FULL BENCH

Before Gurdev Singh, R. S. Narula, H. R. Sodhi, Gopal Singh and Man Mohan Singh Gujral, JJ.

DEV RAJ,—*Appellant.*

versus.

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 212 of 1969.

October 18, 1972.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 40—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 30—Abrogation of the Rule on 10th August, 1963, by sixth Amendment of the Rules—Whether retrospective—Application of a displaced person governed by Rule 30 for transfer of the property—Whether to be considered under Rule 30 as it existed on the date of application—Displaced persons—Whether have a vested right for payment of compensation by transfer of acquired property—Rehabilitation Authorities—Whether have a discretion not to transfer such property to a displaced person even though eligible under the Rules—Section 40—Whether gives power to the Central Government to give retrospective effect to any rule made thereunder—Interpretation of statutes—Retrospective operation to a statute—Whether can be given to impair existing right or obligation.

Held (per Full Bench), that the abrogation on 10th August, 1963, of Rule 30 of Displaced Persons (Compensation and Rehabilitation) Rules (1955) by Sixth Amendment of the Rules is not made retrospectively either by any express provisions or necessary intendment. A displaced person has a right to the determintion of his claim for compensation and its satisfaction in the prescribed manner and this is a substantive right. The use of word "shall" in Rule 30 clearly indicates that the authorities have no discretion in the matter, the right which a displaced person claims under this rule is still on a stronger footing. That right cannot be adversely affected or taken away unless it is expressly stated in the amending provision, or the language of the Act unmistakably and unequivocally indicates an intention to that effect. Hence the rights of a displaced person holding a verified claim to obtain allotable acquired evacuee property under rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, will be governed by the rule 30 as it existed on the date of his application for payment of compensation by transfer of such property, notwithstanding its subsequent amendment. (Paras 89 and 90).

Held, that a displaced person has a vested right not only to have the compensation payable to him ascertained but also to have his claim satisfied in the manner prescribed by the Rules. Rule 30 of the Rules prescribes one of the manners of such satisfaction. It confers a right upon a displaced person to get the property transferred to him if he has claimed it and satisfies all the requirements of that rule. The Rehabilitation Authorities have no discretion to transfer or not to transfer the acquired evacuee property to a displaced person even though he is eligible for its transfer under the Rules. (Para 84)

Held (per Narula, J.), that no power is vested in the Central Government to frame any rules under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, otherwise than in exercise of the powers vested in it by section 40 of the Act. That section does not vest the Central Government either expressly or by necessary implication with the power to give retrospective effect to any rules made thereunder. The rule making authority, i.e., the Central Government being a mere delegate of the Parliament, which is the Sovereign Legislature, cannot, therefore, give retrospective effect to any rule made by it under section 40. (Para 93)

Held (per Full Bench), that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. A statute is not to be construed to operate retrospectively so as to take away or impair a vested or substantive right, unless that intention is made manifest by language so plain and unmistakable that there is no possibility of any choice of meanings. If the enactment is expressed in language, which is fairly capable of either interpretation, it ought to be construed as prospective only. The retrospectivity of a procedural statute will not, however, affect substantive rights which have already vested in a citizen. (Para 41)

Appeal under Clause 10 *of the Letters Patent against the judgment of Hon'ble Mr. Justice P. C. Jain, passed in Civil Writ No.* 1814 *of* 1967 *on* 10*th February,* 1969.

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh and Hon'ble Mr. Justice Gurdev Singh on 27*th January,* 1971, *to the Full Bench for deciding the following important question of law involved in the case* :—

> *"Will the rights of a claimant with a verified claim be governed by rule* 30 *of the Rules, as it existed on the date of his application for the transfer of the property in his occupation or by the position as it existed on the date of the decision by the authorities concerned?"*

The Full Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit, Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice Gopal Singh referred the case to the larger Bench,—vide *order dated* 6*th September,* 1971,

for deciding the said question of law. The larger Bench consisting of Hon'ble Mr. Justice Gurdev Singh, Hon'ble Mr. Justice R. S. Narula, Hon'ble Mr. Justice H. R. Sodhi, Hon'ble Mr. Justice Gopal Singh and Hon'ble Mr. Justice Manmohan Singh Gujral after deciding the question of law on 18th October, 1972 returned the case to the Division Bench for deciding it in accordance with law.

H. L. SARIN, ADVOCATE WITH M. L. SARIN, BHAL SINGH MALIK, H. S. GUJRAL, G. S. GANDHI AND R. L. NARULA, ADVOCATES, for the appellant.

J. S. WASU, ADVOCATE-GENERAL, FOR STATE OF PUNJAB WITH R. K. GULHATI. ADVOCATE. SHRI MANI SUBRAT JAIN AND M. L. MALIK, ADVOCATES, for respondent No. 4 nd 5.

ORDER

Gurdev Singh, J.—(1) This Full Bench is called upon to express its opinion on the effect of abrogation of Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The precise question referred to us is:

> "Will the rights of a claimant with a verified claim be governed by rule 30 of the Rules, as it existed on the date of his application for the transfer of the property in his occupation or by the position as it existed on the date of the decision by the authorities concerned."

(2) Rule 30, with which we are concerned in this case, occurs in Chapter V of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, relating to "payment of compensation by transfer of acquired evacuee properties". It was amended more than once and was ultimately omitted or abrogated by the Sixth Amendment of the Rules (Notification No. GSR-1317/R, dated 3rd of August, 1963, published in the Gazette of India dated 10th of August, 1963). As it stood at the time of its abrogation it ran thus:

> "30. *Payment of compensation where an acquired evacuee property which is an allotable property, is in occupation of more than one person.*—If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property,

the property shall be offered to the person whose gross compensation is the highest and other persons may be allotted such other acquired evacuee property which is allotable as may be available.

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

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

(3) The question that has been referred to us relates to the effect of this abrogation on claims for transfer of acquired evacuee property pending before the Rehabilitation Authorities on that date. For proper appreciation of the matter in contraversy it is here necessary to advert to the facts giving rise to this reference.

(4) The appellant Dev Raj is a displaced person from West Pakistan. On migration to India he settled at Ludhiana and took up his residence with his brother Jagan Nath in his House No. B—IV-1095, Hazuri Road, Ludhiana, to whom a portion of this evacuee property had been allotted by the Custodian, Evacuee Property. On the transfer of Jagan Nath the appellant Dev Raj applied to the authorities in March, 1948, for allotment of this house in his own name. Before his application could be decided, the respondent Gurcharan Parshad, who had been in occupation of a portion, obtained allotment of the entire house. This order was later set aside on the appellant's application, who complained that it was passed without notice to him. The allotment made to Gurcharan Parshad was accordingly, cancelled on 30th of April, 1948, and instead it was allotted to the appellant Dev Raj. On 5th of August, 1948, the Deputy Commissioner, Ludhiana, acting as Custodian, Evacuee Property, modified this order and allotted to the appellant and Respondent No.4 the portions which were in their respective possession.

(5) On coming into force of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (hereinafter referred to as the Act), the appellant Dev Raj, being holder of a verified claim,

sought the transfer of the entire house to him in settlement of his claim for compensation, taking advantage of Rule 30 of the Rules, as the respondent Gurcharan Parshad not only did not hold any verified claim but was not even a displaced person as he had been residing in Ludhiana long before the partition of the country took place. Before this application for transfer made by Dev Raj could be adjudicated upon, Gurcharan Parshad, Respondent No. 4, whose mother Smt. Lajwanti was a displaced person holding a verified claim, succeeded in obtaining transfer of the entire house jointly with his mother. Because of this order of the District Rent and Managing Officer dated 29th January, 1960, the Assistant Settlement Officer, Ludhiana, Shri D. C. Ganpati, rejected the appellant's application for transfer on 20th May, 1960. An appeal against this order preferred by Dev Raj was, however, accepted on 24th September, 1960, by the Settlement Officer who was invested with the power of the Settlement Commissioner. It was directed that the compensation case of the appellant be reopened and the house be transferred to him. This order, having been passed without notice to the respondents Gurcharan Parshad and his mother Smt. Lajwanti, was set aside on 15th September, 1961, by the Deputy Chief Settlement Commissioner, exercising the powers of the Chief Settlement Commissioner.

(6) This was, however, not the end of the matter. On 23rd of October, 1961, Shri Parshotam Sarup, Deputy Chief Settlement Commissioner in exercise of his revisional jurisdiction set aside the order dated 29th of January, 1960, by which the District Rent and Managing Officer had directed the transfer of the house in dispute in favour of Respondents 4 and 5 to the exclusion of the appellant Dev Raj. He remanded the case for fresh decision, directing that the eligibility of the contending parties be first determined. This order forms Annexure 'A' to the writ-petition out of which this reference has arisen.

(7) Finding that no steps had been taken to implement this order, on 13th of February, 1962 the appellant Dev Raj moved the Chief Settlement Commissioner (Annexure 'B'). Subsequently, he made another application (Annexure 'C') on the 24th of January, 1963, and ultimately, approached the Settlement Officer, Jullundur, for transfer of the house by means of the application (copy Annexure 'D') dated 8th of April, 1963. A copy of the same was sent to the District Rent and Managing Officer. Unfortunately, for a long time no action was taken to implement the order of Shri Parshotam Lal dated 23rd of October, 1961, but ultimately on 24th of May, 1966, Shri

T. R. Chona, Assistant Settlement Commissioner, Jullundur, by his order (Annexure 'F') refused to transfer the property to any of the contending claimants, holding that in view of the fact that Rule 30 had been abrogated as far back as 3rd of August, 1963, the eligibility of the claimants could not be determined and hence no transfer of the property could be made to any one of them, but it was to be put to auction. Dev Raj's petition for revision against this order was rejected by the Chief Settlement Commissioner, Delhi, on 16th September, 1966,—*vide* his order Annexure 'G'. His application to the Central Government under section 33 of the Act met the same fate and was rejected,—*vide* order (Annexure 'H') dated 19th of June, 1967. It was thereupon that Dev Raj invoked the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution, praying that setting aside the orders of the Rehabilitation Authorities by which they had refused to transfer the house to him, a direction be issued to determine the eligibility of the petitioner under Rule 30 as it existed on 23rd October, 1961, and transfer the house to him.

