been done, the record of the case is forwarded by the Settlement Officer to the Settlement Commissioner who then proceeds to determine the amount of compensation u/s 7. Sub-section (1) of this section provides that on receipt of the application, the Settlement Commissioner shall make an enquiry in such manner as may be prescribed and having due regard to the prescribed scales of compensation; the nature of the verified claim and other circumstances of the case, shall ascertain the amount of compensation to which the applicant is entitled.

(15) A right or entitlement to get compensation arises for the first time after the Settlement Commissioner has ascertained the amount of compensation under this sub-section. Even this ascertainment is not the final determination of the compensation which is payable. The Settlement Commissioner is required by sub-section (2) of section 7 to deduct from the aforesaid ascertained amount, dues

recoverable from the verified claimant which may comprise of (a) the amount of public dues determined u/s 5; or (b) the amount, if any, payable to a banking company u/s 6 and the amount of a prior charge declared under the Displaced Persons (Debts Adjustment) Act, 1951; or (c) any unsecured debts payable by the verified claimant as may be communicated by the Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951. It is only after making these deductions that an order is to be made by the Settlement Commissioner under sub-section (3) of section 7 determining the net amount of compensation payable to the verified claimant. Then section 8 provides for the payment of the amount of net compensation from out of the compensation pool constituted u/s 14 of the Act and the form of payment may be either (a) in cash, or (b) in Government bonds, or (c) by sale of any property from the compensation pool to the verified claimant against the compensation payable, or (d) by any other mode of transfer to the verified claimant of any property from the compensation pool, or (e) by transfer of shares or debentures in any company or Corporation, or (f) in such other form as may be prescribed. Sub-section (2) of section 8 authorises the Central Government to make rules to provide for (a) the classes of displaced persons to whom compensation may be paid; (b) the scales according to which, the form and manner in which and the Installment by which compensation may be paid to different classes of displaced persons; (c) the valuation of all property, shares and debentures to be transferred to displaced persons; and (d) any other matter which is to be, or may be prescribed.

(16) The culmination of the hopes and expectations of the verified claimant is the order passed under sub-section (3) of section 7 determining the net amount of compensation payable to him. This order would be "property" just as any other adjudication or decree of a court. The property which actually comes into the hands of the verified claimant u/s 8 would also undoubtedly be "property", if the order under sub-sections (3) of section 7 determining the net amount of compensation is made during the life-time of the verified claimant or the property, as and by way of compensation, is received by him during his life time, they would be a part of his estate which would pass on his death to his successors in-interest because the successors-in-interest are included in the definition of a "displaced person" in the 1954 Act. The question, however, is whether they will be property within the meaning of the Estate Duty Act if the aforesaid order is not made or the aforesaid property is not received by the verified claimant during his life-time.

(17) The 1954 Act gave by section 4 to the verified claimant a right to make an application for the payment of compensation. This section merely confers a right to claim or a right to sue and such a right would not be property within the meaning of the Estate Duty Act. However, section 7 of the 1954 Act gives a right to the verified claimant to payment of compensation in any of the modes prescribed by section 8 if the net amount of compensation has been determined under sub-section (3) of section 7. The "property" is the net amount of compensation determined under this sub-section and the 1954 Act undoubtedly

confers a right on the verified claimant to get this net amount of compensation. If a verified claimant dies before such determination or payment, he will, in his life-time, still have interest in this net amount of compensation which is to be determined after his death. The mere fact that such determination had not been done during his life-time would not affect the question and, in any event, the verified claimant will have an interest in the net amount of compensation determined or to be determined under sub-section (3) of section 7 in his life-time which he was competent to dispose of and which would, by the force of section 6 of the Estate Duty Act, pass on his death. To put it shortly, the interest of the verified claimant in the net compensation determinable under subsection (3) of section 7 of the 1954 Act would be covered by the inclusive definition of "property" in sub-section (15) of section 2 of the Estate Duty Act.

(18) If a verified claimant dies after an order has been made under sub-section (3) of section 7 determining the net amount of compensation payable, it is only the estimated value of such determination at the time of death which will be subjected to estate duty. Similarly if the verified claimant dies after having received the compensation in any one or more of the modes prescribed by section 8, it will be only the estimated value at the time of his death of the property which has actually come into his hands which will be subjected to estate duty.

(19) Revenue has relied upon a decision of the Punjab High Court in re. R. M. Shahani v. Controller of Estate Duty, Delhi (Estate Duty Cases) where it has been observed :-

"A compensation claim is merely a decision made by a competent authority in respect of a claim made by a displaced person concerning his property left behind in Pakistan. The decision, when made, entitles the claimant to receive compensation the value of which is fixed according to precise rules."

