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own conduct has been unimpeachable, if the wife is proved to be entirely without means of support and unable through ill-health to earn her own living. After referring to some other English authorities, Gajendragadkar, J., observed in that case as under:—

“It may be that in a given case desertion by the wife may be so grossly wilful that a Court may feel that a wife who has been guilty of such gross and wilful desertion should not be given alimony against her husband. We do not think it would be proper to characterise the conduct of the wife in those terms in the present case.”

In the present case I find that though the respondent has been found to have deserted the husband, there is nothing to show that she is unchaste or is living away because of some ulterior motive. Her conduct is also not such as can be deemed to be flagrantly vicious or to amount to gross and wilful desertion. In the circumstances, I see no cogent ground to interfere with the order of the Court below about the grant of alimony in favour of the respondent.

The appeal, accordingly, fails and is dismissed, but in the circumstances I leave the parties to bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

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

SWAMI RAM LAL AND OTHERS,—*Appellants*

versus

THE DEPUTY CUSTODIAN-GENERAL, EVACUEE

PROPERTY, AND OTHERS.—*Respondents*

Letters Patent Appeal No. 151 of 1959

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 9—Scope of—Dispute relating to

title to compensation in respect of a verified claim—Whether can be settled by Settlement Officer or Settlement Commissioner.

Held, that the intention underlying section 9 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, is that whenever any dispute arises as to who is entitled to receive compensation in respect of a verified claim, the dispute is to be settled by the Settlement Officer or the Settlement Commissioner unless the officer concerned thinks it advisable to refer it for decision to the District Judge. The dispute mentioned in section 9 is not confined to a dispute among members of a joint Hindu family or the representatives of the person in whose name the claim may have been verified but covers, on the other hand, the case of everybody who claims a right to receive the compensation. In the present case, it is true that the claim was verified in the name of Nand Lal and normally Nand Lal's heirs at law would be entitled to receive compensation. There is nothing in section 9 to prevent such a claim being adjudicated upon by the Settlement Commissioner or, of course, by the District Judge on a reference to him, the dispute essentially being "as to the person or persons who are entitled to the compensation or as to the apportionment of compensation among persons entitled thereto." It is obvious that if in the urban land mentioned in Nand Lal's claim there was included some land which had originally belonged to Uttam Chand and which was the subject of the decision of the Privy Council, then compensation for that portion of land would be payable to the heirs of Uttam Chand and there seems no reason why the authorities acting under the Displaced Person (Compensation and Rehabilitation) Act should not be able to investigate the facts and come to a decision.

Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice G. D. Khosla, passed in Civil Writ Application No. 1127 of 1957, dated 15th April, 1959.

H. S. GUJRAL, ADVOCATE, for the Appellants.

H. L. SARIN, H. L. SIBAL AND N. L. DHINGRA, ADVOCATES,
for the Respondents.

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May, 18th.

JUDGMENT

Dulat, J.

DULAT, J.—Two connected matters have been argued before us together. One is a Letters Patent appeal against decision of a Single Judge of this Court and the other is a writ petition which has been referred by a Single Judge, the facts concerning it being connected with the Letters Patent Appeal.

Some of the main facts are clear and admitted. One Nand Lal, who is now dead, obtained a mortgage decree while in Pakistan and in execution purchased the mortgaged property but that was not sufficient to satisfy the decree. Another man named Uttam Chand had stood surety for the mortgagor and Nand Lal, therefore, asked for execution against Uttam Chand's property. Some land belonging to Uttam Chand was consequently sold and it was purchased by Nand Lal. The heirs of Uttam Chand then started litigation challenging the sale on the ground that the land in question was joint family property. The plaintiffs ultimately succeeded and a decision of the Privy Council held that Uttam Chand's heirs were entitled to get back the land on payment of a small sum of money Rs. 646-5-0. The plaintiffs were also awarded their costs. The decree of the Privy Council was made on the 30th April, 1945, but before it could be executed the partition of the country took place and Nand Lal and other parties came away to India. Nand Lal put in a claim in respect of the property held by him in Pakistan and this included the property he had purchased in execution against Uttam Chand. As against that Uttam Chand and his heirs made an application that they were entitled to allotment in respect of the land to which they were held entitled by the Privy Council. An enquiry was made which took a very

