

down by any words in the article or in the Order and therefore the decree of the courts of West Punjab passed in proceedings pending immediately before the appointed day are not foreign judgments in East Punjab and the limited interpretation contended for by the respondent is not sustainable.

(2) The decree of the Federal Court of Pakistan is covered by the words "appellate jurisdiction" in cl. 2 of art. 4 of the Order. (3) The word "effect" in cl. 3 of art. 4 is of wide connotation and is not equivalent to 'being enforced' by suits on a foreign judgment. (4) Clause (3) of art. 4 is in the nature of a deeming clause and makes the decree of the Pakistan court (West Punjab) a decree of a court of competent jurisdiction in East Punjab (India). (5) Situs of the decree is not in Pakistan alone but the legal fiction applies to that also, and (6) the evacuee laws of Pakistan do not affect the effectiveness of the decree in India.

I would, therefore, allow this appeal and set aside the judgment and order of the High Court. The appellants will have their costs throughout.

ORDER

In view of the majority Judgment the Appeal is dismissed with costs.

B.R.T.

FULL BENCH

Before G. D. Khosla, C.J., K. L. Gosain and D. K. Mahajan, JJ.

HAZARA SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1203 of 1958.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Sections 2 and 30—Public Dues—Definition of—Loans granted under Land Improvement Loans

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Hotels of India,
Ltd., and
another,
v.
R. B. Jodha Mal
Kuthalia,
Kapur, J.

1960

September, 1st

Act (XIX of 1883) and Agriculturists' Loans Act (XII of 1884)—Whether included in 'Public Dues'—Arrest of displaced persons for the recovery of such loans—Whether barred—Section 30—Whether ultra vires—Conflict between Existing Indian Law and Central Act—Which prevails.

Held, that the loans granted to displaced persons under the Land Improvement Loans Act, 1883 and Agriculturists' Loans Act, 1884 are 'Public Dues' as defined in section 2(d) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and according to the scheme and provisions of the said Act are now sums recoverable under the Act and, therefore, in view of section 30 of the Act, the defaulters cannot be arrested when these loans are sought to be recovered from them as arrears of land revenue.

Held, that the Land Improvement Loans Act, 1883 and Agriculturists' Loans Act, 1884 were enacted by the Governor-General and cannot, therefore, be said to be State Laws. They are 'Existing Indian Laws' as defined in clause (10) of Article 366 of the Constitution of India and the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which has been enacted by the Central Legislature, cannot be said to be subservient to the "Existing Indian Laws" on the ground that the field occupied by those "Existing Indian Laws" has now become the exclusive field of the States. In a competition between the Central law and the "Existing Indian Law" the Central law must prevail. Again in the event of a conflict between a State law and a Central law, both laws being within the respective competence of each legislature, and the encroachment being merely incidental or ancillary, the State law must yield to the Central law. The doctrine of occupied field does not apply so as to give superior authority to a State law as against a Union law, even though the provisions of the Union law relate to a matter in the State list. Section 30 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 has been validly enacted and must prevail over the provisions of the Land Improvement Loans Act, 1883 and Agriculturists' Loans Act, 1884 to the extent to which it comes in conflict with those laws.

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, direction or order be

issued quashing the order of arrest of the petitioner issued by the respondents and directing them not to take any steps to recover the various loans and interest due from the petitioner and further praying that the petitioner be not arrested till the decision of the writ petition.

D. S. KANG AND H. S. WASU, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

MAHAJAN, J.—This order will dispose of C.W.s Nos. 1203 to 1207 of 1958, and 17,124,202 and 206 to 209, 509 and 510 of 1959.

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These matters came up for decision before Bishan Narain, J., and were referred by the learned Judge for a decision by a larger Bench and by order of my Lord the Chief Justice, they have been set down for hearing before the Full Bench.

The petitioners in all these petitions are displaced persons and were allotted land in lieu of the lands left by them in Pakistan and with regard to these lands, proprietary rights have also been conferred on them under the Displaced Persons (Compensation and Rehabilitation) Act, (No. 44 of 1954). The petitioner in C.W. No. 209 of 1959, in addition to his being an allottee of land is also a holder of a verified claim to the extent of Rs. 17,500 and the net compensation to which he is entitled has been assessed at Rs. 6,000 odd.