(8) The learned Single Judge, before whom the matter came up, agreed with the authorities that because of abrogation of Rule 30 the evacuee property in dispute could not be transferred to the appellant. Being still dissatisfied Dev Raj appealed under clause 10 of the Letters Patent against this order dated 10th of February, 1969. The finding of the learned Single Judge that the Rules as they existed on the date of the decision were applicable and that the appellant could not take advantage of the rule that had been abrogated during the pendency of his application for transfer of the property was challenged. In holding that the appellant could not take advantage of the abrogated rule, the learned Single Judge observed:—

> "The order dated 23rd October, 1961, did not create any right in favour of the petitioner and no final order of transfer of property prior to the change in law was made in his favour. It is unfortunate that the matter remained pending for quite a long time and in the meantime rule 30 was abrogated. Nevertheless, the Assistant Settlement Officer was justified in disposing of the matter in accordance with law as it stood at that time and not when the case was remanded to him."

(9) When the Letters Patent appeal came up before my Lord the Chief Justice and myself, reliance for upholding the view taken by

the learned Single Judge was placed on the Bench decision of this Court in *Mela Ram* v. *The Government of India,* (1) wherein it had been held that the Rules, as they existed on the date of the decision and not on the date of the application, would apply to all pending proceedings under the Act. Subsequent to this decision a Full Bench of this Court in *Chanan Dass* v. *Union of India and others,* (2), by majority (Mehar Singh C.J. and D. K. Mahajan J.), however, held that rule 30 as amended on March 24, 1961, did not apply to Revisions, pending on that date or filed thereafter under sections 24 and 33 of the Act, implying thereby that the amended rule operated to affect the pending proceedings upto the stage of the appeal. On behalf of the appellant Dev Raj it was contended that the Full Bench decision had no bearing on the point as the learned Judges had proceeded on the assumption that the decision in *Mela Ram's case,* (1) supra, was correct and had directed themselves solely to the question, whether the amended rule applied to the pending Revisions under section 24 and applications under section 33 or should be confined upto the stage of Appeal. Challenging the correctness of the view taken in *Mela Ram's case* (1) with regard to the retrospective operation of the amended rule 30, reliance was placed upon the decision of their Lordships of the Supreme Court in *Sardarni Attal Kaur* v. *The Chief Settlement Commissioner* (3), wherein while dealing with rule 19 it had been held that there was a vested right in a displaced claimant for the determination and satisfaction of his claim and any subsequent modification of that rule would not affect the right of a person to have his claim ascertained in accordance with the Rules, as they existed on the date of his making the application. In view of the importance of the question raised, the Letters Patent Bench directed that the controversy with regard to the effect of abrogation of rule 30 be settled authoritatively by a Full Bench. The Full Bench constituted by my learned brothers P. C. Pandit, R. S. Narula and Gopal Singh, JJ., however, felt that since *Chanan Dass's case* (2) had been heard by a Bench of 3 Judges and doubt was cast on its correctness, the matter be dealt with by a larger Bench. Accordingly, this Bench of five Judges has been constituted to answer the question, which has been set out in the opening part of this order.

(1) L.P.A. 92 of 1963 decided on 19th February, 1964.

(2) 1967 P. L. R. 1.

(3) C. A. No. 2145 of 1966 decided by Supreme Court on 3rd February, 1967.

(10) To resolve the controversy raised before us, it is necessary not only to refer to the history of rule 30, the benefit of which the appellant claims, but also to notice the scheme of the Rules in which it occurs and that of the Act under which they have been framed.

(11) On the Partition of the country, Hindus, Sikhs and other non-Muslims from West Pakistan and East Bengal were compelled to leave their hearths and homes, seeking shelter in free India. Because of this in flux of refugees the Government of this country was confronted with gigantic problem of rehabilitation of displaced persons. As a result of a similar movement of Muslims from this country to Pakistan, the property left behind by them became available and the Government decided to utilise the same for compensating the displaced persons from Pakistan and for their rehabilitation. Displaced persons were thereupon required to put in their claims for the properties that they had left behind in Pakistan. The claims were duly registered and in accordance with the Rules and law promulgated for the purpose they were got verified. To compensate such claimants and to rehabilitate them, the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was enacted and it came into force on the 9th of October, 1954. Its preamble is in these words :—

> "An Act to provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith."

(12) Section 3 of the Act sets up the machinery for carrying out its purpose and to enforce its provisions. Section 4 enjoins upon the Central Government to issue notifications in the official Gazette from time to time, but not later than the thirtieth day of June, 1955, requiring all displaced persons having a verified claim, to make applications for the payment of compensation. As before this Act came into force most of the available evacuee property had been leased out or allotted and occupied by displaced persons, provision is made in section 5 for the determination of public dues recoverable from the applicant and they have to be adjusted in determining the amount of net compensation under section 7 due to a displaced person. Section 8 prescribes the form and manner of payment of compensation. It lays down that compensation may be paid in one or more of the various forms stated therein, namely, cash, Government bonds, sale to

the displaced person of any property from the compensation pool, transfer of shares and debentures and such other form as may be prescribed. Sub-section (2) thereof provides that for the purpose of payment of compensation the Central Government may, by rules, provide, *inter alia*, for the scales according to which, the form and manner in which and the instalment by which, the compensation may be paid to different classes of displaced persons. Section 10 prescribes special procedure for payment of compensation to displaced persons to whom acquired evacuee property had been allotted under various notifications specified therein, by transfer of such property.

(13) Section 12 authorises the Central Government to acquire any evacuee property for a public purpose, being a purpose, connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons. On publication of such notification "the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances". It was in exercise of these powers that the Central Government acquired evacuee property and the same became a part of the compensation pool set up under section 14 and it is out of this property in compensation pool that compensation is paid to displaced persons.

(14) Omitting the provisions that are not relevant for the purposes of this case we come to section 20. It provides for the transfer of property out of the compensation pool by sale, lease or allotment, etc. subject to any rules that may be framed under the Act.

(15) Sections 22 to 33 contain provisions for appeal, revision etc. to various authorities under the Act. Section 40, which is the last section of this Act, authorises the Central Government to make Rules to carry out the purposes of this Act including :—

> "(g) the terms and conditions subject to which property may be transferred to a displaced person under section 10.
>
> (j) the procedure for the transfer of property out of the compensation pool and the manner of realisation of the sale proceeds or the adjustment of the value of the property transferred against the amount of compensation."

(16) It was in exercise of this power under section 40 that the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, were framed. On their promulgation by publication in the Government Gazette, they came into force on the 21st of May, 1955. The Scheme of these Rules and some of the provisions made thereunder may now be noticed.

(17) Chapter II of the Rules lays down the procedure for submission of compensation applications and determination of public dues. Under rule 4, which occurs in this chapter, an application for compensation has to be made by a displaced person in the form specified in Appendix I and it has to be accompanied by the questionnaire in the form specified in Appendix II and an affidavit in the form specified in Appendix III, besides certified copy of the scheme, assessment order and some other documents. Chapter III lays down the procedure to be followed by the Settlement Commissioner on receipt of the duplicate copies of the applications for compensation. Chapter IV contains provisions for determination of compensation. This brings us to Chapter V headed 'Payment of compensation by transfer of acquired evacuee properties'. It is in this chapter that rule 30, on which the appellant bases his claim to the transfer of the house in dispute, occurred. Rule 22 with which this chapter opens lays down the various categories of property which shall "ordinarily be allotted". Category (a) as it originally stood in this rule read as follows :—

> "(a) any residential property in the occupation of a displaced person, the value of which does not exceed five thousand rupees."

Subsequently, by an amendment dated 21st September, 1955, the words "five thousand" were replaced by the words "ten thousand" and by a still later amendment dated 22nd of may, 1962, these words were substituted by "fifteen thousand".

Rule 23 provides :

> "23. *Classes of acquired evacuee properties which may be sold.*—All acquired evacuee properties which are not allotable under rule 22 shall ordinarily be sold."

(18) Rule 24 enjoins upon the Regional Settlement Commissioner to determine the value of the allotable property that is to be transferred to a displaced person in satisfaction of his claim before ordering its transfer. Rules 25, 26, 30 and 31 make provision for the transfer of evacuee property to a person or persons in occupation thereof. Rule 25 relates to the property that is in the sole occupation of a person holding a verified claim, while rule 26 deals with the transfer of a property in the sole occupation of a person who does not hold a verified claim.

(19) Rule 30, with which we are concerned, relates to allotable property which is in occupation of more than one person. As originally promulgated it read as follows :

> "30. *Payment of compensation where an acquired evacuee property which is an allotable property, is in occupation of more than one person.*—If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired property which is allotable as may be available :
>
> Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him.
>
> "*Explanation I.*—The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property which is an allotable property hold verified claims and some do not hold such claims.
>
> *Explanation II.*—If any acquired evacuee property has been allotted to a member of a family defined in sub-rule (3) of rule 7 who does not hold any verified claim and if another member of the family holding a verified claim is in occupation of such property, the compensation payable to such other member of the family may be adjusted against the value of the property."

(20) This rule was amended more than once. By the amendment dated 24th of March, 1961, the words "the highest" were substituted for the words "nearest to the value of the property".

(21) Subsequent to these amendments rule 30 in its entirety was deleted by the Sixth Amendment of the Rules effected on 3rd of August, 1963, and it is because of this abrogation that the authorities concerned have refused to transfer the property to the appellant who claims to have been in its occupation and holds a verified claim. His claim for transfer can be accepted only if it is found that rule 30, which was in existence when he applied to the Rehabilitation Authorities for transfer, would continue to govern his case, notwithstanding its abrogation and the fact that on the day the Rehabilitation Authorities had to adjudicate his claim it was no longer in existence.

(22) Though sometimes distinction is made between 'repeal' and an 'amendment', in essence there is no real distinction. Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of the existing law is small the Act professes to amend, if it is extensive, it repeals the law and re-enacts it. (See *N. S. Dal Mill* v. *Firm Sheo Prasad*) (4). Reference may here be made to page 447 of Sutherland's Statutory Construction, 3rd Edition, Vol. I, wherein it is stated :—

> "The distinction between repeal and amendment, as these terms are used by the Courts, is arbitrary. Naturally the use of these terms by the Court is based largely on how the Legislatures have developed and applied these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitle the Act as an amendment.....When a provision is withdrawn from a section, the Legislatures call the Act an amendment, particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a repeal. Thus as used by the Legislatures, amendment and repeal may differ in kind—addition as opposed to withdrawal; or only in degree—abrogation of part of a section as opposed to abrogation of a whole section or Act ; or more

(4) A.I.R. 1958 All. 404.

commonly, in both kind and degree—addition of a provision to a section to place a provision being abrogated as opposed to abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal—the abrogation of an existing statutory provision—and have therefore applied the term 'implied repeal' and the rules of construction applicable to repeals to such amendments."

