not the procedure prescribed by Chapter XXIII, but the one prescribed by section 526(2). A bare look at section 271(1) shows that Chapter XXIII, deals with trials and that is why the section starts with "when the Court is ready to commence the trial....." Section 526(2) does not appear to use the expression 'trial' in a loose sense for sections 526(1) (i) and 526(8) use both the terms 'inquiry' and 'trial'. I am, however, not directly concerned with this problem, as it may if at all arise only later. It is sufficient to say that section 526(2) provides no indication that on such transfer there is a dispensation of the inquiry proceedings. I do not find any direction in the judgment of the Supreme Court as has been suggested on behalf of the petitioner. In the result I must hold that the learned Additional Sessions Judge was right in the view he took. The petition, therefore, fails and is dismissed. Parties will appear before the trial Court on May 3, 1966.

B. R. T.

LETTERS PATENT APPEAL

Before R. P. Khosla and Inder Dev Dua, JJ.

PRITHVI CHAND,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

L.P.A. No. 58-D of 1962.

April 21, 1966.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 40(3)—Central Government—Whether can make or amend rules with restrospective effect—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 49—Explanation added in 1960 with retrospective effect—Whether valid.

Held, that the Displaced Persons (Compensation and Rehabilitation) Act, 1954, has not only laid down the general outline of the statutory policy, purpose and scheme, but the Parliament has also retained an effective legislative control over the rule-making authority by enacting sub-section (3) of section 40. This control must remove all apprehensions—if at all there be any—that the delegation in question amounts in substance to abdication. There are several methods of retaining legislative control but the one adopted in this case brings the rules in close proximity to the provisions of the Act themselves. The Central Government, therefore, has the power to make or amend the rules with retrospective operation. The Explanation added to rule 49 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, is therefore, valid.

Letters Patent Appeal under Clause 10 *of the Letters Patent, against the judgment of the Hon'ble Mr. Justice A. N. Grover, dated* 24*th May,* 1962, *dismissing Civil Writ Petition No.* 537-*D of* 1960, Prithvi Chand *vs.* Union of India.

I. M. LALL, ADVOCATE, for the Appellant.

PARKASH NARAIN, ADVOCATE, for the Respondents.

JUDGMENT

DUA, J.—This judgment will disposed of four Letters Patent Appeals (Letters Patent Appeals Nos. 57-D, 58-D, 59-D of 1952 and 73-D of 1955). Main arguments have been addressed in L.P.A. 58-D of 1962 and it is conceded that the other three appeals would stand or fall with this one. The facts giving rise to this appeal may now briefly be stated.

The petitioner claiming to be a displaced person from district Hazara, N.W.F.P., now forming part of West Pakistan, migrated to India and settled down permanently in village Tihar in Delhi. He was owner of agricultural land and buildings in West Pakistan. His claim in respect of agricultural land was verified for 4 standard acres and 9-1/2 units while his claim in respect of rural buildings was verified for Rs. 9,441-8-0. The latter claim was, however, rejected on the ground that the petitioner had already been allotted agricultural land in India against the land held by him in Pakistan. His claim for agricultural land having thus been verified, he was found to be eligible for allotment of agricultural land in Delhi State. The Additional Custodian of Evacuee Property (Rural), New Delhi, in November, 1953, allotted to the petitioner barani agricultural land, the possession of which was taken by the petitioner soon after. He claims to have been in continuous possession of the said land, having also spent more than Rs. 3,000 on improvement thereof. According to Rule 49 of the Displaced Persons (C&R) Rules, 1955, a displaced person having a verified claim in respect of agricultural land is required, as far as possible, to be paid compensation by allotment of agricultural land. The writ petition continues to aver that according to Rules 62, 63 and 56 of the said Rules, the petitioner is entitled to permanent transfer of the entire area of agricultural land in his occupation which had been allotted to him before the commencement of the said rules against his verified claim relating to agricultural land left in Pakistan. On 10th July, 1959, however,

the Settlement Officer/Managing Officer (Rural), Gokhle Market, Delhi, issued a notice to the petitioner alleging that the latter was not entitled to the transfer of the entire area allotted to him and called upon the petitioner to show-cause why the allotment of the land except in respect of one Khasra number valued below Rs 10,000 be not cancelled. The petitioner preferred objections against the proposed action which were disallowed. An appeal was preferred by the petitioner to the Assistant Settlement Commissioner (Rural) but the same was dismissed on 21st October, 1959 as time-barred. It was in these circumstances that the writ petitioner was presented in this Court. Grover, J., dealing with a large number of writ petitions together, did not feel inclined to exercise his extraordinary powers under Article 226 in favour of the petitioner because the learned counsel for the department (now Mr. Justice Jindra Lal) stated that the department was willing to give the benefit of the new rules contained in Chapter V-A of the Displaced Persons (C&R) Amendment Rules 1960. It may be pointed out that the learned Judge was also of the view that Rules 22 and 23 could have no possible application to the cases before him, but in spite of this infirmity, he was disinclined to grant relief under Article 226 because of the willingness of the department to give the benefit of the new rules to the petitioners as stated by the learned Government Counsel.