All these petitioners obtained loans from the State Government for one or more of the following purposes, namely,—

- (1) for the purchase of tractors, seed, bullocks, and houses ; or

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(2) for repairs to houses ; or

(3) for construction of houses ; or

(4) for sinking of tubewells or wells, etc. •

These loans were advanced to them under the provisions of the Land Improvement Loans Act (No. 19 of 1883), and the Agriculturists' Loans Act (No. 12 of 1884). Both of these Acts are Governor-General's Acts and as such Central Acts passed long before the bifurcation of the legislative powers between the Centre and the provinces and later on the States. These laws have been saved by the Constitution Acts that have been passed from time to time and fall within the category known to the Constitution of India as the "Existing Laws". Section 4 of both of these Acts sets out the purpose for which loans may be granted, while section 6 in the 1883 Act deals with the period for repayment of the loans and section 7 with the recovery of loans and it is only necessary to mention that the loans are recoverable as if they were arrears of land-revenue due in respect of that land. In the 1884 Act, the recovery section is section 5 and there too the loan is recoverable as arrears of land-revenue. Chapter VI of the Punjab Land Revenue Act (No. 17 of 1887), deals with the collection of land-revenue and section 69 in this Chapter is in these terms :—

"69. (1) At any time after an arrear of land-revenue has accrued a Revenue-Officer may issue a warrant directing an officer named therein to arrest the defaulter and bring him before the Revenue-Officer.

(2) When the defaulter is brought before the Revenue Officer, the Revenue Officer may

cause him to be taken before the Col-^{Hazara Singh.}
 lector, or may keep him under personal ^{v.} The State of
 restraint for a period not exceeding ten ^{Punjab and}
 days and then, if the arrear is still un- ^{others}
 paid, cause him to be taken before the ^{Mahajan, J.}
 Collector.

(3) When the defaulter is brought before the Collector, the Collector may issue an order to the officer-in-charge of the civil jail of the district, directing him to confine the defaulter in the jail for such period, not exceeding one month from the date of the order, as the Collector thinks fit.

(4) The process of arrest and detention shall not be executed against a defaulter who is a female, a minor, a lunatic or idiot."

This section permits the arrest and detention of a defaulter.

For recovery of these loans, proceedings were taken by the State Government under section 69 of the Land Revenue Act. This led to the present petitions. This Court stayed the proceedings for the arrest of the petitioners and the sole question that has to be settled in these petitions is whether the petitioners can be arrested for default of non-payment of the loans, which admittedly are recoverable as arrears of land-revenue under the aforesaid provisions.

It is not disputed that the loans granted by the Rehabilitation Department to displaced persons are covered by section 30 of Act No. 44 of 1954, and for non-payment of these loans, a displaced person cannot be arrested unless his case

Hazara Singh falls within the ambit of section 30(2), and the
 v. of dispute only centres round the loans advanced by
 The State of the State Government under the 1883 and 1884
 Punjab and the State Government under the 1883 and 1884
 others Acts referred to above.

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The contention advanced on behalf of the petitioners is based on the provisions of the Displaced Persons (Compensation and Rehabilitation) Act (No. 44 of 1954)—hereinafter called the Act—and particularly on section 30 of the Act, which prohibits arrests for the recovery of sums due under the Act. The petitioners' case is that these loans are public dues as defined in section 2(d) of the Act and according to the scheme and the provisions of the Act are now sums recoverable under the Act and therefore, in view of section 30 of the Act, the petitioners cannot be arrested.

On the other hand, the contention of the State is that these sums are not sums due under the Act, but are sums due under the Land Improvement Loans Act (No. 19 of 1883), and the Agriculturists' Loans Act (No. 12 of 1884), and as such can be recovered as arrears of land-revenue and the petitioners can be arrested. It is further contended that even if these loans are held to be sums due under the Act the jurisdiction to legislate about them is within the exclusive legislative field of the State and therefore, the Act so far as it bars arrest for recovery of the loans would be outside the competence of the Union Legislature and would, to that extent, be *ultra vires*. In support of these contentions, number of arguments have been advanced, which will be presently noticed.

Before considering the respective contentions, it will be proper to examine the scheme and the purpose of the Act.

This legislation is one of the series of legislations that were enacted in the wake of the partition

of the country for relief and rehabilitation of persons displaced from territories, which fell within the Dominion of Pakistan. The Act provides for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith. Section 2(d) of the Act defines 'public dues' and is in these terms :—

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"2 (d) 'public dues' in relation to a displaced person, includes—

(i) arrears of rent in respect of any property allotted or leased to the displaced person by the Central Government or a State Government or the Custodian ;

(ii) any amount recoverable, whether in one lump sum or in instalments, from the displaced person on account of loans granted to him by the Central Government or a State Government or the Rehabilitation Finance Administration constituted under the Rehabilitation Finance Administration Act, 1948 (XII of 1948), and any interest on such loans ;

(iii) the amount of purchase money or any part thereof, and any interest on such amount or part remaining unpaid and recoverable from the displaced person on account of transfer to him of any property or interest therein by—

(a) the Central Government ; or

(b) any State Government ; or

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(c) any body corporate or other authority or person financed by the Central Government or a State Government for the purpose of the acquisition, development or construction of any immovable property for the rehabilitation of displaced persons ;

(iv) any other dues payable to the Central Government, a State Government, or the Custodian which may be declared by the Central Government, by notification in the official Gazette, to be public dues recoverable from the displaced person :”

