

(2010) 05 DEL CK 0257

In the Delhi High Court

Case No : Writ Petition (C) No. 2613 of 1981 and 1429 of 1994

Lachhman Dass

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 24, 33
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 19, 19(2), 19(3)
Hindu Succession Act, 1956 — Section 14
Hindu Womens Right to Property Act, 1937 — Section 3(2), 3(3)

Citation : (2011) 7 RCR(Civil) 1968

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : L.D. Adlakha, for the Appellant; Dalip Mehra, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In these two writ proceedings, the petitioner questions to the decision of the Central Government, which in effect rejected his claim for allotment of 6 standard acres and 7-15/16 units, under the Displaced Persons (Compensation and Rehabilitation) Act, 1964 and Rules framed under it (hereafter called the Act and the Rules, respectively).

2. Briefly the facts pertaining to WP(C) No. 2613/1981 are that the petitioner claimed ownership of lands in erstwhile Punjab (present day in Pakistan) and had to flee during the partition when he came and settled in India. The scheme of the Act and Rules prescribed that such individuals, i.e. "displaced persons" were to lodge claims that were to be verified having regard to the records available. The petitioner was allotted agricultural land in Tehsil Ballabhgarh (present day in Haryana), in lieu of the land owned by him in the North West Frontier Province (NWFP). It is contended that the petitioner's claim was not fully satisfied and continued to be pending till 28.12.1977 when a letter was issued acknowledging that as against his entitlement to 32 standard acres and 11/16 units (after the

permissible deductions under the Act and Rules), he was holding 25 standard acres and 8-3/4 units. He was therefore held entitled to allotment of net balance, i.e. 6 standard acres and 7-15/16 units. The petitioner refers to his two representations having been made for allotment of such 6 standard acres odd of land and has annexed copies of such letters dated 28.12.1977 and 06.04.1979.

3. Such being the position, on 11.09.1979 the Rehabilitation Department of Haryana by a communication dated 11.05.1979 took the possession saying that under the existing policy no allotment could be made to a non-Punjabi claimant. This stand is reflected in the following in the following letter:

No. 372/R/1 dated 11/5/1979

To

Shri Lachman Dass

Son of late Shri Thana Ram,

House No. 2, H.B./80/_Township New/_

Faridabad, District Gurgaon.

The application which you have given for allotment of agricultural land having an area of 6 standard acre and 7 15/16 units, has been filled on 30-4-1979 on the ground that under the Government Policy, no allotment can be made to a non-Punjabi claimant.

Sd/-Assistant Registrar (H),

Chandigarh.

4. The petitioner protested this stand contending the policy was opposed to the scheme of the Act, which did not discriminate between various classes of displaced persons on the basis of their different land holdings in Pakistan. It was also contended that the petitioner held lands in both pre-Partition Punjab Province, as well as NWFP. On the basis of these allegations, the petitioner approached this Court seeking a direction that his claim for 6 standard acres and 7-15/16 units should be satisfied in accordance with the letter dated 28.12.1977.

5. The Petitioner relies on the order, dated 24.10.1966, of the Authorized Chief Settlement Commissioner confirming that he, and Shrimati Mukandi Bai were entitled to ? share each in the agricultural land claim, which was subsequently accepted by the Settlement Commissioner by his orders dated 31.5.1970. The said Mukandi Bai was the wife of Chaman Lal, whose grandfather, and that of the petitioner?s father were common. The genealogical tree, relevant for the present purpose, as set out in the petitions, and various orders, is as follows:

Sahib Ram. Dasu Ram Thana Ram Hem Raj Lachman Dass Mukandi Bai (widow of Chaman Lal)

It is stated that the above facts did not mean that the petitioner and Smt Mukandi Bai held joint claims. The order of the Authorized Chief Settlement Commissioner, had bifurcated the claims of the petitioner and Shrimati Mukandi Bai in equal shares, to be assessed separately and not on pro-rata basis.