long time but finally the Revenue Assistant, who was entrusted with the enquiry, made a detailed report on the 24th January, 1953. That report was considered by the Deputy Custodian and accepted. The point of that decision was that Uttam Chand and his heirs were held entitled to allotment in respect of the land included in the Privy Council decree and the Rehabilitation authorities decided that in respect of that portion of the land allotment should have been made not in favour of Nand Lal but in favour of Uttam Chand's heirs and consequently cancelled Nand Lal's allotment to that extent. Nand Lal filed a revision petition against that decision before the Additional Custodian but it was dismissed. The matter was then taken to the Custodian-General and there was an order for remand which resulted in a report, but, in the meantime, the Displaced Persons (Compensation and Rehabilitation) Act, 1954, came into force and under that Act the entire evacuee property came to be vested in the Central Government and the Custodian's Department, therefore, found that it could deal with the matter no longer. The effective and subsisting order remained the order of the Deputy Custodian on the recommendation of the Revenue Assistant, dated the 24th January, 1953, and that order was against Nand Lal. To challenge the validity of that order Nand Lal filed a writ petition in this Court. While it was pending, he died and another petition was, therefore, filed on behalf of his heirs and that writ petition was heard by G. D. Khosla, J., sitting alone. Six points were raised and pressed before the learned Single Judge but he found no force in any of them and dismissed the writ petition. Letters Patent Appeal No. 151 of 1959 is against that decision.

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At the time the claim of Nand Lal was being considered and decided, it was found that some of

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the land included in his claim, being 30 acres 3 *kanals* and 13 *marlas*, was urban property in the sense that it was included within Municipal limits. In respect of that area of land cash compensation was allowable and compensation was in the first instance assessed at Rs. 5,41,560, but later raised to Rs. 6,76,590. The heirs of Uttam Chand claimed that some of the land that had been concerned in Privy Council decision was included in the area of 30 acres 3 *kanals* and 13 *marlas* and in respect of their portion of the land they were entitled to proportionate compensation; the area thus claimed being 9 acres 2 *kanals* and 12 *marlas*. Uttam Chand and his heirs had actually assigned their rights to certain other parties and those parties pressed the claim being Madan Mohan and others. Their claim in substance was that in respect of cash compensation sanctioned in the name of Nand Lal, they were entitled to a share in the proportion of 9 acres 2 *kanals* and 12 *marlas*, out of 30 acres 3 *kanals* and 13 *marlas*. That, of course, rested on the basis of the decision of the Privy Council and implicit in the claim was the assertion that the claim of Nand Lal regarding urban land had included some land 9 acres 2 *kanals* and 12 *marlas* which had belonged to Uttam Chand and was included in the litigation finally decided by the Privy Council. That claim was allowed by the Assistant Settlement Commissioner under the Displaced Persons (Compensation and Rehabilitation) Act by his order, dated the 30th October, 1959. The heirs of Nand Lal filed an appeal against that decision and the appeal was heard by the Settlement Commissioner with the powers of Chief Settlement Commissioner and decided on the 7th January, 1961. The appeal was allowed on the ground that under section 9 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the

Assistant Settlement Commissioner had no jurisdiction to settle a dispute of that kind. On this view the Chief Settlement Commissioner reversed the order of the Assistant Settlement Commissioner and thus disallowed the claim of the assignees from Uttam Chand's heirs. It is against that decision that Writ Petition (Civil Writ No. 178 of 1961) has been filed. I should mention that the Chief Settlement Commissioner decided the matter after the writ petition of Nand Lal's heirs had been decided by G. D. Khosla, J., which decision was made on the 15th April, 1959.

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It is clear that when Nand Lal put in his claim, he included in it the land of Uttam Chand which he had purchased in execution. It is also clear that the Privy Council had decided that the heirs of Uttam Chand were entitled to take back that land on payment of Rs. 646-5-0, but since the Privy Council's decree was with costs, that small sum of money was adjustable against the costs recoverable by the heirs of Uttam Chand. If, therefore, full effect were to be given to the Privy Council's decision, Nand Lal could not be permitted the benefit of any allotment made to him in India in respect of the land of Uttam Chand. The Rehabilitation authorities took that view, and, therefore, cancelled the allotment of land made to Nand Lal in respect of Uttam Chand's land and directed that allotment to that extent be made in favour of Uttam Chand's heirs and their assignees. Mr. Gujral appearing in support of the Letters Patent Appeal does not seriously suggest that the Privy Council's decree should have been ignored. His objection is to the manner in which effect was given to the decree. Before the learned Single Judge, therefore, the main contention was that when the Deputy Custodian cancelled the allotment, he did not hear Nand Lal and the order of