IN this case the value of compensation receivable by the deceased had been determined under the 1954 Act and the Rules as Rs. 72,717 and it seems that this amount was the amount determined under sub-section (3) of section 7 of the 1954 Act. The contention on behalf of the assessed was not that such determination is not "property" but that such compensation claims are sold in the market and fetch roughly only half of their face- value. The Central Board of Revenue had found that there was no evidence to support this assertion and they levied estate duty upon the said amount. The High Court held that the Central Board of Revenue were, in the absence of evidence of market value, fully entitled to accept the face-value of the net compensation payable to the deceased as its estimated value within the meaning of section 36 of the Estate Duty Act. This case would not, Therefore, be of any help to the Revenue because the: controversy before us is different.

MYconclusions, Therefore, are :-

(1)that a verified claim under the Displaced Persons (Claims) Act, 1950 is not

property within the meaning of the Estate Duty Act;

(2)that the right to make a claim to compensation conferred by section 4 of the 1954 Act is a mere right to sue and is not property within the meaning of the Estate Duty Act;

(3)that it is only the order determining the net amount of compensation payable to the verified claimant under sub-section (3) of section 7 if passed during his lifetime or the property or properties received by the verified claimant u/s 8 of the 1954 Act during his lifetime which are property within the meaning of the Estate Duty Act, which will pass on his death; and

(4)that even if no order has been made under subsection (3) of section 7 of the 1954 Act during the lifetime of the verified claimant, his right or interest in the net compensation to be determined under sub-section (3) of section 7 of the 1954 Act would be property passing on his death within the meaning of the Estate Duty Act.

(20) It does not appear from the statements of case whether the amounts sought to be taxed had been determined under subsection (3) of section 7 of the 1954 Act before the death of the deceased. Therefore, as the questions are framed, they cannot be answered merely in the affirmative or negative-

(21) I answer the two question in Estate Duty Reference No. 1 of 1967 as follows :-

Q.No. 1 : The compensation payable under the Displaced Persons (Compensation and Rehabilitation) Act. 1954, in respect of the verified claim in the name of the deceased would be liable to estate duty as property passing on the death of the deceased under the Estate Duty Act only if such compensation represents the net compensation payable under an order under sub-section (3) of section 7 of the 1954 Act made either before or after his death.

Q.No. 2: The valuation of compensation at Rs.1,01,27.00 u/s 36 of the Estate Duty Act would be correct only if this amount is the estimated value u/s 36 of the net compensation determined under sub- section (3) of section 7 of the 1954 Act either before or after his death.

(22) I answer the question in Estate Duty Reference No. 2 of 1963 as follows :-

THE amount of Rs. 1,67,330.00 was correctly included in the principal value of the estate of the deceased for purposes of estate duty if this amount represents the estimated value u/s 36 of the net compensation determined under sub-section (3) of section 7 of the 1954 Act, either before or after his death.

(23) In the circumstances of the case, I would leave the parties to bear their respective costs in both the references.

V.S. Deshpande, J. (Concurring)

(24) (DELIVERING the Majority judgment)-Being displaced persons holding

verified claims, Colonel D. H. Rai and Bhagat Lachmi Narain became entitled to be paid compensation under the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (hereinafter called the Displaced Persons (C & R) Act, 1954) which came into force on 9th October 1954. Colonel D. H. Rai died on 3-6-1955 before the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (hereinafter called the Rules of 1955) made under the Act of 1954 were notified. Bhagat Lachmi Narain died 15-5-1956 after the Rules of 1955 had been promulgated on 27th June 1955.

(25) The first question for decision in both the references is whether the compensation payable to Colonel D.H. Rai and to Bhagat Lachmi Narain on the strength of their respective verified claims was in each case "property which passed on the death" of each of them so as to become liable to payment of estate duty u/s 5 read with sub-sections (15) and (16) of section 2 and section 6 of the Estate Duty Act, 1953 (hereinafter called the Estate Duty Act.)

(26) The second question for decision in both the Estate Duty References is how should the principal value of the property passing on the deaths of both of them be estimated having regard to section 36 of the Estate Duty Act.

QUESTIONNo1:--

CONSIDERATION of the first question falls into three parts, namely,

(A)What is the meaning of "property" in the Estate Duty Act ?

(B)Whether the compensation payable under the Displaced Persons (C & R) Act, 1954 is such "property" ?

(C)If so, whether it passed on the death of Colonel D. H. Rai and Bhagat Lachmi Narain ?