6. The Petitioner contends that land to the extent of 46 acres 10-1/6 units was allotted to both claimants, (i.e. himself and Mukandi Bai) in Punjab after Panchayat Tasdik, as by that time Revenue Record was not received from Pakistan. This allotment was made against the accepted claim of 66 acres 10 ? units after applying the "Punjab cut". It is averred that after receipt of the record, total claim was assessed to the extent of 86 std. acres and ? units, in which the Petitioner's share being half was calculated as 43 std. acres and 3/8 units was added to his rights in Punjab land to the extent of 6 Standard Acre 1 unit, thus the aggregate of his share was calculated at 49 standard acres 1 - 3/8 units. After applying the Punjab cut the area to the Petitioner's share worked out to 32 standard acres 11/16 units. This, he submits, was rightly assessed according to rules. He was given the benefit of Rule 19, as his claim was assessed as an independent unit. It is submitted therefore, that after taking into consideration the allotment of land (to the Petitioner) to the extent of 25 std. acres 8 ? units, an area of 6 std. acres 7-15/15 units still remained un-allotted, which was confirmed by the Assistant Settlement Order, by his letter dated 28/29.12.1977.

7. The respondents, after entering appearance, resisted the petition, filed in 1981, and sought vacation of an interim order, which had directed maintenance of status quo, in respect of unallotted lands, contending that a limited area of land had been made available to the State of Haryana, after Punjab reorganization. It was contended by the Union, that the claim of the petitioner and that of Mukandi Bai were to be assessed jointly, and not divided in equal shares as per Rule 19(2)(a). That rule prescribes that where that two or three members are entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into two equal shares and calculating the compensation separately on his share. The respondents relied on an order of 4.6.1973 to say that the petitioner's claim for six standard acres odd, is impermissible.

8. The Court, by its order dated 28th April 1989, varied the interim order, made on an earlier stage of the proceedings, and directed the respondents to keep the extent of the petitioner's claim (6 standard odd acres) unallotted, and subject to final judgment of this Court.

9. The respondents, as mentioned earlier, relied on an order of the Settlement Commissioner, dated 04-06-1973. The same reads as follows:

Present : Shri Pran Nath Talwar, on behalf of Shrimati Mukandi Bai. His arguments have been heard.

2. The only point which is under consideration is spilt into two units as provided

in Rule 19, or, the cut will be applied on the entire claim because Shrimati Mukandi Bai is pre-1937 widow having no right to claim partition.

3. Shri Talwar has taken me through the order of Shri Rajni Kant, dated 24.10.66, according to which he allowed the name of Shrimati Mukandi Bai also to be included in the Claim Order and acknowledged that the claim had been filed jointly. I have also seen orders of Auth. C.S.C. and Joint Secretary who have upheld that this was a Joint Hindu Family claim. Shri Lachman Dass, in his own compensation application, has also stated that claims were filed on behalf of the Joint Hindu Family vide page 3 of the C.A.F. (Column 3).

4. The short question which arises is whether Shrimati Mukandi Bai may be treated as one of the members entitled to claim partition in terms of Rule 19(2) (a). Shri Talwar felt that since Shrimati Mukandi Bai is descending in a different branch right from Shri Daulat Ram, their fore-father, these two different branches may be maintained while computing units under Rule 19. He has drawn my attention to the Memo of appeal which shows the family-tree as under:

Daulat Ram Sahib Ram. Dasu Ram Thana Ram Hem Raj Lachman Dass Mukandi Bai (widow) (Respondent No. 3) appellant 5. On my further enquiry, I am told that Shri Chaman Lal, husband of Shrimati Mukandi Bai, Died in 1924, and Shri Hem Raj, father of Shri Chaman Lal, died earlier in 1909. As it is, Shrimati Mukandi Bai is a pre-1937 widow and remained joint with Shri Lachman Dass, the survivor of the second branch of the tree.

6. In this view of the matter, I am afraid according to the position of the family as it emerges out on the 14th day of August, 1947, there is only one unit as Shrimati Mukandi Bai cannot be treated as a second unit due to her being a pre-1937 widow not entitled to claim partition. The case will, therefore, be processed by applying the key on the entire claim and then dividing the compensation in two equal shares.