Section 4 deals with application for payment of compensation and the particulars required to be stated are enumerated in sub-section (3) and are in these terms :—

“4 (3). An application for the payment of compensation under this section shall contain the following particulars, namely :—

- (a) * * * * *
- (b) * * * * *
- (c) * * * * *
- (d) * * * * *
- (e) the amount, if any, of the public dues recoverable from the applicant :
- (f) * * * * *
- (g) * * * * *

Section 7 provides for the determination of compensation and for the deduction of public dues

from the amount of compensation and is in these terms :—

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"7(1). * * * *

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(2) On ascertaining the amount of compensation to which an applicant is entitled under sub-section (1), the Settlement Commissioner shall deduct therefrom the following dues recoverable from the applicant, in the order of priority mentioned below :—

(a) the amount, if any, of the public dues recoverable from the applicant under section 5 ;

(b) * * * *

(c) * * * *

(3) After deducting the dues referred to in sub-section (2) the Settlement Commissioner shall make an order determining the net amount of compensation, if any, payable to the applicant.

(4) * * * *

Section 10 provides a special procedure for payment of compensation in certain cases specified in the section and is in these terms :—

"10. Where any immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published—

(a) by the notification of the Government of Punjab in the Department of Rehabilitation No. 4895-S or 4892-S, dated the 8th July, 1949 ; or

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(b) by the notification of the Government of Patiala and East Punjab States Union in the Department of Rehabilitation No. 8R or 9R, dated the 23rd July, 1949, and published in the Official Gazette of that State dated the 7th August, 1949.

and such property is acquired under the provisions of this Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property 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.*"

Section 12 confers power on the Central Government to acquire evacuee property for rehabilitation of displaced persons. Section 14 enumerates what the compensation pool consists of, and land and other property left by Muslims forms part of the compensation pool. Section 20 confers power on the managing officers and managing corporations for the transfer of property out of the compensation pool. Section 21, which is in these terms :—

"21. (1) Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise howsoever, for any period prior to the date of acquisition of such property under this Act,

which has not been recovered under section 48 of the Administration of Evacuee Property Act, 1950 (31 of 1950), and any sum payable to the Government in respect of any property in the compensation pool, may be recovered in the same manner as an arrear of land revenue.

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- (2) If any question arises whether a sum is payable to the Government or to the Custodian within the meaning of subsection (1) in respect of any property referred to therein, it shall be referred to the Settlement Commissioner within whose jurisdiction the property is situated, and the Settlement Commissioner shall after making such enquiry as he may deem fit and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question ; and the decision of the Settlement Commissioner shall, subject to any appeal or revision under this Act, be final, and shall not be called in question by any Court or other authority.
- (3) For the purpose of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by the Indian Limitation Act, 1908 (9 of 1908), or any other law for the time being in force, relating to limitation of actions."

deals with certain sums to be recovered as arrears of land revenue. Section 30, which is in these terms :—

- "30 (1) No person shall be liable to arrest or imprisonment in pursuance of any process issued for the recovery of any sum

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due under this Act which is recoverable as an arrear of land revenue.

- (2) Notwithstanding anything contained in sub-section (1) if the Chief Settlement Commissioner is of opinion that a person is refusing, or neglecting, or has refused or neglected, to pay any sum due under this Act, he may, after giving such person an opportunity of being heard, by order in writing stating the grounds therefor, direct that the provisions of sub-section (1) shall not apply to him, and thereupon such person shall cease to be entitled to the exemption conferred by that sub-section."

provides for exemption from arrest under certain circumstances. It may be mentioned that at the time when these petitions were admitted sub-section (2) of section 30 was not enacted. It was enacted later. Section 32 confers power on the Central Government to give direction to any State Government as to the carrying into execution in the State of any of the provisions contained in the Act or of any rules or orders made thereunder. Section 40 deals with the power to make rules and is in these terms :—

"40. (1) The Central Government may, by notification in the official Gazette make rules to carry out the purposes of this Act.

- (2) In particular, an without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,—

(a) * * * * *

- (b) * * * * * Hazara Singh,
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- (c) the scales according to which, the form and manner in which, and the instalments by which, compensation may be paid to displaced persons ;
- (d) the dues which may be deducted from the amount of compensation to which a displaced person is entitled ;
- (e) * * * * *
- (f) * * * * *
- (g) the terms and conditions subject to which property may be transferred to a displaced person under section 10 ;
- (h) * * * * *
- (i) * * * * *
- (j) the procedure for the transfer of property out of the compensation pool and the manner of realization of the sale-proceeds or the adjustment of the value of the property transferred against the amount of compensation ;
- (k) * * * * *
- (l) * * * * *
- (m) * * * * *
- (n) * * * * *
- (o) * * * * *

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(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the said period of thirty days."