(A)The meaning of "property" has to be determined primarily in the light of the provisions of the Estate Duty Act. Section 5(1) of the said Act levies estate duty on "all property" which passes on the death of a person. It is not on any particular kind of property but on all property that the estate duty is leviable. This shows that the meaning of "property" is to be so wide as to include all possible kinds of property. This is why sub-section (15) of section 2 does not attempt to define "property" exhaustively. An exhaustive definition of "property" would be extremely difficult as it would have to comprehend every conceivable type of property. Sub-section (15) of section 2, Therefore, merely states that "property" includes any interest in property, movable or immovable, "etc.". This definition, Therefore extends the concept of "property" beyond what it includes. Its purpose is to show that the concept is wider than what is stated in sub-section (15) of section 2 which includes only a part of the said concept. The definition of "property" in the Estate Duty law of England is similar to the definition of "property" in our Estate Duty Act. it is instructive to see, Therefore, the width of the scope of the term "property in the English law as indicated by the following passage from the Elements of Estate Duty (1952) by C N. Beattie,

page 13 :

"THE expression "property", as used in the Finance Acts, is defined as including real and personal property and the proceeds of sale thereof respectively, and any money or investment for the time being representing such proceeds. Property attracting duty includes not only tangible property, but also equitable interests, debts and other choses in action, and indeed any rights capable of being reduced to a money value.

A right of action for damages possessed by a deceased is property liable to duty on his death. This includes a claim for damages for pain and suffering and loss of expectation of life in respect of a tort causing death, for which an action lies at the suit of the personal representatives under the Law Reform (Miscellaneous Provisions) Act, 1943. Damages awarded to a deceased's personal representatives or other claimant under the Fatal Accidents Act, 1846, in respect of a wrongful act causing death, are property; but they are not liable to estate duty on the death, because the amount is for the benefit of dependants and does not pass as part of the deceased's estate".

(27) In *Jones v. Skinner* Lord Langdale, M. R., described the word "property" as being "the most comprehensive of all the terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have". The learned authors of the *Air Commentaries on the Transfer of Property Act*, 4th Edition (1968) Volume 1, page 248, have expressed the view that it is in this comprehensive sense that the word "property" is used in the Transfer of Property Act. In foot-note (4) the decisions in support of this view are cited by them. In *The Smelting Company of Australia, Limited v. The Commissioners of Inland Revenue* while construing the word "property" in section 59(1) of the Stamp Act, 1891, observed as follows :

"IT has been often said by judges of very great experience that in, construing Acts relating to the revenue, the popular sense of words rather than their strict legal meaning should be looked at, and the reason for that is obvious. The object of taxing Acts has nothing to do with the strict legal meaning of words unless the words used are words of art, such as words which describe an estate in real property, or technical terms peculiar to English law."

THE popular or the dictionary meaning of "property" is very wide and, Therefore, the term "property" is apparently used in that wide sense in the Estate Duty Act in the same way as it has been used in the Transfer of Property Act, 1882.

(28) For the purposes of the Estate Duty Act, however, "property" must not be restricted to the life time of the deceased and the deceased must not be divested of it on his death. It must be capable of being inherited by his legal representatives. For the levy of estate duty u/s 5(1) of the Estate Duty Act is made only on such property that passes on the death of its holder. The "property" shall be "deemed to pass" even if it is not personally vested in the holder before his death provided that he was "competent to dispose of" the same

within the meaning of section 6 of the Act.

(29) (B) Is the compensation payable to a displaced person under the Displaced Persons (C & R) Act, 1954 "property" within the meaning of the Estate Duty Act ? The answer to this question depends on whether such compensation satisfies the criteria of property in the Estate Duty Act. A right to the payment of compensation was centered on all displaced persons holding verified claims by the Displaced Persons (C & R) Act, 1954, as would be apparent from its provisions. By its preamble it is an "Act to provide for the payment of compensation and rehabilitation grant to displaced person". Section 4 places a statutory duty on the Central Government to issue a notification not later than 30th June 1955 requiring all displaced persons holding verified claims to make applications for payment of the compensation. u/s 7, the Settlement Commissioner ascertains the amount of compensation payable to such an applicant according to the scales of compensation prescribed in Appendix Viii to the Rules of 1955 and after deducting there from the public dues payable by the displaced persons, makes an order determining the net amount of compensation payable to the applicant. This right to the payment of compensation has been vested in the displaced persons holding verified claims and is a vested interest within the meaning of section 19 of the Transfer of Property Act. For, there is no uncertainty regarding the title of a displaced person holding a verified claim to the payment of compensation. It is an indefeasible statutory right conferred on him by the Act. There is no discretion left to the Central Government or any of the authorities acting under the Act to deny compensation to any such person. If any of them were to refuse to perform their statutory duty of paying compensation, then the displaced person entitled to such payment may be able to obtain a writ of mandamus under Article 226 of the Constitution to compel the authority concerned to pay compensation to him. In *Munilal v. State of Orissa* such a writ was issued to compel the Government to recognise the petitioner's right to pension on the basis of statutory rules and to fix it accordingly.