The applicant present has been informed. Dated 4.6.1973

Sd/-

(N.B. Gorwaney)

Authorised Settlement Commissioner

4.6.73

10. The petitioner was aggrieved by the above order, which, according to him, was disclosed to him during the pendency of his writ petition. He therefore, sought an order, from the revisional authority, to quash it. By order dated 17th October, 1990, the Assistant Settlement Commissioner, acting in furtherance of his powers u/s 24 of the Act, rejected the claim for quashing of the 1973 order, holding as follows:

2. The relief claimed by the petitioner is to call for the record of compensation

file, quash the impugned order of authorized Settlement Commissioner dated 4.6.1973 and order of Assistant Settlement Officer (P) as communicated vide letter dated 22.8.1988 being illegal void unjust and without jurisdiction and restore the balance compensation due to petitioner to the incident of 6 standard Acres 7-15/16 units and also allow benefit of Rule 19 or 20 of D.P. (C & R) Rules 1955.

3. I have gone through the records of this case and also the arguments of Shri H.K. Dhawan, Counsel for the petitioner. Perusal of the records of this case and also the order dated 4.6.73 shows that the petitioner namely Shri Laxman Das was given full opportunity to present his case before the authorized Settlement Commissioner, New Delhi. On behalf of the petitioner Shri P.N. Twalar, Advocate appeared and argued the case. After considering his arguments and records of this case the Authorised Settlement Commissioner, New Delhi passed order dated 4.6.73. The petitioner was also present at the time of the hearing of the case and as such it was the duty of the petitioner to call copy of the order and if he was not satisfied with the said order he should have sought legal remedy as provided under the law.

4. The points now raised by the petitioner in his revision petition were already considered by the Authorised Settlement Commissioner at the time of passing his order dated 4.6.1973. As regard the letter dated 22.8.88 this letter is nothing but a routine communication intimating the petitioner the detail of the finalization of the Compensation Application and the letter did not convey any order to the petitioner.

5. Perusal of the records also shows that a Writ Petition had been filed by the petitioner bearing No. 2613 of 1981 against the Union of India as well as the Haryana State as have been seen from letter No. 11533/Legal/Writs Chandigarh dated 8.2.82, the out come of which is not known. The petitioner has concealed fate of his Writ Petition filed in the High Court as to whether the same has been decided or not. He has not even enclosed the copy of the order if the same has been decided.

6. From the facts mentioned above it is clear that the claimant has sought legal remedy by filing Writ Petition the revision Petition cannot lie. I, therefore, reject the revision petition filed by the petitioner and uphold orders dated 4.6.73 of the Authorised Settlement Commissioner, New Delhi.

Party be informed, May have a copy of this order under usual terms.

(Rattan Lal)

Under Secretary to the Govt. of India

Authorised Chief Settlement Commissioner.

11. The petitioner questioned the above order, u/s 33 of the Act, contending that the approach of the Authorized Chief Settlement Commissioner was opposed to

law, as he overlooked that the 1973 order violated principles of natural justice, as well as the previous two orders of 1966 and 1970, which had crystallized his entitlement to a separate and independent share, than that of Mukandi Bai. It was contended that Mukandi Bai had agitated for her share of claim, when the Authorized Chief Settlement Commissioner, by his order dated 24.10.66 allowed her request, leading to her filing a compensation application. The petitioner's claim too, was similarly remanded for consideration, in 1970; he relies on that order.

12. The Central Government, which was constituted as the second revisional authority u/s 33, by its order of 31st May, 1991, rejected the petitioner's request for setting aside the Chief Commissioner's order dated 17th October, 1990. This latter order of 31st May 1991, has been impugned in W.P. (C) No. 1429/1994.

13. The petitioner contends that the approach of the respondents, in denying his claim for balance 6 standard acres odd, is unsustainable. He submits that having separately assessed his claim, and determined, after satisfying themselves about the entitlement to 32 standard acres plus, after applying the Punjab cut, under the Act, that he was entitled to such land, the authorities could not have resiled from that position. It is argued that originally, the entire claim could not be verified because the full records were unavailable. After they were received, the respondents discovered that the petitioner's claim was distinct from that of Mukandi Bai; though their claims were assessed together, they were assigned individual and separate shares, after giving the benefit of Rule 19. Mukandi Bai's appeal for compensation led to a remand. However, the assessment by the respondents, of that claim did not mean that they could re-open the question of what the petitioner was entitled to. It was also argued that the 1973 order should not be taken into consideration, as it was made in violation of principles of natural justice, and even the respondents understood the position to be so, as was evident from the endorsement they issued to the petitioner in 1977.