(23) By the Sixth Amendment of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, rules 30 and 31 have been omitted. Rule 30, with which we are concerned in this case and which has been reproduced earlier, relates to the payment of compensation to a displaced person by allotment of acquired evacuee property which is in possession of more than one person. From the other provisions contained in this Sixth Amendment, it becomes apparent that the deletion of this rule became necessary because of the amendment of rule 22, which lays down the various classes of acquired evacuee property that shall ordinarily be allotted. One of the categories of such property, clause (a), is "any residential property in the occupation of a displaced person, the value of which does not exceed fifteen thousand rupees". By the Sixth Amendment to this provision the following Explanation was added :

"No property referred to in clause (a) or clause (b) shall be allottable, if it is in the occupation of two or more persons, whether any or all of them be displaced persons or not."

(24) As a result of this Explanation the acquired evacuee property in possession of two or more persons, even though displaced and holding verified claim, ceased to be allotable. Accordingly, rule 30, which related to transfer of such property was rendered redundant or otiose. Thus, the deletion of this rule by the same Amendment (No. G.S.R. 1317, dated 3rd August, 1963, published in the Gazette of India Pt. II, on 10th August, 1963) was merely intended to chop off the dead wood. In fact, all the amendments made by the Sixth Amendment of the Rules, were made to take evacuee property, which was in occupation of two or more persons, out of the category

of allotable property and it was to achieve this end that an Explanation to Rule 36 as well was added, declaring that even Government built properties, which are in possession of two or more persons, shall not be allotable.

(25) In this situation, it is in reality the effect of the amendment of rule 22 that requires consideration. Even if there is any difference between repeal and amendment, that will not be of much consequence, as the abrogation of rule 30 in the case before us is a consequence of the amendment of rule 22 as noticed above.

(26) What has been urged before us is that the abrogation of rule 30 could not operate retrospectively so as to take away the right of the appellant to have the property, which was allotable at the time he applied for its transfer, transferred to him.

(27) Section 6 of the Central General Clauses Act (10 of 1897), which deals with the effect of repeal of an Act or a Central Regulation, provides that "unless a different intention appears, the repeal shall not—

(a) * * * * * * * *

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) * * * * * * * *;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

(28) This is in consonance with the fundamental rule of interpretation that no statute shall be construed to have a retrospective effect unless such intention appears very clearly in the terms of the Act or arises by necessary and distinct implication. Thus, we have to look to the repealing Act or provisions to find out whether the rule that has been abrogated would continue to govern the pending proceedings.

(29) It cannot be disputed that prior to the abrogation of rule 30, the appellant, who is a displaced person holding a verified claim and was in possession of the house in dispute, was entitled to apply for its transfer to him and, if found eligible, the authorities could transfer the same to him. It is also true that if the law as it stands on the date of determination of his eligibility or adjudication of his claim to transfer is to be considered, than because of the amendment of rule 22 and the abrogation of rule 30, it was no longer open to him to claim the transfer of this house and thus his right to the transfer of property in satisfaction of his claim stands adversely affected. The appellant, however, applied for transfer of this property long before this amendment in the Rules, when the property in his occupation was allotable under rule 22 and he was entitled to ask for its transfer to him under rule 30. It is vehemently urged on his behalf that these amendments of the Rules were not intended to operate retrospectively so as to take away his right to the transfer of this property.

(30) Dealing with retrospective operation of statutes, Maxwell in his "The Interpretation of Statutes" (12th Edition) at page 215 states :—

> "Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English Law that no statute shall be construed to have a retrospective effect unless such an intention appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

(31) In the Sixth Amendment of the Rules, there is no express provision making these amendments retrospective.

(32) Bindra in his Interpetation of Statutes, (Fifth Edition) at page 643, has dealt with this matter thus :

> "Perhaps no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation

otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. A statute which impairs vested rights or the legality of its transactions or the obligations of contract should not *prima facie* be held to be retrospective. Such rights cannot be taken away by implication. A statute affecting private rights is to provide expressly for either the taking away of the private right or for imposing restrictions on that right. The rights cannot be taken away or restricted by implication.....It is well settled that a statute is not to be construed to operate retrospectively so as to take away a vested right, unless that intention is made manifest by language so plain and unmistakable that there is no possibility of any choice of meanings. If the enactment is express in language, which is fairly capable of either interpretation, it ought to be construed as prospective only. The retrospectivity of a procedural statute will not, however, affect substantive rights which have already vested in a citizen.....

"The same rule governs the applicability of an amending statute to a pending action. When an amending section avoids transactions, then it is necessary to have clear words in the statute if transactions entered into before the Act are to be affected."

(33) At page 387 of Craies on Statute Law (Seventh Edition) it is stated :

"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing. In *Laurie* v. *Renad,* (5), Lindley L. J. said : 'It is a fundamental rule of English Law that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such a construction. And

(5) (1892) 3 Ch. 402.

the same rule involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary'....."

(34) The learned Author then gave the following quotation from *Pardo* v. *Bingham*, (6), where Lord Hatherley in his judgment said :

"The question is ..... Secondly, whether on general principles the statute ought in this particular section to be held to operate retrospectively, the general rule of law undoubtedly being, that except there be a clear indication either from the subject-matter or from the working of a statute, a statute is not to receive a retrospective construction..... In fact, we must look at the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was the legislature contemplated."

(35) The question of retrospective operation of an amending provision came up before their Lordships of the Supreme Court in *Moti Ram* v. *Suraj Bhan and others*, (7) where Gajendragadkar J. (as his Lordship then was) summed up the legal position in these words :

"It is well settled that where an amendment affects vested rights the amendment would operate prospectively unless its is expressly made retrospective or its retrospective operation follows as a matter of necessary implication."

(36) In that case their Lordships were dealing with the amendment of one of the clauses of section 13(3) of the East Punjab Urban Rent Restriction Act, pertaining to a ground for eviction. Continuing his Lordship observed :

"The amending Act obviously does not make the relevant provision retrospective in terms and we see no reason to accept the suggestion that the retrospective operation of the relevant provision can be spelled out as a matter of necessary implication."

(6) (1870) L. R. 4 Ch. App. 735.
(7) A. I. R. 1960 S. C. 655.

(37) Pointing out that if the amendment is considered to be retrospective it would result in automatic failure of all pending actions, in which landlords may have applied for possession of their buildings let out to the tenants under that provision, Gajendragadkar J. proceeded on to say :

> "If such a drastic consequence was really intended by the Legislature it would certainly have made appropriate provisions in express terms in that behalf. Where the Legislature intends to make substantive provisions of law retrospective in operation, it generally makes its intention clear by express provisions in that behalf."

(38) Recently in *Income-tax Officer, Allepey* v. *I.M.C. Ponnoose and others,* (8) their Lordships of the Supreme Court dealing with this matter said :

> "It is open to a sovereign legislature to enact laws which have retrospective operation. The courts will not ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect."

(39) In *Arjan Singh* v. *State of Punjab* (9) Hegde J. observed :

> "It is a well settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication

(8) A. I. R. 1970 S. C. 385=(1969)2 S. C. R. 352.
(9) A. I. R. 1970 S. C. 703.

has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended."

(40) In *Ram Parshad Halwai* v. *Mukhtiar Chand* (10), a Division Bench of this Court dealing with the amendment of one of the clauses of section 13(3) of the East Punjab Urban Rent Restriction Act, 1949, said :

"It is correct that the intention to give retrospective operation to a statute so as to make it applicable to pending actions need not be stated in express terms, necessary implication also is a recognised mode of expression. The freedom of legislature to express its mind in any form cannot be restricted. But where any such intention is suggested, the Courts always insist on there being a clear, adequate and unequivocal expression of the intention, which should not be easy to mistake. The matter is one of construction and if upon a construction of the enactment it is absolutely apparent that it was the intention of the legislature that provisions of the Act should apply to pending cases, they have to be so applied."

The legal position as it merges from the above discussion with regard to the effect of amending or a repealing statute may be summed up thus :

(41) A retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. It is well settled that a statute is not to be construed to operate retrospectively so as to take away or impair a vested or substantive right, unless that intention is made manifest by language so plain and unmistakable that there is no possibility of any choice of meanings. If the enactment is expressed in language, which is fairly capable of either interpretation, it ought to be construed as prospective only. The retrospectivity of a procedural statute will not, however, affect substantive rights which have already vested in a citizen.

(10) I. L. R. (1958) II Pb. 1953.

(42) When an amending section avoids transactions, then it is necessary to have clear words in the statute if transactions entered into before the Act are to be affected. If there is an express provision making the amending provision retrospective, effect has to be given to it, but even in absence of any such a provision the amending statue can have retrospective effect if its language is such as plainly to require such a construction. Even then a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. The indication to affect existing rights or remedies must be clear and it has to be gathered either from the subject-matter or from the working of a statute. For that purpose we have to look at the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the legislature contemplated.

(43) The Sixth Amendment of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, effected in the year 1963, with which we are concerned in this case, admittedly does not contain any express provision making the amendments mentioned therein, including the omission of rule 30, retrospective. Indisputably rule 30, which has been reproduced above, as it stood before its deletion, is not a procedural provision, but pertains to transfer of allotable evacuee property to displaced persons holding verified claims, who fulfil certain conditions laid down therein. If the delection of this rule is held retrospective so as to apply to the pending proceedings, it will obviously debar the displaced persons concerned from claiming the benefit of this rule and have allotable property transferred to them. Such an interpretation will be justified only if we find something in the amending provision which discloses clear, adequate and unequivocal intention to deprive the displaced persons, who are eligible for the transfer of the allotable property under rule 30, of its benefit. As has been noticed earlier, prior to its abrogation rule 30 had been amended more than once. The effect of earlier amendments of this rule came up for consideration before this Court in several cases, some of which have been relied upon to support the contention that since rule 30 stood abrogated on the date of the adjudication of the appellant's claim for transfer no relief could be afforded to him, the main reliance being on the Bench decision of this Court in *Mela Ram* v. *The Government of India* (1). (referred to as Mela Ram's case in the judgment) and the Full Bench decision in *Chanan Das* v. *Union of India and others* (2).

(44) In *Mela Ram's case* (1), the Bench consisting of I. D. Dua and H. R. Khanna, JJ, (now their Lordships of the Supreme Court) dealt with a bunch of Letters Patent Appeals and writ petitions that had been referred to them to resolve the conflict in judicial decisions regarding the applicability of the amended rule 30 to proceedings pending before the various Rehabilitation Authorities The amendment in question (G.S.R. 460/R, dated 24th March, 1961) was of rule 30, by which the words "the highest" were substituted for the words "nearest to the value of the property". Their Lordships held the amended rule to be retrospective in its operation right up to the stage of application under section 33 of the Act so as to control all cases not completely finalised by the department.