Rules under section 40 have been framed and were placed for 30 days before the Houses of Parliament as required by sub-section (3) of section 40 and thereafter, were given effect to. Chapter II of the Rules lays down procedure for submission of compensation application and determination of public dues. Rule 7 deals with the determination of public dues in the case of persons holding verified claims. An enquiry for the determination of the public dues is provided in rule 8. Chapter IV of the Rules deals with the determination of compensation and rule 14 thereunder provides for deduction of certain dues from the amount of compensation and is in these terms :—

"14. The following dues shall be deducted from the amount of compensation in the order of priority mentioned below :—

(i) public dues ;

(ii) the amount, if any, referred to in clause (a) of rule 13 ;

(iii) the amount, if any, referred to in clause (b) of rule 13."

Chapter V deals with payment of compensation by transfer of acquired evacuee properties. Chapter VIII deals with compensation in respect of verified claims for land other than agricultural land in the States of Punjab and Patiala and East Punjab States Union. (See rule 69).

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These loans for the recovery of which the petitioners are sought to be arrested are dealt with in Chapter X. Under rule 71, the allottee (i.e., the land allottee) has to file a declaration in the form specified in Appendix XVI in the office of the Settlement Officer or before the authorized officer in the village concerned on the date and place notified by publication of a notice in the village concerned. Appendix XVI requires information regarding rural loans received. In connection with the rural loans, the following particulars are required :—

- (i) kind of loan ;
- (ii) name of tahsil from where loan was taken ;
- (iii) amount actually taken ;
- (iv) amount outstanding at present ;

and by way of illustration under the head 'kind of loan', the following purposes are stated :—

- (1) purchase of bullock ;
- (2) purchase of seed ;
- (3) purchase of agricultural implements ;
- (4) purchase of tractors ;
- (5) purchase of persian wheels, etc.

Rule 72 provides for an enquiry where the allottee has no verified claim. Rule 73 provides for an

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enquiry in the cases where allottee has a verified claim. Both these rules are in these terms :—

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“72 (1) Where an allottee has no verified claim in respect of property other than agricultural land, the Settlement Officer shall, on receipt of a declaration under Rule 71, verify the particular specified therein in the presence of the allottee or his authorized agent, and determine the public dues outstanding against such allottee.

- (2) If the Settlement Officer is satisfied that the allotment is in accordance with the quasi-permanent allotment scheme, he may pass an order transferring the property allotted to the allottee in permanent ownership as compensation and shall also issue to him a *sanad* in the form specified in Appendix XVII or XVIII as the case may be with such modifications as may be necessary in circumstances of any particular case granting him such rights :

Provided that the amount of public dues outstanding against the allottee shall be a first charge on the property transferred to him and shall be payable by him in four equal annual instalments, failing which the amount shall be recoverable as arrears of land-revenue. Such charge shall also be enforceable against the successor-in-interest of the original transferee or the person to whom the property has been subsequently transferred, as the case may be, and the person concerned shall be deemed to have acquired the property subject to such charge.

(3)	*	*	*	*	*	Hazara Singh,
(4)	*	*	*	*	*	The State of
(5)	*	*	*	*	*	Punjab and others

“73 (1). Where the allottee has a verified claim in respect of property other than agricultural land, the Settlement Officer shall, on receipt of a declaration under rule 71 make an enquiry in the manner specified in Rule 72, verify the particulars specified in the declaration in the presence of the allottee or his authorized agent, determine the public dues outstanding against such allottee and shall thereafter send a copy of the declaration and other relevant papers to the Settlement Commissioner together with :—

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- (i) a report on the public dues payable by the allottee ;
- (ii) a recommendation whether having regard to all the circumstances of the case, the allotment may be made permanent, cancelled or varied :

Provided that if it appears to the Settlement Officer that the public dues owing from the allottee do not exceed two-thirds of the compensation payable to him in respect of property other than agricultural land he shall pass an order transferring the property allotted to the allottee in permanent ownership as compensation and shall issue to him a *sanad* in the form specified in Appendix XVII or XVIII as the case may be with such modification, as may be necessary in the circumstances of any particular case granting him such rights.

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(2) The compensation application shall be disposed of by the Settlement Commissioner according to the procedure prescribed in Chapters II, III, and IV of these rules.

(3) The Settlement Commissioner may after considering the recommendations of the Settlement Officer, direct the Settlement Officer—

(i) to transfer to the allottee the property allotted to him in permanent ownership and issue a *sanad* to him in the form specified in Appendix XVII or XVIII as the case may be with such modification as may be necessary in the circumstances of any particular case granting permanent ownership rights :

Provided that if the public dues outstanding are in excess of the compensation due in respect of the verified claim, the excess amount shall be intimated by the Settlement Commissioner to the Settlement Officer, Collector or other appropriate authority who will enter the amount, in the *sanad* and other relevant records as a first charge on the property transferred to the allottee in permanent ownership and such amount shall be payable by the allottee in four equal annual instalments, failing which the amount shall be recoverable as arrears of land revenue. Such charge shall also be enforceable

against the successor-in-interest of Hazara Singh
 the original transferee or the person v.
 to whom the land has been subse-Punjab The State of
 quently transferred, as the case may and
 be, and the person concerned shall others
 be deemed to have acquired the Mahajan, J.
 land subject to such charge;

(ii) to transfer to the allottee in permanent ownership, less area than originally allotted to him unless the allottee is prepared to pay for the excess area either in cash or by adjustment against the compensation payable to him in respect of his verified claim for any urban property or rural building ; or

(iii) to cancel the allotment.