14. The respondents submit that the order of the Assistant Settlement Commissioner dated 04.06.1973, is justified in law. They seriously contest the petitioner's argument regarding violation of principles of natural justice and submit that he and his counsel were heard before the order was made. On the merits, it is submitted that while the fact regarding availability of all the records is correct, no finality could be attributed to the assessment about the petitioner's entitlement, i.e. whether he was entitled to be separately assessed or the claim of Mukundi Bai had to be clubbed with his. It is argued in this context that in order to determine such aspects the relevant provision is 19(2)(a) and Sub-rule (3). It is submitted that the determination of the Settlement Commissioner of June 1973 about Mukandi Bai's dis-entitlement to claim partition is in accord with Rule 19(3), particularly the explanation.

15. It is evident from the above discussion that the plaintiff had claimed for allotment of lands, as a displaced person, in terms of the Act and Rules framed under it. The Act was brought into force, as part of a legislative package,

preceded by provisions enabling the authorities to acquire, after notification, properties left behind by evacuees who had migrated to present day Pakistan. The 1954 enactment gives effect to Parliamentary intention to enable payment of compensation to displaced persons, in respect of the property left by them in the territories forming part of Pakistan.

16. Section 12 of the Act empowered the Central Government to acquire property, which had been declared evacuee property and vested in the Custodian. After acquisition the title of the evacuee stood extinguished and the evacuee property vested absolutely in the Central Government free from all encumbrances. All such property acquired u/s 12 formed part of a "compensation pool". Cash balances lying with the Custodian and other contributions and assets were also made part of this compensation pool; the Central Government framed Rules for paying compensation to these displaced persons from out of the pool. Payment of compensation was also through transfer of property.

17. The respondents do not dispute here about the petitioner's entitlement to allotment, by way of compensation; indeed the record indicates that such allotment was to the extent of more than 25 standard acres. The dispute centres around whether, in the circumstances, and having regard to the text of Rule 19, the clubbing of Mukandi Bai's compensation claim, with that of the petitioner was justified. The respondents argue that it was justified, since Mukandi Bai and the Petitioner belonged to the same family.

18. The order of the Chief Settlement Commissioner, dated 24th October, 1966 reads as follows:

Perusal of the original order passed by the Claim Officer shows that the claim was verified in favour of Shri Lachhman Das and Smt. Mukandi Bai but at the time of revision in accordance with the Revenue record received from Pakistan, the order was passed in favour of Shri Lachhman Das only through the Revenue Record showed the name of Shri Lachhman Das and Shrimati Mukundi Bai, it was instantaneous mistake by the officers who revised cases in suo-moto revision.

In view of their reasons stated above the representation is accepted and the order dated 14.11.58 passed by the Addl. Settlement Commissioner Shri V.P. Kapur, order dated 12.10.62 and 14.10.63 passed by Shri K.L. Wason, Addl. Settlement Commissioner should be treated as having been passed in favour of Shri Lachhmandas and Smt. Mukandi Bai in equal shares.

19. Apparently, Mukandi Bai had preferred a revision, against some determination made in her case; that was disposed of by the order of 11.06.1970, in the following terms:

Under Rule 19 of D.P. (C & R) Rules, 1955 the status of family is to be determined as on 26.9.1955. However, this is a point on which the Processing Officer should call upon the parties to produce evidence and satisfy himself whether the benefit of Rule 19 could be given.

20. The processing officer had called the parties, and heard them. It was under these circumstances, that the order dated 04.06.1973 was made. The order is premised on an interpretation of Rule 19, and the finding that Mukandi Bai was a pre-1937 widow (her husband having passed away sometime in 1924) and therefore, not entitled to claim partition. Consequently, her claim was clubbed with that of the petitioner.

21. At this stage, it would be necessary to refer to Rule 19; it reads as follows:

19. Special Provision for payment of compensation to Joint families - (1) Where a claim relates to properties left by the members of an undivided Hindu family in West Pakistan (hereinafter) referred to as the joint family) compensation shall be computed in the manner hereinafter provided in this rule.