(45) Earlier a different view had, however, been taken by another Bench of this Court (Falshaw, C. J. and Mehar Singh, J.) in *Harbans Lal* v. *Union of India* (11). That was also a case under rule 30. Harbans Lal had been unsuccessful up to the stage of Revision before the Chief Settlement Commissioner under section 24 of the Act in obtaining property because his claim was inferior to that of his opponent under rule 30 as it then stood. He thereupon approached the Central Government under section 33. During the pendency of those proceedings there was an amendment of rule 98(a), which placed the verified rehabilitation grant on the same footing as the verified claim for the purposes of rule 30. Because of this provision Harbans Lal, who was also entitled to a rehabilitation grant, claimed priority before the Deputy Secretary exercising the powers of the Government under section 33. His plea was, however, rejected and the Bench ruled that the amended rule could not be given retrospective effect to in the proceedings under section 33 of the Act, which were in the nature of revisional powers intended to be used in much the same way as the revisional powers conferred on the Chief Settlement Commissioner under section 24 of the Act.

(46) In *Chanan Dass's case* (2), the question referred to the Full Bennch was :

> "Whether rule 30, as amended on March 24, 1961, (published in the Gazette of India, Part II, on April 1, 1961), applies to revisions pending on that date or filed thereafter under sections 24 and 33 of the Displaced Persons (Compensation and Rehabilitation) Act?"

(11) C. W. 513-D of 1959 decided on 31st December, 1963.

(47) By this amendment the words "nearest to the value of the property" were substituted by the words "the highest". The Full Bench by majority (Mehar Singh, C.J., and D. K. Mahajan J;) answered this question in the negative, holding that "the amended rule 30 does not apply to revisions pending on the date of its coming into operation or filed thereafter under section 24, or to applications under section 33 of the Act". Mr. Justice Dua (now an Hon'ble Judge of the Supreme Court) recording dissenting opinion, answered the question referred to the Full Bench in the affirmative, saying :

> "The amended rule 30 is intended to apply to all cases involving consideration of the questions of paying compensation by transferring acquired allotable evacuee property pending before the department till they are finalised and this would include proceedings actually pending with the Central Government under section 33 of the Act. These proceedings are governed by the amended rule for they like those under section 24 and proceedings by way of appeal seem to be steps in a series of proceedings under the Act, all connected by an intrinsic unity and are to be regarded as one legal proceeding."

(48) It is evident that because of the majority opinion of the Full Bench the decision in *Mela Ram's case* (1), stood partially overruled to the extent of making the amended rule inapplicable to the revisional proceedings under sections 24 and 33 of the Act. This decision of the Full Bench, clearly implied that the amended rule would apply retrospectively to the pending proceedings before departmental authorities up to the appellate stage.

(49) It has, however, been urged before us on behalf of the appellant that *Chanan Dass's case* (2), (supra) should not be taken as authority for the proposition that the Sixth Amendment of rule 30, even though it results in its abrogation, has to be given effect to in proceedings pending under that rule and up to the stage of appeal, as the question referred to the Full Bench in that case was confined only to the effect of an amendment on the proceedings pending under sections 24 and 33 of the Act, and it was never called upon to consider, nor did it go into, the question whether the amendment of rule 30 operated retrospectively so as to affect the claims under that rule which were yet awaiting adjudication before the original or appellate authority. It is emphasised that the effect of the amendment of rule

30 on the claims pending before the original authorities and the appeals against orders passed under that provision did not arise in that case and both the order of reference and the decision of the Full Bench proceeded on the assumption that pending proceedings up to the stage of appeal were governed by the amended rule, which assumption, so the learned counsel urges, is not correct.

(50) It is true that so far as the proceedings before the Rehabilitation Authorities up to the stage of appeal are concerned the Full Bench has not ruled that the amended rule would not apply retrospectively and to that extent the decision in *Mela Ram's case* (1), continues to hold the field. All the same it is abundantly clear that the finding in *Mela Ram's case* (1), that the pending proceedings up to the stage of appeal would be governed by the amended rule 30 was not specifically affirmed by the Full Bench. In fact, their Lordships of the Full Bench were not called upon to go into the question whether the amended rule applied up to the stage of the appeal. The question referred to for their Lordships' opinion was limited one and what they were called upon to consider was : "Whether rule 30 applied to revisions pending on the date of its amendment or filed thereafter under sections 24 and 33 of the Act?", and this question was answered by the majority in the negative. Though it can be argued with some plausibility that had their Lordships of the Full Bench found that the amended rule did not apply retrospectively even to pending claims under rule 30 or the appellate proceedings, they would have made that a ground for not extending its operation to proceedings beyond the stage of appeal, yet the fact remains that their Lordships having not been called upon to consider whether the amended rule was applicable up to the stage of appeal, scrupulously refrained from going into that matter. This is apparent both from the majority and the minority judgments. In paragraph 11 at page 15 of the Report, the learned Chief Justice observed :

> "It has already been pointed out that rule 30 has been held to have retrospective effect and that question is not before this Bench, for the question under consideration deals only with the stage of revision and the applicability of the amended rule at that stage."

(51) In fact, this was emphasised by Dua J., in the opening part of his judgment (paragraph 16) when his Lordship said :

> "The question formulated apparently assumes that Rule 30 of the Displaced Persons (Compensation and Rehabilitation)

Rules, 1955, (hereinafter called the Rules) as amended in March, 1961, would govern the proceedings pending on appeal under section 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act). This would seem to me to suggest that the rule in question has at least partial retrospective effect and is not completely prospective."

Again at page 38, Dua J., reiterated :

"It is significant that in the present case retrospectivity is assumed from which it follows that the rule does not deal with vested rights as was strongly argued in *Mela Ram's case* (1). The question is: does the amended rule apply to proceedings pending under section 33?"

(52) The question that has been referred to us is, however, of wider amplitude. We have to consider whether the amendment of rule 30 resulting in its abrogation can apply retrospectively to any pending proceedings at whatever stage it be before the Rehabilitation Authorities. This involves going into the decisions in both *Mela Ram* (1), and *Chanan Dass's* (2), *cases*. As has been observed earlier, it is not correct to say that *Mela Ram's case* (1), so far as it lays down that the amendment of the rule would apply retrospectively up to the stage of appeal before the Rehabilitation Authorities, has been approved by the Full Bench in *Chanan Dass's case* (2). The whole matter relating to the retrospective operation of the rule to the pending proceedings at whatever stage they may be is now before us.

(53) In fact, the decisions of this Court with regard to the retrospective applicability of the amended rule 30 even up to the stage of appeal are not uniform and it was because of this conflict of judicial opinion that I, sitting in Single Bench, considered it necessary, in *Mohan Lal* v. *Union of India, etc.*, (12), that the matter be decided by a larger Bench. It was thereupon that *Mohan Lal's case* (12), was placed before the Bench hearing *Mela Ram's case* (1), supra.

(54) The question whether the appeals pending at the time of the amendment of rule 30 should be decided in accordance with the

(12) C. W. No. 1586 of 1961 decided on 16th September, 1963.

amended rule or the rule as it existed before the amendment came up for consideration before this Court in several cases. The decisions on the point, however, are conflicting. In *Dr. Khushi Ram* v. *The Union of India and others* (13), Shamsher Bahadur J., had to consider the effect of an earlier amendment of rule 30 whereby the word "gross" was substituted for the word "net", and held that the amendment could not be given retrospective effect, observing as follows:

> "The amending rule, if it is given the construction which is sought to be placed on it, would deprive third respondent of the right to be allotted the property, a right which had vested in her before the amendment came into force. By no stretch of reasoning could it be said that amendment was merely procedural, which could be given retrospective operation. Even if retrospective operation could be given to statutory rules, it would not be possible to do so in the present case as such intention is not manifested. It cannot, however, be said to be a mere procedural matter which could be given retrospective operation by implication. In my view, the third respondent came to be vested with a right by operation of law and she cannot be deprived of it by a strained interpretation of the rule which seeks to give it retrospective operation. The proposition that a vested right can arise from operation of law finds support from a Full Bench authority of this Court in *Messrs Gordhan Das Baldev Das* v. *The Governor-General in Counsel* (14)."

(55) Subsequently, in *Sajjan Singh* v. *The Chief Settlement Commissioner* (15), decided on 28th October, 1961, the same learned Judge, however, took a contrary view. Both these cases were considered by Pandit J., in *Asa Nand* v. *The Central Government of India and others* (16). His Lordship preferred to follow the view taken by Shamsher Bahadur J., in *Sajjan Singh's case* (15), and held that the amended rule applied to the cases which were then pending not only before the appellate but before the revisional authorities as well, observing that no party to the dispute can be said to have

(13) 64 P. L. R. 755.

(14) 54 P. L. R. 1.

(15) C. W. No. 32 of 1960 decided on 28th October, 1961.

(16) 65 P. L. R. 214.

acquired a vested right in the property when the matter is still pending before a revisional or an appellate authority. My attention has been invited to another decision of Pandit J., reported as *Lal Chand* v. *The Financial Commissioner, Punjab, Chandigarh, and another* (17), in which dealing with the amendment of section 19 of the Punjab Security of Land Tenures Act (10 of 1953) his Lordship held that the subsequent change in the law could not affect the rights of the respondent-allottee retrospectively. In this connection, he observed :

> "It is undisputed that when a law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to very such rights (59 P.L.R. 386-Full Bench. No such intention is apparent from the Amending Act 32 of 1959."

(56) Later, however, in *Mela Ram* v. *The Government of India and others* (18), Shamsher Bahadur J., while again considering the amendment of rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, accepted the view that the authorities and Courts exercising appellate and revisional jurisdiction can take account of the change in the law and that an amendment in the statutory rules would apply to a matter which has not been finally settled and is awaiting decision either before an appellate or revisional authority. Dealing with his two earlier decisions, Shamsher Bahadur J., referred to his own observations in *Sajjan Singh's case* (15), and followed the decision of Pandit J., in *Asa Nand's case* (16).