(4) A copy of every order under sub-rule (3) shall be supplied free of cost to the allottee.

The *sanads* required to be issued by the Settlement Officers under this rule but actually issued by the Managing Officers before the 28th February, 1958, shall be deemed to be as valid, as if they were issued by Settlement Officers."

The forms of the *sanad* granted under these rules are prescribed in Appendices XVII and XVIII. In both these forms, clause 2(ii) is identical and only need be noticed for the present purposes. It is in these terms :—

"2(ii) Any loan made to the transferee or his predecessors-in-interest by the Central Government or a State Government

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or, any other dues payable by the transferee or his predecessors-in-interest in respect of the said property to either of the said Governments on the date of transfer together with any interest due on any such loan shall as well be a charge on the said property and shall without prejudice to any other rights and remedies of the said Governments, be recoverable in the same manner as an arrear of land revenue and any transfer of the said property shall not be valid unless the amount of the said loan together with the interest, if any, and the said dues have been paid in full."

The other provisions are not necessary to be noticed for the purposes of these petitions.

It would, therefore, appear from the entire scheme of the Act and the Rules made thereunder that the loans granted by the Central or the State Government before the conferment of permanent rights in land to the allottees or before the payment of compensation to the holders of verified claims are treated as sums due under the Act. It is only on this basis that a provision for their recovery could be made under the Act. This was necessary as a measure of relief to the displaced persons as well as for the purpose of safeguarding the public revenues. These loans have been made a first charge on the land allotted to them and are to be adjusted towards the amount of compensation to be paid on the verified claims. It cannot be denied that recovery by instalments of loans from the displaced persons is a measure of relief for their rehabilitation and so also the immunity from arrest. Therefore, it must be held that the Act has been enacted to give relief to and also to rehabilitate the displaced persons and matters connected therewith.

It cannot be disputed and indeed it was not that the loans granted under the 1883 and 1884 Acts are made payable or recoverable under the Act, but the learned counsel for the State relying on the expression "sums due under this Act" strenuously contends that the loans in question were incurred under the aforesaid Acts and thus cannot be said to be loans under the Act. His contention is that the word 'due' means 'owed' and nothing more. In order to examine the soundness of this contention, it has to be seen what exactly the word 'due' means. In the Shorter Oxford English Dictionary, Third Edition, the word 'due' as an adjective is stated to mean :—

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(1) That is owing or payable, as a debt.

Due (substantive): 1. That which is due ; a debt. (2) That which is due to any one legally or morally. (3) That which is due by any one. (4) A legal charge, toll, tribute, fee, or the like.

In Wharton's Law Lexicon, Fourteenth Edition, its meaning is stated to be :

"anything owing. That which one contracts to pay or perform to another ; that which law or justice requires to be paid or done. It should be observed that a debt is said to be 'due' the instant that it has existence as a debt ; it may be payable at a future time."

In Words and Phrases, Permanent Edition, Volume 13 (West Publishing Co.), various shades of meaning of the word 'due' are given and I am only setting out a few of them to illustrate the variety of uses to which the word 'due' has been put :—

Page 437. "The word 'due' has a variety of meanings, depending on the connection

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in which it is used. It has been defined generally to be that which is owed; *that which custom, statute, or law required to be paid.*"

Page 446. "The word 'due' in its primary sense, means 'owing' ;"

Page 447. "The term 'due' is sometimes used to express "the mere state of indebtedment, and then is an equivalent to 'owed' or 'owing' and it is sometimes used to express the fact that the debt has become payable."

Page 447. "The word 'due' has more than one signification or is used on different occasions to express distinct ideas. At times, it signifies a simple indebtedness, without reference to the time of payment. At other times it shows that the day of payment or tender is passed."

Page 449. "The word 'due' is only equivalent to 'payable'."

Page 450. "The word 'due' considered by itself has many definitions. Bouvier defines it, in its first and broadest sense, as that which is just and proper and in another and less general sense, as 'what ought to be paid ; what may be demanded.'"