On Letters Patent Appeal in this Court, the short question canvassed on behalf of the appellant relates to the *vires* of the amended Rule 49 of the Displaced Persons (C & R) Rules. This rule may appropriately be read at this stage:—

> "49. *Compensation normally to be paid in the form of land:*— Except as otherwise provided in this chapter, a displaced person having verified claim in respect of agricultural land shall, as far as possible, be paid compensation by allotment of agricultural land. Provided that where any such person wishes to have his claim satisfied against property other than agricultural land, he may purchase such property by bidding for it at an open auction or by tendering for it and in such a case the purchase price of the property shall be adjusted against the compensation due on this verified claim for agricultural land which shall be converted into cash at the rates specified in Rule 56. *Explanation.*—In this rule and in the other rules of this Chapter, the expression 'agricultural land' shall mean the agricultural land situated in a rural area."

It is the Explanation against which the challenge is directed because this Explanation has been added in the year 1960 and has been made retrospective in its operation by providing that this Explanation is to be deemed always to have been inserted,—*vide* amendment No. XXXIX, dated 11th February, 1960, made by the Central Government acting under section 40 of the Displaced Persons (C & R) Act No. 44 of 1954 (See 1960 D.L.T. Part VI, page 21). It may be pointed out that the rules under the Act were initially made in 1955.

It is argued by Shri I. M. Lall, with his usual vigour that the power to make law, in other words, the legislative function under our Constitution has been entrusted to the Parliament and to the State Legislatures within their respective constitutional spheres and it is not open to them to pass on this solemn duty to any other body, however, responsible or high-placed. It is conceded that the Parliament could have in this case made a retrospective law similar to the provision contained in the impugned Explanation, but, according to the counsel, power to make retrospective law in the form of rules cannot under the Constitution be delegated to the Central Government. It is, however, not disputed that the Central Government can be delegated within permissible limits the power to make rules which operate prospectively. To accede to the delegated authority the power to make retrospective rules would be tantamount to the conferment on the delegate the power to make rules to operate even prior to the birth of the parent statute itself, says Shri Lall. This, he adds, is not supportable in our democratic set-up which is governed by Rule of law. A passing reference has been made to Articles 19(1)(f) and 31 of the Constitution and it is sought to infer from these provisions that the Constitution forbids retrospective legislation when right to property is infringed. This submission has been pressed because, according to the learned counsel, the petitioner claims to have a right similar to those guaranteed by Articles 19(1)(f) and 31. Reference was made by the learned Single Judge to a Full Bench decision of this Court in *Shivdev Singh* v. *State of Punjab* (1), in which a decision by Khosla and Falshaw, JJ. (as they then were) in C.W. No. 53 of 1951 decided on 28th September, 1951, was noticed and the following observations of Khosla, J., reproduced:—

> "It seems to me that the rule-making power is in the nature of legislative power within certain limits and as long as

(1) I.L.R. 1959 Punj. 1445=A.I.R. 1959 Punj. 453.

> the rule is framed within limits, it can be made to take effect retrospectively."

The Full Bench then proceeded to notice a later Bench decision of this Court by Weston, C.J., and Harnam Singh, J., in C.W. No. 191 of 1951 decided on 13th May, 1952, in which a doubt was expressed with regard to the power of the rule-making authority to make a rule with retrospective effect. The fololwing observation by Weston, C.J., was reproduced:—

> "I must confess that I can see no justification for the proposition that an authority to whom rule-making powers have been given can proceed to make rules and to direct that the operation of those rules shall have effect not from the time they are made but for all previous time whether or not earlier rules have up to that time been in force."

The Full Bench then noticed two decisions, one of the Allahabad High Court and the other of the Hyderabad High Court containing certain observations supporting the view of Weston, C.J., and also noted the view expressed in American Jurisprudence, Volume 42, S. 101, supporting the validity of a rule operating retrospectively. Before the Full Bench, however, no question of retrospective effect of rule arose and, therefore, it was not considered necessary to decide which view was correct. It may be pointed out that the Full Bench was concerned with the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act No. 50 of 1948, the question raised being whether that Act conferred power on the State Government to delegate its functions and powers with retrospective effect. Shri I. M. Lall, has also referred us to a recent decision of the Supreme Court in *Dayal Bagh Co-operative House Boulding Society* v. *Sultan Singh, etc.*, C.A. 654 of 1965, decided on 6th January, 1966, which is noticed in the Supreme Court Notes, dated 15th January, 1966, at serial No. 85 p. 48. In that case, while dealing with section 3(c) of the Land Acquisition Act, it seems to have observed that the said Act confers statutory powers of an exceptional character upon the Collector and it is well-settled that the statutory powers of this description can be exercised only subject to the limitations and conditions prescribed by the Act itself. The powers of special appointment conferred by section 3(c) of that Act accordingly cannot be so exercised as to have retrospective effect. Shri Murari Singh had made an order under that Act on 26th February, 1957, when he was not invested with the requisite power to do so. The