(57) The same question had come up for consideration before some of the Division Benches of this Court prior to the decision in *Mela Ram's case* (1). They also disclose that the judicial opinion was not consistent. Unfortunately, some of those decisions were not brought to the notice of their Lordships, who heard *Mela Ram's case* (1), and this fact finds mention in the dissenting judgment of Dua J., himself in *Chanan Dass's case* (2). At page 31 of the Report his Lordship said :

> "It may be pointed out that unfortunately the Bench decision in the case of *Harbans Lal* (11), was not brought to the

(17) 64 P. L. R. 581.
(18) C. W. No. 307 of 1962.

notice of the Court hearing *Mela Ram's case* (1), alongwith the other connected cases. Cases in which this was the only question raised were disposed of finally but those cases in which it was in fact represented that some other point still remained to be determined were remitted back to Single Benches for decision of the remaining points and for final orders in the cases. The point of retrospective operation was finally decided in all cases heard by the Bench."

(58) This brings me to the consideration of the contention that *Mela Ram's case* (1), supra, was not correctly decided. Reliance in this connection is placed upon the judgment of their Lordships of the Supreme Court in *Sardarni Attal Kaur* v. *The Chief Settlement Commissioner, New Delhi, and others* (3). In that case their Lordships were dealing with the amendment of rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and held that the modification of the original rule could not affect the right of a person to have his claim ascertained in accordance with the Rules as they existed on the date of his application, observing as follows:

"The amended rules are not expressly made retrospective. It was so held by the High Court and the Chief Settlement Commissioner. It is a well recognised rule of construction that statutes should be interpreted, if possible, so as to respect vested rights. While learned counsel for the appellant contends that as under the old rule a widow who was a member of a joint Hindu family had a statutory right to claim compensation separately for her share and as the appellant had made a claim in that regard under the rule as it stood then, the subsequent amendments could not be so construed as to have retrospective operation to deprive her of that right, learned counsel for the respondents argues that, as the amended rules are declaratory of the law, the Court should give retrospective operation to the new rules so as to apply to pending proceedings."

(59) Thereafter their Lordships summed up their conclusions in these words :

"Chapter IV provides the mode of determination of the compensation ..... Rule 19 of Chapter IV of the Rules describes, how to ascertain the amount of compensation in

the case of a joint family ..... Chapter V provides for payment of compensation by transfer of acquired evacuee properties. Under rule 34 thereof 'where any property is transferred to any person under this Chapter the property shall be deemed to have been transferred to him' from the dates prescribed thereunder. Under the said provisions an heir or a deceased displaced person whose claim has been verified has a statutory right to apply for compensation; and under the rules before they were amended in 1956, in the case of joint Hindu family such a claimant, if he is one of the 2 or 3 members thereof, has the right to have his compensation calculated separately on his or her share. Under Chapter V, subject to the conditions laid down therein towards the compensation so ascertained, evacuee properties will be transferred to him or her. In short, a member of a joint Hindu family *had a vested right under the Rules to have his claim ascertained and satisfied in the manner prescribed* by Rule 19(2)(a). It is a substantive right, though a particular procedure is prescribed to work out that right. The subsequent amendments have not expressly made the amendments retrospective and they cannot be so construed as to affect the right of a claimant, who has exercised his statutory right thereto by filing the application under rule 3 of the Rules. We are not concerned here with the case of a person, who has not presented his claim for compensation under the old Rules and nothing need, therefore, be said about his rights under the old Rules."

(60) Adverting to the facts of the case with which they were dealing, their Lordships said :

"It is, therefore, seen that before the rule was amended in 1956, not only she (appellant) had filed her claim for compensation but also an order was passed by the Regional Settlement Commissioner under Chapter IV of the Rules. "Therefore, the appellant had acquired before rule 19 was amended in 1956, a vested right to claim compensation under rule 19(2)(a). If so, it follows that the amended rules cannot affect that right."

(61) From this decision, we reach the following conclusions :—

(1) It is a well recognised rule of construction that statutes should be interpreted, if possible, so as to respect vested rights, if the amended provision is not expressly made retrospective.

(2) Under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the Rules framed thereunder, a displaced person has a vested right to have his claim ascertained and satisfied in the manner prescribed by the Rules and this is a substantive right.

(3) The amendments to statutory rules, which are not expressly made retrospective, can not be so construed as to affect the right of a claimant who has exercised his right by filing an application under the Rules.

(62) Basing himself on these observations, the appellant's learned counsel argues that the decisions in *Mela Ram's case* (1), and *Chanan Dass's case* (2), which proceed on the premises that the Rules relating to the determination of compensation and its payment to a displaced person do not clothe the claimant with any right much less a vested right, are no longer good law. Rule 19, with which their Lordships of the Supreme Court were dealing in *Sardarni Attar Kaur's case* (3), (supra), bears the heading "Special provision for payment of compensation to joint families" and lays down the method of computing the compensation payable to them. During the pendency of the proceedings before the Rehabilitation Authorities rule 19 was amended so as to affect the amount of compensation which could be claimed by the members of the joint family. Their Lordships ruled that such an amendment in the Rules could not operate retrospectively so as to adversely affect the amount of compensation payable to the members of joint families, holding that there was a vested right in a claimant to the determination of the compensation payable to him and satisfaction of his claim, which cannot be taken away. The decision is certainly an authority for the proposition that a displaced person holding a verified claim has a vested right to have the amount of compensation determined and his claim satisfied in accordance with the Rules that were in existence on the date of his application. This is apparent even from the scheme of the Act and the Rules framed thereunder. The preamble of the Act, as has been noticed earlier, expressly says that it has been enacted "to provide for the payment of compensation and

rehabilitation grant to displaced persons and for matters connected therewith."

(63) Applications for payment of compensation are required to be made by the displaced persons holding verified claims under section 4 of the Act, and section 7 provides for determination of the amount of compensation. The form and manner of payment of compensation are specified in section 8, sub-section (2) whereof empowers the Central Government, by rules, to provide for various matters in this connection. One of the forms in which compensation can be paid is by the transfer of the acquired evacuee property out of the compensation pool created under section 14, which includes, *inter alia,* all evacuee property acquired under section 12. This provision is made for detemination of the compensation payable to various categories of displaced persons and satisfaction of their claims to such compensation. There can thus be no doubt that the appellant like any other displaced person has a right to have the amount of compensation payable to him determined and satisfied in accordance with the provisions of the Act and the Rules as they existed on the date of his application under section 4 of the Act. It follows that except where the amendment in the Act or the Rules expressly or by necessary implication takes away his right or interferes with it, his claim to compensation must be settled in accordance with the Rules existing on the date of his application.

(64) The learned Advocate-General has, however, urged that the amendment of rule 30 or its abrogation in no way interferes with the appellant's right to have his compensation determined and satisfied, as rule 30, as it was originally enacted, or stood before its abrogation, only related to the mode of satisfaction of the claim and not to the determination of the amount. It is vehemently argued that a displaced claimant has no vested right in the mode of payment of compensation or satisfaction of his claim, and it is entirely in the discretion of the authorities to pay him the compensation due in any of the forms or manners specified in section 8 and the Rules made under the Act.

(65) Support for this contention is sought from the decision of the Letters Patent Bench in *Mela Ram's case* (1), (supra), where Dua J., noticing the provisions of section 8 of the Act, said:

> "This section does not seem to me, *prima facie* to create any vested right in a displaced person to insist on payment of

compensation by means of allotment of immovable property."

(66) Dealing with the argument that in that case an offer of property had, in fact, been made to the displaced claimant under rule 30, his Lordship proceeded on to say :

"Looked at in the background of these provisions, it appears to me that the offer of property to a displaced claim-holder within the contemplation of Rule 30 may with some plausibility be considered to give rise to a certain property-interest in his favour, which may, without being unreasonable, be argued to clothe him with a vested or substantive right."

(67) His Lordship, however, refused to accept this plausible contention with these words :

"On the other hand, it can be argued with noless show of sound reason and plausibility that keeping in view the basic object of Rule 30, the law-maker must be deemed to have intended that unless the property has in fact been completely transferred to the claim-holder and the controversy between the rival contesting claim-holders finally settled by the highest departmental authority under the Act, the right to get the property transferred does not vest in the person to whom the department has chosen to make the offer: in other words, he has till then no substantive right which should be presumed not to have been intended to be liable to be impaired or adversely affected without express words. This contention would seem to possess the desirable merit of equality of treatment of the claim-holders to as large an extent as it is possible without disturbing the completed titles, controversy regarding which has in fact been finally settled by the department under the Act. It is in this connection noteworthy that the general pattern of the scheme of compensation appears to be that compensation to the displaced claimants is to be paid out of the compensation pool. I am inclined also to recognise the need for certain retrospective laws even though they may tend to appear certain vested or substantive interests, if promotion of cause of justice and of general good demand if, for,

the general rule of implication against retrospective operation of statutes impairing vested rights is founded only on grounds of justice, and not on any statutory mandate of imperative character ..... If, therefore, the language of a statute is susceptible of more than one construction, the Court need not hesitate to consider the consequences which will follow the adoption of a particular construction in determining the legislative intent. Considerations of public good and public justice may constitute sufficient reasons for upholding a retrospective operation of legislation even if it may have a tendency of impairing certain rights which may be capable of being treated or described as vested or substantive rights; this view, in opinion, is not destructive of any known equitable doctrine or principle. If for carrying out the general pattern of the scheme of payment of compensation by transfer of acquired property from the compensation pool the rules governing the manner, terms and conditions of such transfer are changed as a result of administrative experience on the whole, a retrospective operation of these rules controlling all incomplete transfers would seem to yield more just and equitable results than mere prospective operation. Of course such an operation may adversely affect a few individual cases, but the legislative intention would appear to be more concerned with the overall effect of the working of this statutory provision."

(68) As has been observed earlier, the observations of the learned Judge 'that unless the property has in fact been completely transferred to the claim-holder and the controversy between the rival contesting claim-holders finally settled by the highest departmental authority under the Act, the right to get the property transferred does not vest in the person to whom the department has chosen to make the offer' need modification in view of the dictum of the Full Bench in *Chanan Dass's case* (2), supra, wherein it has been specifically held that rule 30 as amended would not apply to pending revision petitions under sections 24 and 33 of the Act, but only up to the stage of the appeal. Dealing at some length with *Mela Ram's case* (1), Mehar Singh, C.J., who recorded the majority opinion, referred to the various factors that weighed with Dua J., in returning the finding that the amended rule 30 must govern all

the proceedings before the Rehabilitation Authorities even up to the stage of application under section 33 of the Act. These are :

(1) Rule 30 does not create any vested right and that the only vested right which a claim-holder may be able to claim under the statute is payment of compensation but the form in which it is to be paid is not treated by the statute as a vested right.