It would, therefore, be noticed that the word 'due' has not one fixed meaning and has various shades of meaning. It is a well settled proposition of law that where a word is used in an Act, which is capable of various shades of meaning, the particular meaning to be attached must be arrived at

by reference to the scheme of the Act or of the section in particular taken as a whole. See in this connection, *Nihal Singh v. Siri Ram and others* (1), and *Manohar Lal v. Emperor* (2). There is another rule of construction, which will apply to the facts of the present case. It is to the effect that it is open to the Court, in cases where there is a manifest contradiction of the apparent purpose of the enactment or where the literal construction is likely to lead to a result not intended by the Legislature, to modify the meaning of the words, if necessary even by departing from the rules of grammar or by giving an unusual meaning to particular words [See *The Premier Automobiles Limited v. Ramchandra Bhimaya Polkam* (3).] Yet another rule may again be noticed. In considering a remedial measure the Court must give to the provision of law as wide an interpretation as possible consistently with the language used by the Legislature. When an expression is capable of two interpretations it is open to the Court to consider what was the object of the Legislature and what was the mischief aimed at, and the Court must try and give that construction to a particular expression which will be more consistent with the suppression of the mischief rather than that mischief being allowed to continue uncontrolled. [See *Walchandnagar Industries Limited v. Ratanchand Khimchand Motishaw* (4)].

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Keeping in view the rules laid down in the aforesaid decisions and the scheme and the purpose of the Act, the argument of the learned Deputy Advocate-General that the word 'due' only means 'owed' and not 'payable' must be repelled. In section 30 of the Act, the words 'sums due

(1) A.I.R. 1939 Lah. 388 (F.B.)

(2) A.I.R. 1943 Lah. 1

(3) 62 B.L.R. 199

(4) 55 B.L.R. 236

Hazara Singh, under this Act' would also cover 'sums payable v. The State of under this Act' or even 'sums recoverable under Punjab and this Act', and in that case they need not necessarily be 'owed' in the technical sense in which others the learned Deputy Advocate-General wants the word 'due' to be interpreted. In my view the words 'payable' and 'due' in this Act have been used synonymously. If the interpretation, which I have placed on the 'sums due under this Act, is not placed, it would defeat the very purpose and object of the Act and would lead to absurdity. There are no sums due under the Act possibly with the exception of sums which become due by way of rent of evacuee property after it is transferred to the compensation pool. Section 21 provides for recovery of certain sums as arrears of land revenue and they are sums payable to Government or to the Custodian in respect of any evacuee property, which had become due prior to the date of acquisition of such property under the Act. According to the argument of the State counsel, they would be sums due under the Administration of Evacuee Property Act and section 21 only makes them recoverable under the Act. But then, the learned counsel did not contend that what is covered by section 21 is not a sum recoverable under the Act. He argued that section 30 has relation only to section 21 and sums outside section 21 would be outside section 30. How this would be so, I have not been able to appreciate. As I look at the matter there is no difference between sums contemplated by section 21 and those by section 10 of the Act and the Rules. Therefore, taking the argument of the learned counsel for the State to its logical conclusion even the sums due under section 21 excepting the sums due after the formation of compensation pool would not fall within the ambit of section 30(1) of the Act. But as I have already said, the words 'payable', 'due'

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and 'recoverable' have been used in the Act. Hazara Singh v. The State of Punjab and others
 synonymously and therefore any sums recoverable or payable under the Act would be sums due under the Act.

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This argument of the learned counsel for the State also leads to an anomaly because under section 21 of the Act, there would be sums recoverable from non-displaced persons, i.e., where the Custodian has let out property to non-displaced persons and so far they are concerned, they would be exempt from arrest, while displaced persons would be liable to arrest. In this view of the matter, there appears to be no force in this contention of the learned State counsel.

He further urged that if the intention was to provide for recovery of State dues under section 30, the expression 'State dues' would have been used and not 'sums payable under this Act'. Section 30 of the Act was enacted to recover all types of amounts due from displaced persons and non-displaced persons to the Government—whether State dues or not—and therefore—the word 'sums' was used, it having a wider connotation than the phrase 'State dues'. It cannot be urged with any reasonableness that 'State dues' would not be 'sum' recoverable under this Act. So this contention also fails.

Having realised the futility of this argument, the learned counsel for the State raised another similar argument. He contended that the sums for the recovery of which the petitioners are sought to be arrested are due under the Rules made under this Act and as such cannot be said to be 'sums due under this Act' for they are only due under the Rules. This argument he sought to support by reference to sections 14, 17, 20 and

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30 of the Act, wherein it is stated that subject to the provisions of this Act and the Rules made thereunder such and such result would follow. And as section 30 is not so framed, therefore, the Rules are excluded. There is two-fold answer to this argument. In the first instance, if section 10 of the Act is read with the Rules and the appendices, then these loans must, in fact, be held to be recoverable under the Act because the transfer of the property is subject to such terms and conditions as may be prescribed and those terms and conditions are prescribed by section 10 of the Act. The other answer is that the Rules in this case are statutory rules, which have the tacit approval of both Houses of Parliament and as such are part of the Act. If the Rules are within the competence of the rule-making power, then they become part of the Act and as such any sum due under the Rules would automatically be sum due under the Act, for the Rules have by reason of the provisions of section 40 become part of the Act. In this connection, reference may usefully be made to the decision of the House of Lords in *Institute of Patient Agents and others v. Joseph Lockwood* (1). The learned State counsel did not and could not contest that the Rules made were either outside the scope of the Act or are, in any way, *ultra vires* the Act.