(30) In a recent important decision in *Anismnic Ltd. v. Foreign Compensation Commission* the House of Lords was dealing with the right of compensation conferred by the Foreign Compensation (Egypt) (Determination and Registration of Claims), Order, 1962, article 4(1) of which was worded as follows :

"THE Commission shall treat a claim under this part of the Order as established if the applicant satisfies them of the following matters, etc."

LORD Reid observed as follows : "The effect of the Order was to confer legal rights on persons who might previously have hoped or expected that in allocating any sums available discretion would be exercised in their favor". Lord Pearce expressed the same view regarding the effect of Article 4 of the Order in the following words: "It gave no general discretion at all. If the applicant satisfies them of certain listed matters, the commission shall treat the claim as established". The majority of the House of Lords, Therefore, held the rejection of the claim by the Commission as being without jurisdiction and a nullity.

(31) It was argued for the assesseds that sub-section (2) (a) of section 8 of the Displaced Persons (C & R) Act, 1954 enabled the Government to exclude certain clauses of displaced persons from payment of compensation. Section 8(2)(a) runs as follows :-

"FORM and manner of payment of compensation-

* * * * (2)For the purpose of payment of compensation under this Act the Central Government may, by rules, provide for all or any of the following matters :-

(A)the classes of displaced persons to whom compensation may be paid."

IT would be seen that the rule-making power is conferred on the Central Government "for the purpose of payment of compensation" and not for the purpose of laying down whether compensation should be paid or not. Further, the rules may provide- for "the classes of displaced persons to whom compensation may be paid". The rules cannot provide for any class of displaced persons to whom compensation is not to be paid. Further, section 8(2)(b) deals with the scales according to which compensation may be paid to different classes of displaced persons. It does not exclude any class of displaced persons from payment of compensation. The whole scheme of the Act is a firm commitment of the Government to pay compensation to every displaced person holding a verified claim. No where is there any indication that compensation may not be paid to some of them. Moreover, exclusion of some displaced persons from payment of compensation would not only be contrary to the Act but also would be contrary to Article 14 of the Constitution being discriminatory. Rule 65 of the Rules of 1955 does not exclude any displaced person holding a verified claim from payment of compensation altogether. It only provides that a displaced person who has already been allotted agricultural land would not be entitled to compensation for rural buildings. It was then argued that a displaced person may not make an application at all for payment of compensation. This argument cannot prove that the right to receive compensation was not property. No one can force a person to claim his own property or to enjoy it. The owner of property is always free to throw it away and to refuse to enjoy it. But his property does not cease to be such property by his refusal to claim it. It was also argued that the public dues etc. payable by a displaced person may be more than the compensation payable to him and Therefore, until an order under sub-section (3) of section 7 of the Displaced Persons (C & R) Act, 1954 determining the net amount of the compensation payable to the displaced person is passed, it remains uncertain whether the displaced person will receive any compensation at all from the Government under the Act. This argument has been rebutted by the Revenue in the orders of reference on the ground that the amount of compensation, though not certain on the date on which the Act came into force, was nevertheless capable of being made certain according to the procedure laid down in the Act. "It is not necessary that the property shall be ascertained or ascertainable at the time of the death". (Green's Death Duties, 6th Edition, page

20). The rule is *Certum Est Quod Certum Reddi Potest*. "This maxim, which sets forth a rule of logic as well as of law, is peculiarly applicable in construing a written instrument" (Broom's Legal Maxims, 10th Edition, page 422). For instance, although every estate for years must have a certain beginning and a certain end, the provision that it is to last for so many years as J. shall name makes it a good lease for years. For though it is uncertain to start with, it becomes certain after J. names the period of years for which it is to last.