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cancellation was, therefore, in law invalid. The learned Single Judge found that as a matter of fact full hearing had been given to Nand Lal by the Revenue Assistant who made the detailed enquiry and on whose report and recommendation the Deputy Custodian finally cancelled the allotment to the extent of Uttam Chand's land. Mr. Gujral now urges that the hearing before the Revenue Assistant was not in law sufficient because the actual decision was made by the Deputy Custodian and a hearing should have been given to Nand Lal by that officer. There is, in my opinion, little force in this contention. Section 12 of the Administration of Evacuee Property Act gives full power to the Custodian to cancel any allotment and, strictly speaking, the section does not require any notice to be given to any party. In the present case, however, not only notice but a full hearing was given to the interested parties by the Revenue Assistant who enquired into the whole matter and the mere fact, that the final order was made by another officer to whom the Revenue Assistant's recommendation was submitted, does not alter the fact that Nand Lal had been afforded full opportunity of presenting his case. In substance, Nand Lal had little to urge in view of the Privy Council's decision and, as I have said, Mr. Gujral is not able to say very much on the merits of the claim of Nand Lal to hold the allotment in respect of the land which, according to the Privy Council's decision, had to go back to Uttam Chand's heirs. A similar matter was considered by the Supreme Court in *Dunichand v. Deputy Commissioner* (1), and it was held that for cancelling an allotment notice is, strictly speaking, not necessary. There is, in the circumstances, no ground for saying in the present case that the order of the Deputy Custodian was illegal, much less that it

(1) A.I.R. 1957 S.C. 150.

involved any injustice to the present appellant so as to justify interference by this Court under Article 226 of the Constitution.

Two other matters were raised before the learned Single Judge. One was that Nand Lal had made a number of improvements on the land before the allotment was cancelled and he should have been given some compensation. This is a matter which could only have been properly raised before and decided by the Rehabilitation authorities and it is obviously impossible for us to embark on an enquiry of this kind in the present proceedings. It is open to the appellants to raise this matter before the appropriate officers. The second matter, which is possibly more substantial, is that while the allotment of some land in the hand of Nand Lal was cancelled, due regard was not had to the fact that at the time of the original allotment a cut had been imposed which cut pertained to the holding of land which he claimed as his but which cut would not have been imposed if the land left with Nand Lal after excluding Uttam Chand's land were considered. It is, of course, quite possible that something of the kind mentioned by Mr. Gujral has actually happened to the detriment of the appellants. Displaced persons were allotted land in India in consideration of their land holdings in Pakistan but the allotments were not directly in proportion to the original holdings and in all cases graded cuts were imposed and those cuts varied with the size of the original holdings. It is, therefore, possible that at the time of the original allotment when Nand Lal's claim included Uttam Chand's land, a greater cut was imposed than would have been if Uttam Chand's land had been excluded. This, however, is again a matter which can be satisfactorily settled only by the Rehabilitation authorities on making appropriate

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calculations. It has not been raised before those authorities in that form and before us there is no material on which we can come to any satisfactory conclusion. The proper course for the appellants; therefore, is to raise this grievance before the appropriate authorities and I have no doubt that they will consider the matter and decide it according to the rules.

Nothing else has been seriously pressed before us. On the main question that the appellants cannot be permitted to hold the allotment made in respect of Uttam Chand's land, the decision of the Rehabilitation authorities is, in my opinion, just and proper and the learned Single Judge rightly declined to interfere. The present appeal (Letters Patent Appeal 151 of 1959) must, therefore, fail and I would dismiss it.

Regarding the writ petition brought by the assignees from Uttam Chand's heirs, the case is that included in Uttam Chand's land, which was purchased by Nand Lal, was an area of urban land measuring about 9 acres, 2 *kanals* and 12 *marlas* and this was included in Nand Lal's claim for urban land and in view of the Privy Council's decision Uttam Chand's heirs were entitled to receive compensation in respect of that property. The urban claim of Nand Lal has been valued at over Rs. 6,00,000 and the petitioners claim a share in it. Mr. Gujral for the respondents does not admit that any land of Uttam Chand, which was the subject-matter of the litigation ending with the Privy Council's decision; was really urban property and he says, therefore, that out of the cash compensation found due to Nand Lal no share can go to Uttam Chand's heirs. This matter was considered by the Assistant Settlement Commissioner, Shri R. N. Mahna, in his order, dated the 30th

October, 1959, and he did find that out of the urban land, for which Nand Lal's claim had been accepted and which measured 30 acres, 3 *kanals* and 12 *marlas*, about 9 acres, 2 *kanals* and 12 *marlas* of land had originally belonged to Uttam Chand and in view of that finding he ordered a proportionate share of the cash compensation to be granted to the present petitioners. The respondents disputed the correctness of that decision and took an appeal to the Chief Settlement Commissioner. The appeal was decided by Shri C. P. Sapra, on the 7th January, 1961. Shri Sapra allowed that appeal but he did so without going into the disputed questions of fact, as he was of opinion that neither he nor the Assistant Settlement Commissioner had jurisdiction under section 9 of the Displaced Persons (Compensation and Rehabilitation) Act, to decide such a dispute. He found that the claim of Nand Lal having been decided by a Claims Officer in favour of Nand Lal, that decision was final and section 9 of the Displaced Persons (Compensation and Rehabilitation) Act, did not empower him to decide the question whether the present petitioners were entitled to any share out of the claim. What section 9 of that Act says is this—