I may now advert to the two contradictory views of this Court as to the applicability of section 30 *qua* displaced persons by Dua, J. and Bishan Narain, J. In the decision by Dua, J., in *Pirthi Singh v. The Punjab Government and others* (2), section 30 of the Act was applied to the case of a displaced person and proceedings for his arrest were quashed under Article 226 of the

(1) 1894 A.C. 347

(2) A.I.R. 1960 Punj. 155

Constitution; while there are two decisions to the contrary by Bishan Narain, J., one in C.W. No. 114/D of 1955, and the other in C.W. 216/D of 1955, and the latter decision is based on the earlier decision in C.W. 114/D of 1955. The earlier decision is not available and it is not possible to examine the reasoning of the learned Judge. So far as the decision of Dua, J., is concerned, it is also not helpful in determining the present controversy as the arguments now raised were not raised before him and it proceeded on the assumption that the debt was due under the Act. So far the view of Bishan Narain, J., is concerned, it has been expressed in the referring order in these terms:—

“I am of the view that the expression ‘due under the Act’ used in section 30 means any sum owed under the Act. Considering the various relevant statutory provisions the word ‘due’ in this context has not been used as synonym for ‘payable’ but as meaning ‘owing’. Section 30 does not purport to amend statutory provisions of the Land Improvement Loans Act (No. 19 of 1883), and the Agriculturists’ Loans Act (No. 12 of 1884) nor does it purport to alter any terms of agreement binding on the borrower and the lender. It would not be proper to hold in favour of such an amendment in the absence of express words to that effect in section 30 or in the absence of any such indication in the Act or the rules made thereunder. It is also my opinion that rule 72 and 73 merely create another mode of payment which the parties may adopt but without affecting rights and liabilities existing under the terms on which the loans were granted.”

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It will be noticed from these observations that the word 'due' has been interpreted as meaning 'owing'. The learned Judge was of the view that only an alternative mode of payment was provided and that would not mean that the debt became due under the Act. It cannot be disputed that the Act provides for the recovery of debts due under enactments other than the Act and brings about by operation of law a totally new relationship between the debtor and the creditor. Moreover, the word 'due' is not confined to merely as being 'owing' as has already been noticed, and therefore, with due deference to the learned Judge there is no justification for holding the word 'due' as merely meaning 'owing'.

The last argument raised concerns the *vires* of section 30 of the Act. It is contended that the grant and recovery of loans in question belongs exclusively to the State field (Schedule VII, List II, item 18) while the Act (section 30 of the Act) relates to the concurrent field (Schedule VII, List III, item 27 or possibly item 41), and therefore, in so far as it trenches on the exclusive State field, namely, the grant of agricultural loans, which will include the provision for arrest of the debtor for the recovery thereof, will, to the extent, it forbids arrest be repugnant, and therefore *ultra vires*. Thus the State Law which permits the arrest of the petitioners for recovery of such loans would still hold the field. On this basis, it is contended that the proceedings for arrest are quite legal.

At this stage it will be proper to examine the position of the 1883 and 1884 Acts *vis-a-vis* the Act. The aforesaid Acts are not and cannot be said to be State laws. As to what is a State law, reference

may be made to Article 246 of the Constitution. Hazara Singh
 The aforesaid Acts were Governor General's Acts v. The State of
 and have been kept alive by the subsequent Con-Punjab and
 stitution Acts. They are what is known as "Exist- others
 ing Indian Laws". See clause (10) Article 366 of Mahajan, J.
 the Constitution of India, which is in these
 terms:—

"(10) 'existing law' means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;"

Therefore the position that emerges is that the Act is a valid Central Act, which has incidentally legislated about a matter, which is the subject-matter of an 'Existing Indian Law', though the field of that 'Existing Indian Law' is now under the Constitution of India the exclusive field of State legislation.

So far as the argument of the learned State counsel is concerned, it need not detain us long. In pith and substance, the Act deals with relief and rehabilitation—a matter on which the Central Legislature could legislate—it being one of the matters in the Concurrent List (Schedule VII, List III, item 27 of the Constitution of India). It cannot be disputed that in a legislation of this kind, some matters which exclusively fall within the State field may be trespassed upon. That is bound to happen in a legislation of this type and the sole test in such cases where a conflict of jurisdiction of two legislatures arises is whether the impugned legislation is in pith and substance a legislation