(2) Where on the 26th Sept. 1995 hereinafter referred to as the relevant date) the joint family consisted of:

(a) two or three members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into two equal shares and calculating the compensation separately on each such share.

(b) four or more members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into three equal share and calculating the compensation separately on each such share.

(3) For the purpose of calculating the number of the member of a joint family under Sub-rule (2) a person who on the relevant date:

(a) was less than 18 years of age,

(b) was a lineal descendant in the main line of another living member of joint Hindu family entitled to claim partition shall be excluded.

Provided that where a member of a joint family has died during the period commencing on the 14th August, 1947 and ending on the relevant date leaving behind on the relevant date all or any of the following heirs namely:(a) A widow or widows

(b) a son or sons (whatever the age of such son or sons but no lineal ascendant in the main line,

then all such heirs shall, notwithstanding anything contained in this rule, be reckoned as one member of the joint Hindu family.

Explanation - For the purpose of this rule, the question whether a family is joint or separate shall be determined with reference to the status of the family n the 14th day of August, 1947 and every members of a joint family shall be deemed to be joint notwithstanding the fact that he had separated from the family after that date.

22. The petitioner contends that the extracts of Revenue Record received from

Pakistan show that these are in the name of his father, Thana Ram, pertaining to village Khasora Pacca. Similarly "Parchi Chhant", i.e. extract of Revenue Records of village Mali Khail Kacha and Mali Khail Pacca, says the petitioner, and shows entries in favour of Thana Ram. It is submitted, that there are other extracts as well which are in the name of Mukandi Bai along with Thana Ram, which imply that both of them were co-owners of the agricultural land in Pakistan. It is an undisputed fact that Thana Ram died in Pakistan; the petitioner filed his claim application on 29.9.1950 in his own name and in the name of Shrimati Mukandi Bai.

23. The basic reason which persuaded the Chief Settlement Commissioner to hold, as he did that the petitioner and Mukandi Bai were to be assessed jointly, is found in the following extract of his order, of 1973:

Shri Chaman Lal, husband of Shrimati Mukandi Bai, Died in 1924, and Shri Hem Raj, father of Shri Chaman Lal, died earlier in 1909. As it is, Shrimati Mukandi Bai is a pre-1937 widow and remained joint with Shri Lachman Dass, the survivor of the second branch of the tree.

6. In this view of the matter, I am afraid according to the position of the family as it emerges out on the 14th day of August, 1947, there is only one unit as Shrimati Mukandi Bai cannot be treated as a second unit due to her being a pre-1937 widow not entitled to claim partition...

24. The relevant provisions of the Hindu Woman's Right to Property Act, 1937, Sections 3(2) and (3) are as follows:

(2) When a Hindu governed by any school of Hindu Law other than the Dayabhag school or by customary law dies intestate having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of Sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

25. There appears to have been a conflict of judicial opinion as to whether a Hindu widow's right to claim partition had to be reckoned from the date of her husband's death, or from the date she sought to enforce her claim. This was resolved by the Supreme Court, in Potti Lakshmi Perumallu Vs. Potti Krishnavenamma, in the following manner:

...Coming to (the last question there is a certain amount of conflict in the decisions of the various High Courts. One view is that the quantum of interest to which a Hindu widow is entitled u/s 3(2) of the Hindu Women's Rights to Property Act, 1937 is to be determined as on the date on which she seeks to enforce partition under Sub-section (3) of Section 3. The other view is that it has to be determined as on the date on which her husband died, that is to say, that it

is not a fluctuating interest increasing or decreasing as in result of deaths or births in the family.

The first mentioned view has been stated with approval in Mulla's Principles of Hindu Law, (12th ed.) and it is stated at pp. 109-110:

The share which devolves on a widow of a deceased coparcener is not a fixed and determinate share but what she takes is the "same interest as he himself had". Therefore, until there is partition, she cannot predicate the particular fraction of her share for it is likely to increase or decrease by birth or death of other coparceners. Her share would include a share in accretions to the joint family property till partition is effected, Prior to the Act, a widow was entitled to a share in partition among her sons in her capacity as a mother (except in Madras). It has been held in a number of cases that after the Act the widow cannot claim a double share on partition between the sons, one in her capacity as a widow and another as a mother. Under the prior law, stridhan acquired by a female from her husband or father-in-law was taken into account when a share was allotted to her on partition amongst the sons. The share she gets u/s 3(2) is not affected by any rule of Hindu law to the contrary and it has been held in a Nagpur case that such stridhan received by her would not be deducted from her share on partition.