(2) That unless the property has, in fact, been transferred to the claim-holder and the controversy between the rival contesting claim-holders finally settled by the highest departmental authority under the Act, the right to get the property transferred does not vest in the person to whom the department has chosen to make the offer: in other words, he has till then no substantive right which should be presumed not to have been intended to be liable to be impaired or adversely affected without express words.

(3) Considerations of public good and public justice may constitute sufficient reasons for upholding a retrospective operation of legislation even if it may have a tendency of impairing certain rights which may be capable of being treated or described as vested or substantive rights.

(4) Amendment of rule 30 being based on administrative experience on the whole, a retrospective operation of these rules controlling all incomplete transfers would seem to yield more just and equitable results than mere prospective operation.

(5) The doctrine of *stare decisis* is applicable to this case as the department had been giving retrospective effect to the amended rule and decisions of this Court are also in favour of retrospective operation.

(69) All these propositions were examined by the Full Bench in *Chanan Dass' case* (2). The assumption made in the last proposition about the decisions of the departmental authorities and this Court was not found to be tenable. Mehar Singh, C.J., dealt with this matter in these words :

"Fifthly, it has been said that the decisions of the department also point to the same way, but such decisions, after the amendment, if I understand this matter right, are not

helpful because the retrospective operation of a statutory provision or a rule is to be seen on the date on which the same is made and not by anything done subsequently with regard to its reading or interpretation by the department operating or applying such law. If this approach were correct, it would mean that what was not in fact retrospective law, will have to be read to be retrospective because those whose duty it is to apply that law have applied it retrospectively. I do not consider that this is the correct approach to the question. Apart from this, the decisions of the department are by no means one way and consistent. An example of this is available in the appeal of Chanan Das (2). In that case the Chief Settlement Commissioner exercising his powers of revision under section 24 held that the amended rule is not retrospective as applying to the stage of proceedings before him, and he proceeded to that view following an earlier decision of the department in a case *Bhagwan Das* v. *Regional Settlement Commissioner, Julkundur,* decided on April 22 and 24, 1961, from which citation is made in his order of June 1, 1961. So that even earlier to the case of Chanan Das appellant, the department was taking the view that the amended rule does not operate retrospectively so as to affect proceedings at the stage of revision under section 24 of the Act. Thus neither has there been a consistent opinion in this Court nor in the department that the amended rule 30 is operative retrospectively so as to affect revisions under section 24 and applications under section 33 of the Act. This obviously cannot be a factor which shows the way with regard to the intention of the rule-making authority to make amended rule 30 so retrospective as to apply to the stage of a revision under section 24 or an application under section 33 of the Act."

(70) That there were no such uniform decisions of departmental authorities regarding retrospective operation of rule 30 is apparent from the following observations of Dua J., himself in the minority judgment recorded by his Lordship in *Chanan Dass's case* (2), (supra) :

"In *case of Mela Ram* (1), the Bench was to some extent influenced by the assertion made at the bar on that occasion that the department had generally been extending to

this amended rule retrospective operation up to the stage of revision. It was suggested that previously in some cases, the department did construe the amended rule prospectively, but later the practice changed and retrospective operation began to be favoured. This was not controverted and this later practice was considered an additional reason to treat the rule to be retrospective in its operation. It is now asserted that the practice of the department in this respect has not been uniform. Whether or not it is so, is, in my opinion, immaterial because the question referred to us assumes the amended rule to be retrospective up to the stage of appeal and the Division Bench in *Harbans Lal's case* (11), held it to be so retrospective; the only controversy now requiring solution is whether the retrospective operation extends to revisions or only extends up to the state of the appeal."

(71) On careful consideration of the matter, we find ourselves in respectful agreement with the observations of the learned Chief Justice with regard to the decisions of the department. Even if the department had been applying the amended rule retrospectively, that could not furnish justification for holding it retrospective if, in fact, on construction of the amended rule in the light of the well recognised canons of judicial interpretation we find that the rule is prospective and not intended to impair or interfere with vested rights.

(72) Turning again to the majority opinion in *Chanan Dass's case* (2), we find that the learned Chief Justice, dealing with the argument that since the amendment had been necessitated by administrative experience it should be held to operate retrospectively even up to the stage of revision under section 24 and an application under section 33 of the Act, expressed himself in these words :

"If this consideration is of some assistance in this respect, it was the reason for the amendment. And it is settled that objects and reason for change in law are not an aid to interpretation though the same may be looked at for the matter of understanding and appreciating the circumstances which brought about the change. However, there is no material in these cases what was the departmental experience and whether any and what departmental

experience led to this amendment of rule 30. So that this factor also does not point to the retrospective operation of the amended rule 30 either at the stage of revision under section 24 or at the stage of proceedings in an application under section 33 of the Act."

Thus, we find that most of the considerations that prevailed with the Bench in *Mela Ram's case* (1), in holding that the amended rule 30 had to be given retrospective effect in proceedings before the Rehabilitation Authorities even up to the stage of application under section 33 of the Act, had not appealed to the Full Bench in *Chanan Dass's case* (2), and the decision in *Mela Ram's case* (1), so far as it lays down that the amended rule 30 applies to revision-petitions under section 24 and an application under section 33, stands overruled.

(73) From the various decisions that have been discussed above and in view of the well recognised rules of constrution, it follows that where an amendment is not expressly made retrospetive, it cannot be given retrospective operation affecting vested rights unless that intention can be spelled out clearly and unmistakably as receiving implication. Amendment of a provision which is declaratory or procedural will, as is well settled, apply to pending proceedings, but not those affecting substantive rights. So what has to be considered at this stage is, whether rule 30, which has been deleted because of the recent amendment, conferred any substantive or vested right ?

(74) Under this rule 30, as it stood before its abrogation, a displaced person holding a verified claim had the right to apply for transfer of allotable property of which he had been in occupation and if the property was in possession of more than one person then the right to obtain the property was given to the person whose net compensation was nearest to the value of the property. The rule specifically provided: "Such property *shall be offered* to the person whose compensation is nearest to the value of the property and other persons may be allotted such other acquired evacuee property which is allotable as may be available."

(75) Much emphasis has been laid on the use of the word 'shall' and it is urged that it was obligatory upon the authorities to offer such property to the person whose net compensation was nearest to the value of the property and, as such, it conferred a right on such

person to obtain the property in satisfaction of his claim for compensation subject to the value of the property and the amount of compensation to which he was found entitled. In an attempt to meet this argument, it has been urged by the learned counsel for the respondents that the use of the word 'shall' is not of much significance as in the context it has no more force than the word 'may' and even if a displaced person holding a verified claim is found to be eligible for allotment of property in his occupation, the Rehabilitation Authorities have the discretion to allot or not to allot the property to him but can direct that the compensation be paid to him in cash or in some other form prescribed by the Act or the Rules framed thereunder. This contention, in my opinion, is not tenable and I do not find it possible to agree that the word 'shall' should not be given its usual and ordinary meaning, but be read as having no more force than the word 'may'. A perusal of the various rules relating to the transfer of acquired property would go to show that the distinction between the words 'shall' and 'may' was present to the mind of the rule-making authority and whereas in some of the rules it was satisfied with the use of the word 'may', in rule 30, it deliberately used the word 'shall'. The question whether it constituted a vested right was also raised before the Bench in Mela Ram's case (1). Emphasis was laid on the use of the word 'shall' in rule 30. Dua, J., dealt with this matter in these words :

> "It has been strongly urged that the word 'shall' in Rule 30 does not connote any vested right and that the only vested right which a claim-holder may be able to claim under the statute is payment of compensation and that the form in which it is to be paid is not treated by the statute as a vested right. Emphasis has been laid on the fact that it is at the option of the department to make payment in any one of the forms mentioned in the rule and that they have also the option of making payment partly in one and partly in any other form. The mere fact that an offer is made to make payment in one of the forms does not estop the department from changing its mind before the payment is finally made."

(76) After noticing this argument, his Lordship proceeded on to say:

> "The question raised is by no means free from difficulty. In some cases undoubtedly, the word 'vested' has been stated

to possess a well-understood meaning; in other cases it is stated to have a double meaning. This conflict must necessarily tend to lead to a certain amount of confusion. As used in relation to property, this word signifies fixation of a personal right to the immediate or future enjoyment of the property. It indicates a present and immediate interest as distinguished from one which is contingent. A vested right has also at times been described to amount to property and the property interest need be no more than the right to enforce a legal demand or exemption if it is complete and unconditional and not a mere expectancy. As I view things, it appears to me that word 'vest' calls for construction with reference to the subject-matter or the context wherein it is found as in the case of any word or phrase. Looked at from this point of view, it is necessary to bear in mind that we are not concerned with any statute in which this word has been used but with the judicially recognised rule of statutory construction that every statute which impairs or takes away vested rights must be presumed to be intended not to operate retrospectively. This rule is accepted by our Courts on the ground that the law-maker in our democracy does not ordinarily intend what is unjust and, therefore, does not impair an existing valuable right or obligation except in matter of procedure, without manifesting a clear intention to that effect. The expression 'vested right' in this background seems to me to convey the same idea as 'substantive right'."

(77) Adverting to the scheme of the Act, Dua, J. emphasised that section 8 gave option to the department to pay compensation in any one of the forms mentioned therein and observed:

"This section does not seem to me, *prima facie* to creat any vested right in a displaced person to insist on payment of compensation by means of allotment of immovable property." After referring to the rules he continued: "This would show that these rules are clothed with virtually the same force and sanctity as are provisions of the Act themselves, except that in case of irreconcilable conflict between the statute and the rules, the latter would give way as subordinate to the former. Looked at

in the background of these provisions, it appears to me that the offer of property to a displaced claim-holder within the contemplation of Rule 30 may with some plausibility be considered to *give rise to a certain property-interest in his favour, which* may, without being unreasonable, be argued to *clothe him with a vested or substantive right.* "On the other hand, it can be argued with no less show of sound reason and plausibility that keeping in view the basic object of Rule 30, the law-maker must be deemed to have intended that unless the property has in fact been completely transferred to the claim-holder and the controversy between the rival contesting claim-holders finally settled by the highest departmental authority under the Act, the right to get the property transferred does not vest in the person to whom the department has chosen to make the offer: in other words, he has till then no substantive right which should be presumed not to have been intended to be liable to be impaired or adversely affected without express words. This contention would seem to possess the desirable merit of equality of treatment of the claim-holders to as large an extent as it is possible without disturbing the completed titles, controversy regarding which has in fact been finally settled by the department under the Act. It is in this connection noteworthy that the general pattern of the scheme of compensation appears to be that compensation to the displaced claimants is to be paid out of the compensation pool."