“Where there is any dispute as to the person or persons who are entitled to the compensation (including any dispute as to who are the successors-in-interest of any deceased claimant to compensation) or as to the apportionment of compensation among persons entitled thereto, such dispute shall, after such enquiry as may be prescribed, be decided,—

- (a) where the value of the verified claim does not exceed twenty thousand rupees, by the Settlement Officer;

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(b) where the value of the verified claim exceeds twenty thousand rupees, by the Settlement Commissioner.

Provided that the Settlement Officer or the Settlement Commissioner, as the case may be, may refer any such dispute to the District Judge nominated in this behalf by the State Government, whose decision thereon shall be final."

It appears that at one stage there was a proposal to make a reference to the District Judge but that reference was at the instance of the Chief Settlement Commissioner withdrawn on the view that the dispute was simple and stood settled by the Privy Council's decision. The Assistant Settlement Commissioner then considered the matter and it was against his decision that an appeal was taken to the Chief Settlement Commissioner. Mr. Sibal, for the petitioners urges that if the dispute was not to be referred to the District Judge, then the Settlement Commissioner was bound to settle the dispute himself as he in fact did and when an appeal against his order was taken to the Chief Settlement Commissioner that officer was equally bound to decide the dispute. The Chief Settlement Commissioner while declining to do so observed—

"It would thus appear that the object of section 9 is the settlement and determination of rights and disputes with regard to apportionment of compensation due on a verified claim amongst the persons who do not dispute the verification of the claims in the names of the persons in whose favour it stands verified but who on account of their relationship with the persons in whose name claim stands verified have some right or interest in the compensation. These

are the cases of members of Joint Hindu Family, widows in the family and the successors or representatives of the persons who held the verified claim. This section is not intended to deal with the cases of persons who claim a right or title to the property left in Pakistan regarding which the claim is verified, which is at variance or adverse to the rights of the persons in whose favour the claim was verified."

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It is this view which Mr. Sibal disputes. In my opinion he is right for, as I read section 9, the intention is that whenever any dispute arises as to who is entitled to receive compensation in respect of a verified claim, the dispute is to be settled by the Settlement Officer or the Settlement Commissioner unless the officer concerned thinks it advisable to refer it for decision to the District Judge. The dispute mentioned in section 9 is not confined to a dispute among members of a Joint Hindu Family or the representatives of the person in whose name the claim may have been verified but covers, on the other hand, the case of everybody who claims a right to receive the compensation. In the present case, it is true that the claim was verified in the name of Nand Lal and normally Nand Lal's heirs at law would be entitled to receive compensation. The present petitioners were, however, entitled to dispute that right and claim a share in the compensation on the ground that the Privy Council's decision had held them entitled to a part of the land included in the claim. There is nothing in section 9 to prevent such a claim being adjudicated upon by the Settlement Commissioner or, of course, by the District Judge on a reference to him, the dispute essentially being "as to the person or persons who are entitled to the compensation or as to the apportionment of compensation

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among persons entitled thereto." It is obvious that if in the urban land mentioned in Nand Lal's claim there was included some land which had originally belonged to Uttam Chand and which was the subject of the decision of the Privy Council, then compensation for that portion of land would be payable to the heirs of Uttam Chand and there seems no reason why the authorities acting under the Displaced Persons (Compensation and Rehabilitation) Act should not be able to investigate the facts and come to a decision. In my opinion, therefore, the Chief Settlement Commissioner, Shri Sapra erred in law in holding that he was not competent to decide such a dispute and that error led to a failure on his part to exercise jurisdiction which properly vested in him. His order dated the 7th January, 1961, therefore, cannot in law stand. I would, therefore, allow the writ petition (Civil Writ No. 178 of 1961), quash the order made by the Chief Settlement Commissioner dated the 7th January, 1961, and direct that the Chief Settlement Commissioner will proceed to decide the appeal on the merits after going into the relevant facts.

In view of the circumstances I would leave the parties before us in both the cases to their own costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

MILKHA SINGH AND OTHERS,—Petitioner.

versus

MAHARAJ KISHEN AND OTHERS,—Respondents.

Civil Revision No. 704 of 1963

East Punjab Urban Rent Restriction Act (III of 1949)—

1964
May, 26th.

S. 13(2) (ii) (a)—Tenant becoming a dealer for supply of