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within the competence of the legislative authority of enacting the same. If it is in pith and substance and such a legislation, it must be held to be valid even though it trenches to some extent on the exclusive field of another legislature, in this case the State field, in subsidiary and ancillary matters. In this connection, reference may be made to a decision of the Privy Council in *Prafulla Kumar Mukherjee and others v. Bank of Commerce Ltd.* (1), and also to *Shantilal Vadilal Shah v. State of Bombay* (2) The decision in *Prafulla Kumar Mukherjee's case* was relied upon by the Supreme Court in *D. N. Banerji v. P. R. Mukherjee and others* (3), wherein the following observations occur:—

“This invasion of the provincial field of legislation does not, however, render the Industrial Disputes Act of the Central legislature invalid, as we have to pay regard primarily to the pith and substance of the challenged Act in considering the question of conflict between the two jurisdictions. Industrial and labour disputes are within the competence of the Central legislature, and the impugned Act deals with this subject and not with local government. The point is covered by *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna* (1)” .

Therefore the argument that the Act is *ultra vires* so far as it legislates about matters covered by Schedule VII, List II, item 18 Constitution of India must be repelled.

The learned counsel further contended that the field being occupied by the State law, the Central Act so far as it comes in conflict with that

(1) A.I.R. 1947 P.C. 60

(2) A.I.R. 1954 Bom. 508

(3) 1953 S.C.R. 302

occupied field would be *ultra vires* and the State law must prevail in preference to the Central law. This argument is not sound. In the first instance, there is no State law, which occupies the field. The field is only occupied by an 'Existing Indian Law' and in a competition between the Central law and the 'Existing Indian Law' the Central law must prevail. Even assuming that the field is occupied by a State law, I am not prepared to accept the contention that in the event of a conflict between a State law and a Central law, both laws being within the respective competence of each legislature and the encroachment being merely incidental or ancillary, the State law must yield to the Central law. The doctrine of occupied field does not apply so as to give superior authority to a State law as against a Union law, even though the provisions of the Union law relate to a matter in the State List. In this connection, reference may be made to Article 246 of the Constitution. Once it is held that the conflicting Central Law has been validly enacted and it must be so held as the Central law in pith and substance is within item 27, List III, Schedule VII of the Constitution of India, it must have precedence over the State law. Reference in this connection may also be usefully made to the decision of the Privy Council in (1907 A.C. 65). At page 68, the following observations occur:—

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“There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be *ultra vires*, if the field is clear; and, secondly, that if the field is not clear, and in such a domain the two legislations meet, then the Dominion legislation must prevail.”

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 To the same effect is another decision of the Privy Council in *Tennant v. The Union Bank of Canada* (1).

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There is another way of looking at the matter. The provisions of 1883 and 1884 Acts are general provisions while the provisions of section 30 of the Act are special provisions. Therefore section 30 of the Act, which provides for special circumstances, must prevail over the general provision. See in this connection the decisions in *British Columbia Electric Railway Company Ltd. v. Stewart and others* (2), and *Hall v. Arnold and others* (3), as well as Maxwell on the Interpretation of Statutes, Tenth Edition, at page 168:—

“A later Act which conferred a new right would repeal an earlier right, if the co-existence of such right would produce inconvenience, for the just inference from such a result would be that the legislature intended to take the earlier right away.”

This passage fully applies to the situation brought about by the enactment of section 30 of the Act as against the provisions of the earlier two “existing Indian Laws”. As I have already said, there is no State law on the subject and there are only the “existing Indian laws” and those laws were enacted by the predecessor-in-interest of the Central Legislature and therefore the present law, which is again passed by the Central Legislature, would not, in any way, be held to be subservient to the existing Indian law on the ground that the field occupied by the existing Indian law has now become the exclusive field of the State.

(1) (1) 1894 A.C. 31

(2) 1913 A.C. 816

(3) (1950) 2 K.B. 543

After giving the entire matter my careful consideration, I am of the view that the Central Act is a valid piece of legislation and must prevail over "the existing Indian laws" to the extent to which it comes in conflict with those laws.

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For the reasons recorded above, these petitions must succeed. I, therefore, allow them and quash the orders of arrest issued against the petitioners.

G. D. KHOSLA, C. J.—I agree.

G. D. Khosla,
C. J.

K. L. GOSAIN, J.—I agree.

Gosain, J.

B.R.T.

FULL BENCH

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

HARCHARAN SINGH alias HARCHAND SINGH—
Appellant.

versus

ISHER SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 718 of 1954.

1960

Punjab Custom (Power to Contest) Act (II of 1920)—Section 6—Fifth degree collateral successfully contesting the will made by the last male holder in respect of ancestral property, obtaining possession and after some time gifting it to his sister's sons—After his death the beneficiary under the will of the last male holder obtaining probate and filing suit for possession of the property against the donees from the fifth degree collateral—Donees pleading invalidity of the will under custom—Whether entitled to do so.

Sep., 6th

Held, that the facts, which are not in dispute, leave no doubt that as soon as Harnama died, a dispute about the will arose and Nand Singh—fifth degree collateral—