(78) His Lordship then proceeded on to hold that even if the retrospective operation of rule 30 tended to affect vested rights, considerations of public good and public justice may constitute sufficient reasons for upholding such a retrospective operation notwithstanding that it may have a tendency of impairing certain rights which may be capable of being treated or described as vested or substantive rights.

(79) On giving our earnest consideration to the matter, notwithstanding the high esteem in which we hold his Lordship, we do not find it possible to subscribe to the view propounded by Dua, J. As recognised by his Lordship himself the argument raised against

the retrospective application of the amended rule even to the original proceedings under rule 30 and appeals arising therefrom is plausible and the matter is not free from difficulty. This certainly reinforces the argument that there is nothing in the language of the amending rule which clearly and unmistakably indicates that the proceedings before the Rehabilitation Authorities, at whatever stage they be, are to be governed by the amended rule. In fact, as has been observed earlier, the Full Bench in *Chanan Dass, case* (2) has ruled that at least so far as the revisional prceedings under sections 24 and 33 of the Act are concerned, the amended rule cannot retrospectively apply.

(80) It here becomes necessary to ask: "Is there anything in the amending notification which may justify the conclusion that rule 30, as amended, will be partially retrospective so as to affect the proceedings pending under that rule up to the appellate stage and not beyond?" Speaking with respect, we do not find that such an intention can be spelled out of the Sixth Amendment of the Rules, with which we are concerned in this case. If the situation as it emerges from the combined reading of the decisions in *Mela Ram's* (1) and *Chanan Dass's* (2) *cases* is accepted leading to the conclusion that the amendment has to be given partial retrospective effect up to the appellate stage, this would lead to anomalous position in several cases, as it has arisen in the case before us. Adverting to the facts of this case we find that the appellant Dev Raj, who claims the benefit of rule 30 as it stood before its abrogation, had succeeded in obtaining an order for the transfer of the house to him in recognition of his right under that rule. That order was, however, set aside on the 23rd of October, 1961, by the Deputy Chief Settlement Commissioner in exercise of his revisional jurisdiction and he remanded the case for fresh decision after first determining the eligibility of the contending parties. If it is held that the amended rule applies up to the stage of appeal and not to the revisional proceedings under sections 24 and 33 of the Act, it would always be open to the Revisional Authorities in those proceedings to get out of the difficulty created by the dictum of the Full Bench in *Chanan Dass's case* (2) by remanding the case to the original or the Appellate Authority, so that they may apply the amended rule which the Revisional Authority cannot do as ruled by the Full Bench. Such a construction would lead to undesirable results and is likely to permit perpetuation of fraud on

law. A construction which leads to such an ugly and undesirable situation has to be avoided, especially when there in no express language in the Act to support it and is not manifestly implied. It is well settled that where the language of the amending provision is capable of two interpretations and the provision is not a procedural one, the interpretation should be against its retrospective operation.

(81) The various considerations that weighed with the Division Bench in *Mela Ram's case*, (1) as noticed above, were considered by the Full Bench in *Chanan Dass's case* (2). The relevant observations of Mehar Singh, C.J. have already been reproduced. It is abundantly clear from them that most of the factors on which Dua, J. had based his finding that the amended rule was intended to apply retrospectively to all the pending proceedings before the Rehabilitation Authorities, were not accepted. It was found that the previous decision of the Rehabilitation Authorities and this Court with regard to the retrospective operation of the Rules were not consistent or uniform and, consequently, the rule of *stare decisis* could not apply; that there is nothing to indicate that administrative experience called for retrospective operation of the amended provision; and that the purpose and scheme of the Act and the Rules framed thereunder "is not a circumstance which indicates in the least whether the amended rule 30 is by necessary intendment or implication to be held to be operative so retrospectively as to affect applications under sections 24 and 33 of the Act."

(82) It can, no doubt, be presumed that there must have been adequate reasons for the present amendment resulting in abrogation of rule 30, but that would not lead us to the conclusion that this amendment was intended to operate retrospectively to affect all the pending proceedings at whatever stage they were. Unless such an intention can be gathered clearly and unmistakably from the language used in the amending provision itself, the Court will not be justified in giving retrospective effect to the amending rule simply because in its opinion it will lead to better administration of evacuee property or be in the larger interests of the displaced persons. If the amendment was of such an importance and it was intended to deprive the persons who applied for the transfer of property to which they were eligible under the Rule, the rule-making authority could not have omitted to make its intention clear by incorporating a specific provision to that effect in the amending Rules. At

the time the Sixth Amendment of the Rules was made in 1963, as noticed earlier, the decisions of this Court as well as those of the Rehabilitation Authorities themselves, on the question whether the amended rule be applied retrospectively or not, were conflicting. If despite this conflict the Central Government did not expressly state in the amending Rules that they would apply to the pending proceedings, it is not unreasonable to conclude that the rule-making authority never considered it necessary to make the amendment retrospective.

(83) The contention that a displaced person does not acquire any vested or substantive right under the Rules relating to the payment of compensation is no longer tenable in view of the decision in *Sardarni Attal Kaur's case* (3) (supra), where their Lordships of the Supreme Court have ruled that a displaced person has a "vested right under the Rules to have his claim ascertained and satisfied in the manner prescribed" and it remains a substantive right though a particular procedure is prescribed to work out that right. It was further held in that case that amendments which are not made retrospective cannot be so construed as to affect the right of the claimant who has exercised his statutory right by filing an application under rule 3 of the Rules.

(84) It is thus no longer open to dispute that a displaced person has a vested right not only to have the compensation payable to him ascertained but also to have his claim satisfied in the manner prescribed by the Rules. Rule 30 with which we are concerned in this case, prescribes one of the manners of such satisfaction and thus it cannot but be considered to confer a right upon a displaced person to get the property transferred to him if he has claimed it and satisfies all the requirements of that rule. In this view of the matter, the contention that the Rehabilitation Authorities have full discretion to transfer or not to transfer the acquired evacuee property to a displaced person, even though he is eligible for its transfer under the Rules, cannot be accepted.

(85) Even apart from this we find that there is no such vast discretion vesting in the authorities. Section 8 of the Act, on which considerable reliance is placed in support of the argument that the manner of satisfaction of the claim is within the discretion of the authorities, if properly read, itself goes to show that this discretion

is not so vast and unlimited but is subject to other provisions of the Act and the Rules framed thereunder. This is quite apparent from section 8 which runs as follows :

"*Form and manner of payment of compensation*—(1) A displaced person shall be paid out of the compensation pool the amount of net compensation determined under subsection 3 of section 7 as being payable to him and subject to any rules that may be made under this Act, the Settlement Commissioner or any other officer or authority authorised by the Chief Settlement Commissioner in this behalf may make such payment in any one of the following forms or partly in one and partly in any other form, namely :

(a) in cash ;

(b) in Government bonds ;

(c) by sale to the displaced person or any property from the compensation pool and setting off the purchase money against the compensation payable to him ;

(d) by any other mode of transfer to the displaced person of any property from the compensation pool and setting off the valuation of the property against the compensation payable to him ;

(e) by transfer of shares or debentures in any company or corporation ;

(f) in such other form as may be prescribed.

(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 ;

(b) the scales according to which, the form and manner in which, and the instalment 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 ;

(d) any other matter which is to be, or may be prescribed."

(86) Section 8(1) specifies the various modes of payment of compensation to displaced persons. The rules made under sub-section (2) thereof and section 40 of the Act, however, specify, *inter alia*, the cases in which acquired evacuee property can be transferred to a displaced person in part or full satisfaction of his claim. Rule 30, with which we are concerned, is one of such rules, making provision, as its heading shows, "for payment of compensation where acquired property which is allotable property is in occupation of more than one person". Apart from the fact that discretion vesting in the Rehabilitation Department under section 8 to pay compensation in one of the various modes specified therein has to be exercised in accordance with the Rules, section 4 of the Act read with rule 4 gives an opportunity to a displaced person to indicate his option regarding the mode of satisfaction of his claim. Sub-section (3) of section 4 specifies the various matters which an application for payment of compensation should contain, one of them being: "The form in which the applicant desires to receive compensation". He has also to give the details of the property, if any, allotted or leased to the applicant by the Central Government or a State Government or by the Custodian. This application for compensation has to be in the form prescribed in Appendix I to the Rules. In this application the applicant is required to furnish, *inter alia*, particulars of rehabilitation benefits received, which include the particulars of the property allotted to him. This application is to be accompanied, *inter alia*, by Questionnaire in Appendix II. In this the applicant is required to give particulars of the evacuee quarter, house or shop occupied by him.

(87) Section 10 of the Act, which lays down special procedure for payment of compensation in certain cases, provides, *inter alia*, that where any immovable property leased or allotted to a displaced person by the Custodian is acquired under the notification mentioned in that section, the displaced person concerned shall, so long as the property remains vested in the Central Government, continue in its possession on the same conditions on which he held the property immediately before the date of the acquisition, and the Central Government may, for the purpose of payment of compensation to such displaced person, transfer to him such property on such terms and conditions as may be prescribed. The conditions prescribed are to be found in the Rules.

(88) As some of the acquired property may be in possession of more than one person, provision is then made for the settlement

of disputes between the rival claimants for the transfer of the property. All these provisions unmistakably lead to the conclusion that transfer of acquired evacuee property is not at the sweet will of the authorities but has to be made in accordance with the Rules framed under the Act. If a displaced person satisfies all the requirements of a particular rule under which he claims the transfer of property, the authorities have no discretion in the matter. In innumerable cases the Courts have granted petitions under Article 226 of the Constitution, where the authorities had refused to transfer property to a displaced person despite the fact that he had satisfied the requirements of the relevant Rule under which he was eligible for its transfer under the provisions of the Act and the Rules.

(89) In view of the above discussion, there can be no escape from the conclusion that a displaced person has a right to the determination of his claim for compensation and its satisfaction in the prescribed manner and this is a substantive right. So far as rule 30 is concerned, in view of our earlier finding that the use of the word "shall" clearly indicates that the authorities have no discretion in the matter, the right which a displaced person claims under this rule is still on a stronger footing. That right cannot be adversely affected or taken away unless it is expressly stated in the amending provision, or the language of the Act unmistakably and unequivocally indicates an intention to that effect.

(90) My answer to the question referred to us, accordingly, is that the rights of a displaced person holding a verified claim to obtain allotable acquired evacuee property under rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, will be governed by the rule 30 as it existed on the date of his application for payment of compensation by transfer of such property, notwithstanding its subsequent amendment.