(32) In *Attorney General v. Quixley* the Court of Appeal had to consider if estate duty was payable on a death gratuity granted u/s 5(1) of the Teachers (Superannuation) Act 1925 by the Board of Education to the personal representatives of the deceased. Affirming the decision of Rowlatt, J., Lord Hanworth, M. R. observed as follows :-

"FROM and after, Therefore, the operation of the Act there was a definite right on the part of the school teacher who fulfills certain conditions to be paid a sum which is to be estimated and calculated under the provisions of the statute and the regulations which are made in pursuance of it.By section I of the Finance Act of 1894 there is charged to estate duty "all property, real or personal, settled or not settled, which passes on the death of such person". It is said, and I think rightly said, that if that section stood alone "this sum of 429 shillings would not be charged to the estate duty. For the purpose of fulfilling the word "passes", it has. I think, been decided in cases that there must be at the death the property in existence which, upon the death, continues and passes on to the successor. In this case there was a right, but it is difficult to say that the right had become and was, in the hands of the deceased teacher, a sum or property which actually passed on. Section 1, however, does not stand alone. It is interpreted to embrace wider words, which are found in section 2. By section 2 it is provided : "Property passing on the death of the deceased shall be deemed to include the property following, that it to say : (a) Property of which the deceased was at the time of his death competent to dispose".. . . .It appears to me that from and after the 1925 statute came into operation, whereby it was laid down that the board shall make a grant to the legal personal representatives of a teacher, that interest was not only an interest in an uncertain amount, but was a right which was within the term "property". The fact that it was not determined how much her right would be quantified at dies not appear to me to offer any guide to the solution of the question, because the charge is upon the principal value of all property ascertained as hereinafter provided. The statute will provide the mode of ascertainment of the value, but the primary question is : Is this right under the section a piece of property ? in my view it is."

THE above decision is even stronger than the case before us. The right of the deceased therein to the payment of gratuity arose only on his death. In the present case, the right to receive compensation was already vested in the deceased in their life time. While in *Quixley*'s case, Therefore, the property could only be deemed to pass on his death, in the case before us, the property actually

passed on the death of the two deceased.

(33) In *Attorney-General v. John Brunning* the deceased had entered into a contract for the sale of his estate. The purchaser was a ward of Court and the contract could not be valid till it was approved by the Court of Chancery. The deceased died before the formal approval of the contract was given by the Court of Chancery. The contract also provided that it could be rescinded through the act of the parties on the non-payment of money etc. Despite these apparent uncertainties, the right of the deceased to receive purchase money under the contract was held to be a part of the "estate and effects" of the deceased and as such liable to probate duty. In *Exparte. Huggins* In re Huggins the pension granted to a civil servant by the Secretary of State for Colonies was held to be "property" which vested in the trustee in bankruptcy even though there was no statute or ordinance regulating the grant of pensions and the pensions used to be placed on the annual estimates of the Colony and voted annually by the Colonial Legislature and to that extent the grant of pension was attended with uncertainty.

(34) It was further argued for the assesseds that the right to receive compensation was not even an actionable claim within the meaning of section 3 of the Transfer of Property Act but was more like a mere right to sue which could not be transfer *Cheshire and Fifoot on the Law of Contract, 1969 Edition, at page 471* : "Any assignment is void if it savours of the tort of maintenance, i.e., if it amounts to assistance given to one of the parties to an action by a person who has no legitimate interest in that action. This is the basis of the rule that a bare right of action is unassignable. What this means is that if all that is assigned is the right to recover unliquidated damages for a breach of contract or for a tort, or for waste, or to set aside a transaction for fraud, the assignment is void. It seeks to transfer nothing more than a hostile right to bring parties into court. Nevertheless, a right of action may be validly assigned if it is a subsidiary but an essential part of the main subject-matter of the assignment". The same distinctions made in *Titlie on the Law of Contract, 1966 Edition at pages 505 to 507*. The right to receive compensation in the case before us was a valuable right of property, the transfer of which was authorised under the law and the payment of compensation for which was guaranteed by the Act. It could not, therefore, be in any sense analogous to a mere right to sue. Even an assignment of the right to receive damages in a pending action was held in *Glegg v. Bromley* to be an assignment, not merely of an expectancy, or of a cause of action, but that of property, that is. of the fruits of an action as and when recovered.

(35) In *Murat Singh v. The Controller of Estate Duty* it was observed as follows at page 429 of the report :

THERE can thus be no manner of doubt that any legal rights that came into being in the matter of receiving compensation by displaced persons who had left their properties in Pakistan were created by the Act of 1954 and not by the earlier Act of 1950 which only dealt with the registration and verification of claims"