In support of this statement in law reliance has been placed upon the following decisions: Nagappa v. Mukamhe ILR 1951 Bom 442 : 1951 Bom. 309 : 53 Bom. L.R. 177; Mahadu Kashiba Varnekar Vs. Gajarabai Shankar Varnekar, Sluvappa v. Yellawa AIR 1954 Bom 47; Gangadhar Rout and Another Vs. Subhashini Bewa and Others, ; Tukaram v. Mt. Gangi AIR 1957 Nag. 28; Ramchandra v. Ramgopal AIR 1956 Nag 228; Hanuman v. Tulsabai AIR 1956 Nag 63.

In addition to these decisions our attention was also invited on Gurudayal v. Sarju AIR 1952 Nag 434; Kamal Kishore v. Harihar ILR 30 : AIR 1951 Pat 645; Sabujpari Satrugan Isser AIR 1958 Pat 40 Movva Subba Rao and Another Vs. Movva Krishna Prasadam by Padyala Muthaiya and Another, Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, Manicka Gounder Vs. Arunachala Gounder and Others, Keluni Dei and Another Vs. Jagabandhu Naik and Others, The Indian Leaf Tobacco Development Ltd. Vs. K. Kotayya and Others, ; Laxman v. Gangabai ILR (1955) M.B. 282 : AIR 1955 M.P. 138; Bhondu Ganpat Kirad and Others Vs. Ramdayal Govindram Kirad and Another, ; Ratan Kumari Tholia Vs. Sunder Lal Tholia and Others,

The High Court itself referred to the decision in Parappa alias Hanumanthappa and Another Vs. Nagamma and Others, which is a decision of the Full Bench constituted for resolving an apparent conflict between the decisions in M.C. Chinniah Chettiar Vs. Sivagami Achi alias Sornam Achi and Others, and Subha Naicker v. Nallammal AIR 1950 Mad 192. In the opinion of the Full Bench there was really no conflict between the two decisions and that the right conferred by the Hindu Women's Rights to Property Act was a new right in modification of the

pre-existing one. The Full Bench further held that Section 3(2) of the Act does not bring about a severance of interest of the deceased coparcener, that his widow is not raised to the status of a coparcener though she continues to be a member of the joint Hindu family as she was before the Act, that the joint family would continue to exist as before subject only to her statutory rights and that the rights of the other members of the family would be worked out on the basis that the husband died on the date when the widow passed away, the right to survivorship being suspended till then. Further according to the Full Bench a widow can under the Act claim a share not only in the property owned and possessed by the family at the time of his death but also in the accretions arising therefrom, irrespective of the character of the accretions. The various decisions to which we have adverted rest on the view that the interest which the law has conferred upon the widow is a new kind of interest though in character it is what is commonly known as the Hindu widow's estate. This interest is in substitution of her right under the pre-existing Hindu law to claim maintenance. The decisions also recognise that though the widow does not, by virtue of the interest given to her by the new law become a coparcener she being entitled to claim partition of the joint family property is in the same position in which her deceased husband would have been in the matter of exercise of that right. That is to say, according to those decisions her interest is a fluctuating one and is liable to increase or decrease according as there are deaths in or additions to the members of the family or according as there are accretions to or diminutions of the property. In our opinion these decisions lay down the law correctly. To hold, as contended for by Mr. Desai and as would appear from the two decisions upon which reliance was placed by him before us AIR 1944 243 (Nagpur) and Siveshwar Prasad Narain Singh and Others Vs. Lata Harnarain Mal Bahal, would mean that whenever a coparcener in a Hindu joint family dies leaving a widow a disruption takes place in the family. For, unless a disruption is deemed to take place, it would not be possible for the widow's share to be crystallised. The argument of Mr. Desai, however, is that the words in the Act "his widow shall, subject to the provisions of Sub-section (3) have in the property the same interest as he himself had can only mean the interest which the deceased coparcener had at the moment of his death and the words "shall be the limited interest known as a Hindu woman's estate" show that the nature of her interest was to be the same as already recognised by the Hindu law. The legislature did not, he says, intend to create a new kind of interest not to make her a coparcener. Undoubtedly she does not become a coparcener, though her interest in the family property is to be the same as that of her deceased husband except that in extent it is to be that of a Hindu widow. (Now, of course, it has been enlarged by Section 14 of the Hindu Succession Act, 1956). But a coparcener has no defined interest in the joint family property and the right in the joint family property and the right which he has is to claim for partition. The quantum of his interest would be determinable with reference to the date on which such member unequivocally declares his intention to separate and thus put an end to the coparcenary. It cannot even be suggested that the event of the death of a coparcener is not tantamount to an