State Government subsequently conferred on him the necessary power retrospectively so as to validate the above order, which, when made, was admittedly without jurisdiction. The Supreme Court seems in this context to have proceeded to observe that in the absence of any express power in the Act itself, the State Government could not clothe Shri Murari Singh with jurisdiction from a prior date, as that would mean the validation of orders which were admittedly without jurisdiction. The notification by the Delhi Administration dated 13th March, 1957, was on this view held to operate prospectively and not with retrospective effect. According to Shri I. M. Lall, on the analogy of this decision, the power to make rules with retrospective effect must be conferred expressly by statute and cannot be assumed to inhere in the rule-making authority Shri I. M. Lall has also referred us to the *Commissioner of Customs and Excise* v. *Cure and Leelay, Ltd.* (2), for the contention that it is always open to the Court to examine whether or not a regulation was made by an authority within the power conferred on it.

Shri Parkash Narain has, on behalf of the respondents, at the out set drawn our attention to sub-section (3) of section 40 of the Displaced Persons Compensation Act which confers on the Central Government power to make rules to carry out the purpose of the Act. This sub-section is in the following terms:—

> "Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a period of thirty days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or to be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

According to the learned counsel, this provision places the rules made under this Act on a higher pedestal than the rules made by a delegated authority in cases in which the Parliament does not reserve

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(2) (1961) 3 A.E.R. 641.

to itself a right and an oportunity of scrutinising and reviewing the statutory rules before their enforcement. These rules, says the counsel, are as effective as the provisions of the Act itself. He has also cited the Supreme Court decision in *K. R. Rawat* v. *State of Saurashtra* (3), but that decision does not seem to me to be very much in point, *Ram Autar Pandey* v. *State of U. P.* (4), a Full Bench decision of the Allahabad High Court, however, does lay down that the rule-making power conferred by Article 309 on the Governor or his nominee is not confined to prospective rule-making and is apparently wide enough to include the making of rules with retrospective effect. In this connection, reference has also been made to a Single Bench decision of this Court in *Krishena Kumar* v. *Comptroller and Auditor-General of India* (5), where it is observed that if effective powers of control by the delegating authority are extremely significant, the Court may uphold the entrustment of power by denying that there has been any delegation at all, on the ground that in substance the authority responsible for passing on the functions to his subordinates continues to address its own mind to the exercise of its powers. It is unnecessary to make a detailed or extensive reference to the cases supporting the proposition that the Legislature can make a law which is intended to operate retrospectively because this proposition is not disputed by the petitioner's learned counsel and, in my opinion rightly so. The cases cited, however, are *Khyerbrai Tea Co., Ltd.* v. *State of Assam, etc.* (6), *M. P.* v. *Sundaramier & Co.*, v. *The State of Andhra Pradesh, etc.*, (7), *Bhatnagars and Co., Ltd.*, v. *The Union of India* (8) *and Bihari Lal Batra* v. *The Chief Settlement Commissioner, etc.* (9). The counsel has submitted that there is no question here of violation of any right guaranteed by Article 19(1) (f) or Article 31 of the Constitution because except for the bald assertion from the bar, the petitioner has not shown any such right to be vesting in him.

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(3) A.I.R. 1952 S.C. 123.

(4) A.I.R. 1962 All. 328.

(5) 1966 D.L.T. 104.

(6) A.I.R. 1964 S.C. 925.

(7) A.I.R. 1958 S.C. 468.

(8) 1957 S.C.R. 701.

(9) (1964) 7 S.C.R. 192.