REFERENCE to the decision of the Supreme Court in *Amar Singh v. Custodian, Evacuee Property, Punjab* made on behalf of the assesseds was entirely misconceived. The petitioner therein was an allottee of agricultural land under the East Punjab Evacuee's (Administration of Property) Act, 1947. Such an allottee had no vested right u/s 10 of the Displaced Persons (C & R) Act, 1954 to the transfer of the same land to him by way of compensation. On the contrary, such an allotment could be cancelled by the Government u/s 19 of the Displaced Persons (C & R) Act, 1954. This was why such an allotment (though called quasi-permanent) was held not to be "property" within Article 19(1)(f) of the Constitution. The Supreme Court did not at all consider the question whether the right of a displaced person holding verified claim was "property". On the contrary, in column 2 on page 609, the Court distinguished between the right of a displaced person holding a verified claim to compensation and the claim of an allottee to the transfer of the allotted land in the following words :

"IT may be noticed that "compensation" referred to in section 10, in so far as it relates to a displaced person, obviously refers to the compensation for loss of his property in Pakistan and is not the recognition of a right to compensation for deprivation of his interest, if any, in the allotted property by cancellation. Rules have been made by the Central Government called the Displaced Persons (Compensation and Rehabilitation) Rules, 1955,. . . Rules 71 and 73 relate to verified claims which do not seem to refer to agricultural lands. "Verified claims" relate to urban immovable property as the definition thereof in the Displaced Persons (Claims) Act, 1950 shows. Rule 72(1) relates to an allottee of agricultural land having no verified claim and is relevant".

IT is under rule 72 that such an allottee, if the allotment is not cancelled, may get a sanad, which will transfer to him the allotted property. In contrast, the right of a displaced person holding a verified claim to compensation under the Displaced Persons (C & R) Act, 1954, is not defeasible at all and is, Therefore, "property" under the Estate Duty Act. The decision of the Punjab High Court in *Kanwar Sardari Lal Chopra v. The Controller of Estate Duty, Delhi* (Estate Duty 123) is also not relevant to the present case inasmuch as it dealt with a verified claim before the coming into force of the Displaced Persons C & R) Act, 1954 while the present case deals with the right to receive compensation under the Act of 1954.

(36) In *Khudabadi Bhaibund Co-operative Credit Bank, Ltd. v. N. S. Verma*, it was held that once the amount of net compensation payable to a displaced person is determined, the Government is bound to make the payment of compensation. It was, thereafter, a debt payable to the displaced person and as such liable to be attached and sold in execution.

(37) My learned brother Andiey. J. is of the view on the one hand that the right to make claim to compensation conferred by section 4 of the Displaced Persons (C & R) Act, 1954 is a mere right to sue and is not "property" which comes into being only after an order under section. 7(3) is passed though on the other

hand, he concedes that even if no order has been made u/s 7(3) thereof during the lifetime of the verified claimant, his right or interest in the net compensation to be determined u/s 7(3) would be property passing on his death within the meaning of the Estate Duty Act.

(38) This raises the question whether a right or property which has not already been quantified is incapable of being regarded as "property" under the Estate Duty Act. Under sub-section (15) of section 2 thereof, "property" includes "any interest" in the property. The word "any" does not seem to be restricted to a definite or ascertained sum of money. It is well-known that an actionable claim is property but the precise amount recoverable there under may not be definite. Under sub-section (16) of section 2, "property passing on the death" includes property passing either immediately on the death or after interval, either certainly or contingency. This would show that not only the quantum of the property but even the passing of it may not be certain but may only be contingent. Even such property is not excluded from the operation of the Estate Duty Act. u/s 21 of the Transfer of Property Act, an interest in property, which is to take effect only on the happening of a specified uncertain event is a contingent interest in the property. But a contingent interest is a well-recognised form of property which is capable of being transferred. It is not a mere possibility (*Commissioner of Wealth Tax. v. Ashok Kumar Ramanlal Ma Yaif v. The Official Assignee, and Fernando v. Gunatillaka*). The right of a company to call up the uncalled capital is an existing right and was Therefore held to be "property" in *Howard v. Patent Ivory Manufacturing Company* though the money so receivable cannot be quantified unless and until the Tight is exercised and the payments there under are obtained from the shareholders. Instances can be multiplied of various kinds of property which are the means of earning money but which cannot be quantified at any particular moment. The right to receive royalties under a mining lease is the "property" of the Lesser though it cannot he said at any particular moment of time how much money is comprised in such a right. The holder of a copy-right also possesses "property" but the amount of money which would come to the holder there under would be determinable only after the copy-right is sold or royalties there under are realised. The same observation may be made regarding a patent. The claims of creditors in insolvency based on debts are also rights of property though the money payable there under cannot be known till the debts are proved and a scheme is framed by the Court stating how much is payable out of the insolvency's estate to his creditors. When the land is acquired by Government either under the Land Acquisition Act or under the Abolition of land Reforms Acts in the States, compensation is payable as a constitutional and statutory right to the owner of the land. If the owner of the land dies before the compensation is determined, his right to receive compensation would pass to his legal representatives. Similarly, before his death such an owner could transfer the right to receive compensation for the land acquired by the Government to any other person. Can it be said that such .a right which is both heritable and transferable is not "property" under the Estate