unequivocal declaration by him to separate from the family. According to the theory underlying the Hindu law the widow of a deceased Hindu is his surviving half and therefore as long as she is alive he must be deemed to continue to exist in her person. This surviving half had under the Hindu law texts no right to claim a partition of the property of the family to which her husband belonged. But the Act of 1937 has conferred that right upon her. When the Act says that she will have the same right as her husband had it clearly means that she would be entitled to be allotted the same share as her husband would have been entitled to had he lived on the date on which she claimed partition.

26. It is discernable from the above extract that the Supreme Court acknowledged that a Hindu widow's right to claim partition, even for the limited estate, did not result in her being deemed to be a coparcener. Her widow's estate stood enlarged, only to the extent that if there were a partition, she was held entitled to the share her deceased husband would have been entitled to. In this case, Rule 19 created a fiction, when it came to allotment of properties, or compensation, to displaced persons. This fiction can be seen from the following extract:

...Provided that where a member of a joint family has died during the period commencing on the 14th August, 1947 and ending on the relevant date leaving behind on the relevant date all or any of the following heirs namely:

(c) A widow or widows

(d) a son or sons (whatever the age of such son or sons but no lineal ascendant in the main line,

then all such heirs shall, notwithstanding anything contained in this rule, be reckoned as one member of the joint Hindu family.

Explanation - For the purpose of this rule, the question whether a family is joint or separate shall be determined with reference to the status of the family on the 14th day of August, 1947 and every members of a joint family shall be deemed to be joint notwithstanding the fact that he had separated from the family after that date.

27. The above provision was part of Rule 19(3), which amplified as to who were to be considered as members of a joint family. The proviso and explanation clearly state that notwithstanding the severance in status, of the joint family, for the purpose of determining shares, certain categories of persons - including Hindu widows were deemed to be part of a joint family.

28. In this case, the Court is not deciding a normal partition claim. What is really being considered is whether the determination of the authorities, in a rehabilitation measure, deeming that the petitioner's claim had to be considered along with Mukandi Bai, as the latter was to be treated as a member of the Joint Family, is correct in law. It would be worthwhile to recollect that the Act was brought in with a view of providing succor and relief to millions of people,

displaced from their homeland, in the immediate aftermath of Partition. Like all such welfare and humanitarian measures, Parliamentary anxiety was to reach out and provide rehabilitation to all those with the ultimate objective of settling them into as normal a status as could be assured, with utmost expedition. Rule 19 no doubt creates a fiction; but then, one must remember, that the authorities had limited resources, and a limited compensation pool, with which to cater to a large multitude of people. Having regard to these overall objectives, the exception engrafted by Rule 19(3), its proviso and explanation cannot be characterized as unreasonable.

29. This Court does not discern any unreasonableness or arbitrariness in the approach of the authorities, with the issue of the two orders impugned in these petitions. As to the petitioner's contention that the previous orders of 1966 achieved finality, which could not have been tampered with, it can be noticed that the revisional authority merely remitted the matter for determination by the processing officer. The order of 1970 too, said as much. In these circumstances, the order of 04.06.1973 was made after hearing and considering the views of all parties. The petitioner's objection to that order, on the ground of its violating principles of natural justice, to this Court's opinion, is unfounded.

30. In view of the above conclusions, the Court is of the opinion that the two writ petitions have to fail; they are accordingly dismissed, with no order as to costs.