In my view, the appellant's contention is without merit. It is a generally accepted position that Government provides machinery through which people formally regulate their social order. It is unnecessary to enter into conflicts of political theories and constitutional law. In our Republic, the exercise of legislative function is regulated by the Constitution which the people of India have given to themselves. It is pertinent to point out that our attention has not been drawn to any provision in the Constitution which prohibits the delegation of this function. I am using the word "delegation" as distinguished from "abdication" which means transferring the power without retention of supervisory control by the Legislative wing, on which the power and the obligation of making laws has been conferred by the Constitution. The problem of the delegation of powers seems to me in a way to be a refinement of the larger doctrine of the separation of powers. This doctrine has its roots in the natural desire in a democratic society to prescribe a functionally satisfactory division of labour or assignment of work according to the persons or institutions ultimately receiving the power. Now if a department or wing of Government is not entitled to assume powers outside its proper allocated sphere, then it rationally follows that such department or wing may also not be able constitutionally to divest itself of its proper power by delegating or transferring the power to another department. But this disability is, in my view, confined to what is generally described as abdication of the power entrusted by the Constitution. It may not profitably be extended to instances in which the ultimate responsibility and obligation for and control over the exercise of the power is not completely or substantially given up. Indeed, to so extend this disability would defeat rather than promote the efficiency in the functioning of the modern governmental departments. The necessities of an effcient welfare democratic set-up with the constantly increasing social and economic regulations clearly argue against such extension. The necessity of adapting legislation to complex conditions involving a host of details with which the Union or the State Legislatures may not be able effectively to deal in advance to their entire satisfaction, may legitimately require, in the larger interest of efficiency, assistance from some other body better-equipped and more capable of working out the requisite details to suit variable conditions and circumstances. This function, from one point of view, may be considered not strictly legislation but to relate merely to the procedure, in the laws' execution for reliable and uniform ascertainment of the subject upon which the law is intended to operate. The power of delegation is accordingly looked

upon in modern times as a constituent element of the legislative power as a whole, because the Legislature enacts laws to meet the challenge of the complex socio-economic problems and it often finds it convenient and necessary to delegate subsidiary or ancillary powers to delegates of its choice for carrying out the policy laid down by its Acts. The extent to which such delegation is permissible is by now fairly well-settled. The Legislature cannot delegate its essential legislative function in any case, for that would amount to abdication of its solemn obligation; it must lay down the legislative policy and principle affording guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf. It is not seriously urged that in the case in hand such guidance has not been laid down by the Parliament. Now, if the delegated legislation is a constituent element of the legislative power as a whole then in case power is delegated within the permissible limits, it is not understood why in the absence of any express or implied limitation to that effect, such power cannot be exercised by the delegate so as to make rules with retrospective effect. I am unable to infer such limitation merely from the fact that the power is conferred on the delegate without express terms authorising the making of retrospective rules. If otherwise the subject-matter of the delegation and the retention of the requisite legislative control can legitimately sustain the grant of rule-making power in a given case, then I find no constitutional or legal objection to the making of rules with retrospective operation within permissible limits pursuant to this power. In the instant case, not only has the Act enacted the general outline of the statutory policy, purpose and scheme, but the Parliament has also retained an effective legislative control over the rule-making authority by enacting sub-section (3) of section 40. This control must remove all apprehensions—if, at all there be any—that the delegation in question amounts in substance to abdication. There are several methods of retaining legislative control but the one adopted in this case brings the rules in close proximity to the provisions of the Act themselves. But this apart, I may also refer to a decision of the Supreme Court which seems to support the beneficent reading of the power to make rules so as to enable the making of retrospective rules. In *T. L. Tandon* v. *The State of Punjab*, Civil Appeals Nos. 102 and 103 of 1960, decided on 11th August, 1960, by a Bench of five Judges, the rules made by the President with retrospective effect came up for consideration and the Court expressed its view in the following words:—

> "Now in the present case the rules had been made with retrospective effect. That does not, in our view, make the rules

liable to objection. If the President had the power to make the rules of business, as we have held he had under the Proclamation, it cannot be said that he did not have the power to make the rules operate retrospectively. The power to make the rules must be read beneficently. The President had to carry on the business of the Government and for that purpose he had the power to make rules for transacting executive business and if he could make them prospectively, there is no reason why he would not be able to make them retrospectively with effect from the date of the Proclamation."

The contention that the power to make rules with retrospective effect may mean making rules prior to the enforcement of the parent Act or the delegation and therefore, it should not be sustained, is met with the short reply that such is not the case before us. All that has happened in the instant case is that by the impugned amendment, a fiction has been created that the Explanation in question should be deemed to have been inserted when the rules were originally made. This is clearly permissible under the law. If the delegate in some other case makes a rule which suffers from the infirmity suggested on behalf of the appellant, it would be examined on its own facts in the background of the legislative scheme and language of the delegation. I express no opinion on such a hypothetical case.

In the result, this appeal fails and is dismissed but without costs.

R. P. KHOSLA, J.—I agree.

B. R .T.

REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

KAHAN SINGH,—*Petitioner*

versus

GURDEV SINGH AND OTHERS,—*Respondents*

Civil Revision No. 679 of 1965.

April 21, 1966.

Court Fees Act (VII of 1870)— as amended by Punjab Amendment Acts (26 of 1949 and 31 of 1953)—S. 7(iv)(c)—Suit for declaration and consequential relief relating to agricultural land—Court fee payable—Whether 10 times the land revenue or 30 times the land revenue.