Duty Act. With great respect. and for the reasons. mentioned immediately above and also earlier in dealing with the concept. of "property" under the Estate Duty Act, I am of the view that an immediate quantification is not an essential attribute of "property" under the Estate Duty Act. This is recognised by the scheme of the Estate Duty Act. The concept of "property" which is dealt with in sections 2, 3 and in the provisions of Part II of the Estate Duty Act is not conditioned by the necessity of its quantification. The valuation of "property" is consigned to Part V as a separate matter. Section 36(1) lays down that the principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death. This itself pre-supposes that an item of property may not be capable of being quantified in terms of money and the Controller would, Therefore, have to fix its principal value by way of its notional sale in open market. It is only those things which are inherently unsaleable that would be regarded as not "property" under the Estate Duty Act. As already observed, the right to receive compensation and the compensation payable under the Displaced Persons (C & R) Act, 1954 are certainly saleable. It is like a lottery ticket which gives the holder a right to receive a price on the happening of an uncertain event. He may or may not get anything, but so long as people attach value to such a right, it is saleable and is, Therefore, "property".

(39) On behalf of the assesseds, a further argument was put forth saying that a debt which has not become either quantified or payable is not attachable u/s 60(1) of the Civil Procedure Code. This provision has to be read with the provisions of Order 21 rule 46 of the Civil Procedure Code, whereby the garnishee is prohibited from paying debt to the judgment-debtor but is required to pay the same into the Court for payment to the decree-holder. Under the Estate Duty Act it does not appear to be necessary that "property" should be such as could have been ordered to be paid immediately to the deceased on the date of his death. Even property which was not payable on the date of the death or which was not even quantified on that date cannot be excluded from the concept of "property" under the Estate Duty Act.

(40) (C) The definition of a "displaced person" in section 2(b) of the Displaced Persons (C & R) Act, 1954 includes the "successors- in-interest of any such person". A successor-in-interest is a person who succeeds to the interest of the deceased either by inheritance or by transfer inter vivos. (Gurbachan Singh v. Union of India and Shanghara Singh v. Jagat Sing. The right to receive compensation was, Therefore, both heritable and transferable. These are the only essential characteristics which a "property" under the Estate Duty must possess. Both these qualifications inhere in the right to receive compensation. It is clear, Therefore, that this right which was "property" under the Estate Duty Act actually passed on the deaths of Colonel D. H. Rai and Bhagat Eachmi Narain. Even if it is assumed for the sake of argument that this right did not mature into "property" till the order of determination of net compensation was passed u/s 7(3) of the Displaced Persons (C & R) Act, 1954, the right was capable of being disposed of

by the displaced persons holding verified claims during their life time. On the analogy of Quixley's case referred to above, Therefore, such property at any rate be deemed to have passed on the death of these two deceased within the meaning of section 6 of the Estate Duty Act. Section 6 was enacted to enlarge the scope of "passing of property" by way of a deeming provision.

(41) It is clear, Therefore, that the right to receive compensation which had vested in Colonel D. H. Rai was "property" even -though the Rules of 1955 containing Schedule VIII had not been promulgated before his death. The coming into force of the Act of 1954 had however guaranteed the payment of compensation to him and section 8(2)(b) thereof had also enabled the Government to frame rules prescribing the scales of compensation. The Government could not have refused to frame the scale of compensation inasmuch as the Act had already promised the payment of compensation to displaced persons holding verified claims. The Government could have been compelled to discharge its statutory duty of framing the scales of compensation by a writ of mandamus issued under Article 226 of the Constitution.

(42) The right to receive compensation vested in Bhagat Lachini Narain was "property" under the Estate Duty Act inasmuch as he died even after the scales of compensation had been framed under the Rules of 1955 in Schedule VIII thereto. The amount to gross-compensation payable to Bhagat Lachmi Narain had. Therefore, become known before his death. In neither case. however, the amount of net compensation payable could be known inasmuch as the deduction from those compensations by way of public dues etc. had not been determined. In my view, Therefore, the rights of both the deceased were juridical to the same nature. They were "property" which had to be quantified under the provisions of the Displaced Persons (C & R) Act, 1954 and the Rules of 1955. For the above reasons Therefore, I answer the first question in both the references in the affirmative.

