

Moreover, the learned Judge has himself in his judgment remarked—

Ruldu
v.
Umar Din

Pandit, J.

“In any case, the question whether the requirements of the proviso to section 13(2) (i) of the Act have or have not been complied with is a finding on a mixed question of fact and law and it would not be proper for this Court while exercising extraordinary jurisdiction vested in it by Article 227 of the Constitution, to interfere with the finding arrived at by the learned District Judge.”

Finding as I do, that in the present case the tenant neither paid nor tendered the arrears of rent together with interest and cost of the application on the first day of hearing of the application for ejectment, there is no force in this petition which is hereby dismissed with costs. The tenant is ordered to vacate the premises within one month from today.

I. D. DUA, J.—I agree.

Dua, J.

R.S.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur,—J.

UTTAM CHAND,—*Petitioner*

versus

THE CHIEF SETTLEMENT COMMISSIONER AND

ANOTHER,—*Respondents*

Civil Writ No. 1413 of 1959

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 65(1)—Whether applies where no allotment made in respect of a particular claim—Person in possession of property allotted in respect of personal claim—Whether entitled to get compensation in respect of another claim verified in the name of his father as his heir.

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Held, that the right to be paid in respect of one's net compensation is absolute and mandatory. The Rules which

have been prescribed under the Displaced Persons (Compensation and Rehabilitation) Act *inter alia*, deal with the form and manner of payment of compensation. When no allotment has been made in respect of a particular claim, Rule 65(1) is not applicable.

Held, that the right to claim compensation can be inherited and the death of the person in whose favour a claim has been verified does not extinguish his claim, because such a result could not conceivably have been in contemplation of the Legislature and indeed runs counter to the true scope and purpose of the Rules. A person already in possession of the allotted property in respect of his personal claim is entitled to get compensation regarding the claim verified in the name of his father and inherited by him.

..Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1 dated 26th February, 1959.

ROOP CHAND, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, for the Respondents.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—The facts giving rise to this petition under Article 226 of the Constitution of India are not in controversy and may be briefly narrated. The petitioner, Uttam Chand, got a claim registered in respect of the property left behind by him in Pakistan. The registered number of his verified claim is 2,539. The registered number of the verified claim of Lal Chand, father of the petitioner, who had separate property, is No. 2540. Lal Chand died on 20th February, 1952, without having been allotted any property in his name.

It is common ground that the petitioner, who has been allotted agricultural land measuring more than 4 acres, is not entitled to any compensation

under rule 65 of the Displaced persons (Compensation and Rehabilitation) Rules, his verified claim being less than Rs. 20,000. The relevant rule is to this effect :—

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“65. (1) Any person to whom four acres or more of agricultural land have been allotted shall not be entitled to receive compensation separately in respect of his verified claim for any rural building the assessed value of which is less than Rs. 20,000.”

The petitioner, however, claimed compensation in lieu of the verified claim of his father being his only son. Lal Chand, whose claim had been verified for Rs. 18,000 in respect of two separate properties valued at Rs. 4,300 and Rs. 13,700, was not allotted any property and was clearly entitled to compensation in respect of his verified claim which is less than Rs. 20,000. The Settlement authorities have held that the petitioner being already in possession of the allotted property, is not entitled to claim compensation in respect of the verified claim of his father. This does not appear to me to be a correct interpretation of rule 65(1). The scheme of the Act leaves no room for doubt that an individual person's claim has to be dealt with separately. A verified claim, under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, is a claim which has been registered under the relevant statutory provisions and has been verified by any authority appointed for the purpose by the Government of the Punjab or the Government of Pepsu and which has not been satisfied wholly or partially by the allotment of any evacuee land under the relevant notification. Admittedly, no allotment had been made in

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favour of Lal Chand till his death on 20th of February, 1952. The application of Lal Chand was duly presented for payment of compensation under section 4. It may be that the petitioner had been pursuing the claim presented by Lal Chand after 20th of February, 1952, and the claim came to be verified under his name. It has, however, to be observed that the amount of compensation has to be determined in respect of each verified claim under section 7. Section 8 says that "a displaced person *shall* be paid out of the compensation pool the amount of net compensation....." determined under the Act and in such form" as may be prescribed." It seems to me that the right to be paid in respect of one's net compensation is absolute and mandatory and cannot be the subject of the caprice of the Settlement authorities.

The rules which have been prescribed under the Act, *inter alia*, deal with the form and manner of payment of compensation and rule 65, under which the petitioner's claim has been rejected, does not appear to me to be applicable as no allotment had been made in respect of this particular claim to Lal Chand or indeed any one else. The right to claim compensation in respect of the verified claim has been inherited by the petitioner as the only heir of Lal Chand. It is not disputed that the petitioner is entitled as the heir of Lal Chand to receive compensation in respect of his father's verified claim. If Lal Chand had been alive, there can be no doubt that he would have been entitled to receive compensation and the construction which has been put on rule 65(1) by the Departmental authorities has the effect of bringing about this astounding result that the death of Lal Chand extinguishes his claim—a result which could not conceivably have been in contemplation of the Legislature and indeed runs

counter to the true scope and purpose of the Rules. There is no reason, in my opinion, to aggravate the misfortune suffered by the petitioner in his father's death by putting a strained interpretation on rule 65(1) to deprive him even of the inheritance which he is entitled to receive as the heir of deceased.

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In my view, there is a manifest error of law committed by the authorities and I would accordingly allow this petition and quash the orders of the Settlement authorities which are Annexures 'A' and 'B' to this petition. The petitioner would get the costs of his petition.

K. S. K.

APPELLATE CIVIL.

Before S. S. Dulat and Prem Chand Pandit, JJ.

HARDAS KAUR AND ANOTHER,—Appellants.

versus

BAKHTAWAR SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 479 of 1957

Indian Limitation Act (IX of 1908)—Article 144—Last male owner dying in 1937—Possession of the lands left by him taken by his sisters without any right or title—Next heir dying in 1952—Suit for possession by reversioner brought in 1954—Whether within time—Possession of the sisters—Whether adverse ab initio.

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J, the last male owner of the land in dispute died in 1937. P was to succeed to his property as his next heir. Instead of P, the sisters of J, came into possession of the property without any right or title. P did not consent to the possession of the sisters of J. P died in 1952 and the suit for possession was brought in 1954 by 5th degree collaterals of J and P. The question arose whether the suit was within time.

Held, that the suit was barred by time. The possession of the sisters of J was without any right whatsoever to this property and without the consent of the next heir and consequently adverse to him. It follows that their possession was not only adverse to the real owner P, but was