(91) Before parting I would like to make it clear that though by the same amendment (Sixth Amendment of the year 1963) rule 22 has been amended, we have neither been called upon to express any opinion on the effect of this amendment, nor has this matter been argued before us. We have, accordingly, refrained from dealing with this matter.

R. S. NARULA, J.—(92) The history of the case leading to this reference to the Full Bench has been detailed in the judgment of Lord Gurdev Singh, J. and need not be repeated. The relevant factual position which emerges from the said history is that the acquired evacuee property in question is in the occupation of more than one allottee, that out of the two contesting allottees, Dev Raj appellant is a displaced claimant, but Gurcharan Singh respondent No. 4 is a non-displaced person though his mother Lajwanti respondent No. 5 is a displaced claimant, that each of the two contesting parties had applied for transfer of the house in question long before the coming into force of the Displaced Persons (Compensation and Rehabilitation) Sixth Amendment Rules on August 10, 1963, that each of them had on one occasion or the other secured an order for transfer of the house in his favour, and that no subsisting order for transfer of the house in favour of either the appellant or the contesting respondents held the field immediately before the amendment of rule 22 and the abrogation of rule 30 on August 10, 1963, by operation of notification, dated August 3, 1963. On the date on which the amendment with which we are concerned came into force, the whole case was in the melting pot at the original stage before the Managing Officer for redetermining the question of eligibility of the rival contestants to the transfer of the property in question under the order of Shri Parshotam Sarup, dated August 23, 1961 (Annexure 'A' to the writ petition). If a vested right to acquire an allotable house accrues on merely applying for it (subject to the proof of eligibility and of the right to have it transferred), each of the two contesting parties had acquired that right long before August, 1963. It is in this background that the learned Single Judge was called upon to decide in the writ petition whether the order of the Settlement Commissioner, Jullundur, dated May 24, 1966 (subsequently upheld in revision by the Chief Settlement Commissioner and in further revision by the Central Government) refusing to consider the application of the appellant for transfer of the house to him towards satisfaction of his verified claim on the ground that the rules conferring that right were no more in existence, is valid or not.

(93) The first question mooted before us was that the amendments made to the Rules by notification, dated August 3, 1963, were not retrospective. The view taken against giving retrospective effect to enactments affecting vested rights in the

absence of an express provision or necessary intendment by the Judicial Committee in *Colonial Sugar Refining Co.* v. *Irving*, (19), and the law authoritatively laid down in this respect by the Federal Court in *Venugopala Reddiar and another* v. *Krishnaswami Reddiar alias Raja Chidambara Reddiar and another*, (20), and later by the Supreme Court in *Moti Ram* v. *Suraj Bhan and others*, (7), *The Income-tax Officer, Alleppey* v. *M. C. Ponnoose and others*, (8), *and Arjan Singh and another* v. *The State of Punjab and others*, (9), is now the settled law of the country, and it is clear from these pronouncements that retrospective effect cannot be given to any piece of legislation—delegated or otherwise—which may impair any vested right or any substantive right unless such intention is either expressed in the relevant piece of legislation or such an intention is manifest from the language of the law. In the present case it is unnecessary to travel into the question of necessary intendment as no power has been conferred by section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called the Act) (under which the relevant rulles have been made) to legislate retrospectively. No power is vested in the Central Government to frame any rules under the Act, otherwise than in exercise of the powers vested in it by section 40 of the Act. That section does not vest the Central Government either expressly or by necessary implication with the power to give retrospective effect to any rules made thereunder. The rule-making authority, i.e., Central Government being a mere delegate of the Parliament which is the Sovereign Legislature, cannot, therefore, give retrospective effect to any rule made by it under section 40 in view of the authoritative pronouncement of the Supreme Court in *The Income-tax Officer, Alleppey* v. *M. C. Ponnoose and others*, (8) and in *Cannanore Spinning and Weaving Mills Ltd.* v. *Collector of Customs etc.*, (21).

(94) It was then argued before us that even in the absence of any express power having been given to the Central Government

(19) (1905) A. C. 369.

(20) 1943 F. C. R. 39.

(21) (1970)2 S. C. R. 830.

to give retrospective effect to the Rules framed under the Act, the Central Government should be deemed to have sovereign legislative power as a consequence of sub-section (3) of section 40 of the Act which requires the Rules made under sub-section (1) or sub-section (2) of that section being laid before each of the two Houses of Parliament. This argument does not now deserve to be looked into in view of the recent unreported judgment of their Lordship of the Supreme Court in *Hukum Chand etc.* v. *Union of India and others*, (22), and *Prithvi Chand* (deceased) *through Legal Representatives* v. *Union of India*, (23). The common question which arose for decision before their Lordships in that bunch of four appeals was whether the retrospective effect expressly given by the Central Government to the amendment of rule 49 of the 1955 Rules in February, 1960 could be deemed to have been authorised by section 40 of the Act. Their Lordships authoritatively set this controversy at rest by holding:—

> "Perusal of section 40 shows that although the power of making rules to carry out the purposes of the Act has been conferred upon the Central Government, there is no provision in the section which may either expressly or by necessary implication show that the Central Government has been vested with power to make rules with retrospective effect. As it is section 40 of the Act which empowers the Central Government to make rules, the rules would have to conform to that section. The extent and amplitude of the rule making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section the Central Government in such an event would have no power to make that rule. Likewise, if there was nothing in the language of section 40 to empower the Central Government either expressly or by necessary implication, to make a rule retrospectively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact

(22) C. A. Nos. 103, 1094-95 of 1972 decided by Supreme Court on 22nd August, 1972.

(23) C. A. No. 117 of 1968 decided by S. C. on 22nd August, 1972.

laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statue laws lies in the fact that a subordinate law making body is bound by the terms of its delegated or derived authority and that Court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled (see Craies on Statue Law, page 297 Sixth Edition).

The learned Solicitor-General has not been able to refer to anything in section 40 from which power of the Central Government to make retrospective rules may be inferred. In the absence of any such power, the Central Government in our view, acted in excess of its power in so far as it gave retrospective effect to the Explanation to rule 49. The Explanation, in our opinion, could not operate retrospectively and would be effective for the future from the date it was added in February, 1960."

(95) The argument about the Central Government having been clothed by sub-section (3) of section 40 with the same powers as are enjoyed by a Sovereign Legislature was repelled by the Supreme Court in the following words :—

"The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with section 40 of the Act. It would appear from the observations on pages 304 to 306 of the Sixth Edition of Craies on Statute Law that there are three kinds of laying:

(i) Laying without further procedure ;

(ii) Laying subject to negative resolution;

(iii) Laying subject to affirmative resolution.

The laying referred to in sub-section (3) of section 40 is of the second category because the above sub-section contemplates that the rule would have effect unless modified or annulled by the Houses of Parliament. The act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the courts from scrutinising the validity of the rules and

holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule making power of the Central Government."

In view of this legal position I have no hesitation in holding that it was not open to the Central Government to give retrospective effect to anything contained in the sixth amendment of the Rules even if it had inended to do so. The observations in the Division Bench Judgment of this Court in *Mela Ram's case* (1) and by the Full Bench of this Court in *Chanan Dass's case* (2) which are capable of being construed to attribute retrospective effect to any amendment of rule 30 to any extent would, therefore, be held to have been impliedly overruled by the Supreme Court, in *Hukum Chand's case* (22) (supra). The consequential legal position is that rule 22 in its unamended state and rule 30 existed on the statute book up to August 9, 1963, but rule 22 in its amended form stood substituted in place of the original rule 22 and rule 30 stood repealed on and with effect from August 10, 1963, when the sixth amendment rules were published in the Official Gazette.

(96) The right of a displaced person to have his claim ascertained *and satisfied in the manner prescribed* by the Rules has been recognised by the Supreme Court in *Sardarni Attal Kaur's case* (3). Therefore, the right of the appellant to have his claim for compensation satisfied under rule 30, which right had accrued to him before the abrogation of rule 30 has not been taken away by mere subsequent repeal of rule 30. I would, acordingly, hold that rule 30 should notwithstanding its repeal be deemed to govern the disposal of the appellant's application for payment of compensation due against his verified claim on the basis of the principles contained in section 6 of the Central General Clauses Act. The appellant would, therefore, have been entitled to obtain orders for the transfer of the property in question in his favour on his satisfying all the conditions of rule 30, viz.—

(i) that the property in question is an "allotable" property;

(ii) that more than one person holding verified claims are in occupation thereof ; and

(iii) that the amount of gross compensation payable to the appellant is higher than the amount of compensation payable to any other claimant in occupation of any portion of the house.

(97) If the appellant is not able to satisfy any of the three conditions precedent for invoking the benefits of rule 30, he cannot claim the transfer of the house in question in his favour. The Managing Officer has no jurisdiction to transfer a property under rule 30 if the proposed transferee does not fulfil all the three conditions mentioned in that rule. Since, however, the question referred to us is a restricted one, and the appeal itself is not to be decided by us, we do not appear to be called upon to deal with the merits of the controversy between the contesting parties.

For the foregoing reasons I would hold that:—

(i) the amendment of rule 30 made in August, 1963, was not made retrospectively either by any express provision or by necessary intendment;

(ii) even if the Central Government had given retrospective effect to the amendment in question expressly or by necessary intendment, the amendment would not have been given retrospective effect by the Courts in view of the authoritative pronouncement of the Supreme Court in *Hukum Chand's case* (22) (supra);

(iii) the amendment to rules 22 and 30 of the Rules by the Sixth Amendment Act came into operation only on and with effect from August 10, 1963, when the notification dated August 3, 1963, was published; and

(iv) a legal right accrued to the appellant as well as to respondent No. 5 to have their applications for payment of compensation processed according to rule 30 as in force on the date when they made the applications to have compensation paid to them by transfer of the acquired evacuee property.

(98) Subject to the observations made above, I entirely agree with the answer proposed by my lord Gurdev Singh, J. to the question referred to this Full Bench. I also agree that though the amendment to rule 22 is also necessarily prospective and could not be given retrospective effect, the impact of the change made in that behalf on the facts of the present case has to be left to be decided by

the Bench hearing the Letters Patent Appeal on merits, and neither we are called upon to deal with that matter, nor were any arguments addressed to us in that behalf.

H. R. SODHI, J.—(99) I agree with the conclusions reached by my brothers Gurdev Singh and Narula, JJ. and cannot usefully add anything more.

GOPAL SINGH, J.—(100) I concur with the conclusion of the judgment of Gurdev Singh, J.

GUJRAL, J.—(101) I agree with the conclusions reached by my brother Gurdev Singh, J.

K.S.K.

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