(43) Question No. 2 -

THE only method by which the right to receive compensation under the Displaced Persons (C & R) Act, 1954 can be valued is prescribed u/s 36(1) of the Estate Duty Act, namely, the estimate of the Controller of the price which it would fetch in the open market if it had been sold at the time of the death of the deceased. In section 6 of the Madras Urban Land Tax Act, 1963. market value of the urban land was to be as "estimated" to be the price which in the opinion of the Assistant Commissioner, or the Tribunal, as the case may be, such urban land would have fetched or fetch, if sold in the open market on the date of the commencement of this Act.'" The Supreme Court in The Assistant Commissioner of Urban Land Tax, Madras v. The Buckingham and Carnatic Co. Ltd.{ 22) construed this provision in the following words :--

"HAVING regard to the language and context of section 6 of the new Act we consider that the opinion which the Assistant Commissioner has to form under

that section is not subjective but should be reached objectively upon the relevant evidence after following the requisite formalities laid down in sections 7 to 11 of the new Act..... In case the owner fails to attend or fails to produce the evidence, the Assistant Commissioner is empowered to assess the market value on the basis of an enquiry made "by him"

THESE observations are instructive in the construction of section 36 of the Estate Duty Act.

(44) In *R. M. Shahani v. Controller of Estate Duty, Delhi* a Division Bench of the Punjab High Court sitting on circuit at Delhi had to consider how the compensation payable under the Displaced Persons (C & R) Act, 1954 should be valued. On behalf of the assessed, it was contended that the value of the property had to be estimated at its market price on the date of the death of the deceased. Dulat J. with whom Falshaw C.J. agreed, however, observed that "a claim to receive a particular amount as compensation under the Displaced Persons (C & R) Act has no great resemblance to the shares of a company, whether transferable or not. The holder of a verified claim under the Displaced Persons (C & R) Act is, by force of law, entitled to receive some property of the exact value of his net compensation, and hence, Therefore, the net compensation is determined, as has been done in the present case, and its value, in the absence of evidence to the contrary, would be the face value". With respect, the following considerations would lead to a different conclusion in the present case Firstly Colonel D.H. Rai died when the scale of compensation in Appendix VIII of the Rules of 1955 was promulgated. On the date of his death, Therefore, it could not be said what precise amount of compensation he would have got if he had lived till the determination of the net compensation payable to him u/s 7(3) of the Displaced Persons (C & R) Act, 1954. At the same time, the right to receive compensation vested in him was a valuable right which under the law could be sold in open market on the date of his death. The verified claim held by him showed that the property left by him in Pakistan was of considerable value. He was, Therefore, definitely entitled to the payment of some amount of compensation. But such amount could not be known at the time of death. For, the market value of the verified claim prior to the publication of the schedule of compensation would largely be based on speculation and having regard to the large discount in its market value due to the uncertainty as to what would be actually paid as compensation, the market value of such a verified claim on the date of Colonel D. H. Rai's death could not have been very considerable. The Public dues payable by him may also not be known. The sale of his right to receive compensation in open market would, Therefore, have definitely fetched a certain amount of money. Secondly, the determination of the net compensation u/s 7(3) was made later and that amount was not known at the time of his death. It would be an anachronism Therefore to say that the value of the right to receive compensation on the date of the death would be the same as the actual amount of compensation determined much later u/s 7(3).

(45) My answer to Question No. 2 which applies to both the References is, Therefore, as follows : "The compensation payable to both Colonel D. H. Rai and Bhagat Lachmi Narain, on the dates of their deaths, should be valued u/s 36 of the Estate Duty Act only at such figures as would represent, in the opinion of the Controller, their market prices if they had been sold in the open market on the dates of their deaths."

(46) Though a separate question regarding valuation of the compensation payable to Bhagat Lachmi Narain on the date of his death has not been referred to this Court by the Revenue, the question referred to us in Estate Duty Reference 2 of 1963 seems to invite determination of both the passing of the property and its valuation of the date of his death. The answer to the first part of the question is already given in dealing with that question while the answer to the second part of the question is given above. As Bhagat Lachmi Narain died long after the promulgation of the scale of compensation, the precise amount of the compensation payable to him could be recalculated with a fair amount of certainty at the time of his death. The valuation of the said compensation on the date of his death would, Therefore, almost be equal to its face value.

REFERENCES answered accordingly. No order as to costs.

M.R.A. Ansari, J. (Concurring)

(47) I agree.

"ORDER"

S.N. Andley, J. (Concurring)

(48) In accordance with the opinion of the majority, the questions in the two references are answered as in the opinion just delivered by Deshpande, J. There will be no order as to costs in any of the references.