The Indian Law Reports

APPELLATE CIVIL

Before D. K. Mahajan and R. S. Narula, JJ.

SEWAJI AND ANOTHER,—*Appellants.*

versus

GURDIAL KAUR,—*Respondent.*

Regular First Appeal No. 182 of 1959.

January 12, 1967.

Specific Relief Act (I of 1877)—S. 18—Transfer of Property Act (IV of 1882)—Ss. 6 and 43—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 10 and 12—Agreement for sale of acquired evacuee agricultural property executed by a quasi-permanent allottee of that land prior to the transfer of permanent right therein—Whether enforceable at law after such transfer in favour of the allottee—Interest of quasi-permanent allottee—Nature and extent of—Whether akin to spes successionis or "any other mere possibility of a like nature".

Held, that the agreement for sale of acquired evacuee property executed by a quasi-permanent allottee of that land prior to the transfer of permanent rights therein is enforceable at law and specific performance thereof can be claimed after the vendor has obtained the Sanad, both under section 18 of the Specific Relief Act, 1877 and section 43 of the Transfer of Property Act, 1882. So long as a property is already in existence and the person concerned has made definite arrangements for securing the same and the getting of the rights of ownership in the property by such person is not in the nature of *spes successionis* or dependent on some mere chance or mere possibility, there is nothing in law to bar the right of such a person to enter into an agreement to transfer the said property after obtaining rights of ownership in it. Transfer of what is normally called "after-acquired property" provided it does not fall within the three categories of property mentioned in section 6(a) of the Transfer of Property Act is not prohibited by law. The mere fact that the intended vendor has yet to obtain the property in question himself is not by itself a bar to such a vendor entering into an agreement for the sale of the property to an intended buyer after the vendor actually secures the same. The mere fact, therefore, that the respondent was not the owner of the property at the time of the execution of the agreement for sale does not render the contract void and unenforceable nor is it correct to state that a quasi-permanent allottee of land under the Punjab Government notification dated July 8, 1949, had no right, title or interest at all in the land in question.

Held, that with effect from the 24th March, 1955, the date of publication of notification under section 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the right, title and interest of the evacuee in the property in question stood extinguished by operation of sub-section (2) of section 12 and the evacuee property stood vested absolutely in the Central Government free from all encumbrances and neither the evacuee nor the Custodian could deal with the property any further. After the said date the rights of the quasi-permanent allottees became subject to the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and there is no provision in that Act imposing any absolute statutory bar to the transfer of the property which might be acquired by a quasi-permanent allottee in lieu of compensation payable to such an allottee.

Held, that the rights of a quasi-permanent allottee of land originating with the notification of the Punjab Government, dated July 8, 1949, and continuing in force by operation of section 10 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 after the notification under section 12(1) of that Act, but ultimately ripening into ownership of the allotted land in lieu of compensation payable to such an allottee, cannot be described as a "mere possibility" of the nature envisaged in the first two categories enumerated in clause (a) of section 6 of the Transfer of Property Act. Section 10 of the Displaced Persons (Compensation and Rehabilitation) Act entitles a quasi-permanent allottee covered by the notification mentioned in clauses (a) and (b) thereof, to two sets of rights. The first right is to continue in possession of such property on the same conditions on which he held it immediately before the date of acquisition. The conditions referred to in that part of the section may vary from case to case but have no reference to the provisions of the Administration of Evacuee Property Act, 1950, or rules and notifications issued there-under. The second right that accrues to such an allottee is to have the rights of ownership in the property transferred to himself in lieu of compensation to which he may be entitled. This right is dependent on two further things. Firstly, such allottee must be a displaced person and secondly the transfer of the property has to be effected in favour of a quasi-permanent allottee under section 10 of the said Act "on such terms and conditions as may be prescribed" which means "prescribed by rules made under this Act." The relevant rules are Rules 71 to 76 of the Displaced Persons (Compensation and Rehabilitation Rules, 1955, which show that after going through certain procedural formalities, a quasi-permanent allottee of agricultural land under the aforesaid Punjab Government notification is, in the absence of holding in excess any area and in the absence of any misrepresentation or fraud etc., entitled as a matter of right to obtain the ownership of the allotted land in lieu of compensation for agricultural land left behind in Pakistan. The Sanad granted to the respondent in this case clearly shows that she was a displaced person, that compensation was payable to her under the Rehabilitation Act and that the area agreed to be sold by her to the appellants was not in excess of her legal entitlement and was in fact ultimately transferred to her. This kind of entitlement cannot be termed as a "mere possibility of the like nature" referred to in clause (a) of section 6 of the Transfer of Property Act. It would be a different matter if for any valid reason even such an allotment is cancelled by the appropriate authorities and an agreement of sale of the erstwhile allotted land is, therefore, frustrated.

First Appeal from the decree of the Court of Shri Om Parkash Sharma, Senior Sub-Judge, Karnal, dated the 31st March, 1959 granting the plaintiffs a decree for Rs. 700 and dismissing their suit for specific performance of the contract and leaving the parties to bear their own costs.

H. R. SODHI SENIOR ADVOCATE WITH G. P. JAIN, ADVOCATES for the Appellants.

BALDEV SINGH JAWANDA, AND C. L. AGGARWAL, ADVOCATES, for the Respondent.

JUDGMENT.

NARULA, J.—"Whether an agreement for sale of acquired evacuee agricultural property executed by a quasi-permanent allottee of that land prior to the transfer of permanent rights therein is enforceable at law after such transfer in favour of the allottee" is the main question which has arisen in this case in the following circumstances.

A piece of land measuring 5 Bighas and 5 Biswas (8 Kanals and 14 Marlas) comprising Khasra No. 5453/1 in Karnal town belonged to certain Muslims who evacuated to Pakistan on the partition of the country under the Indian Independence Act. The said land consequently became evacuee property. It was allotted by the Rehabilitation authorities of the Punjab Government to Gurdial Kaur respondent. It is the common case of both sides that quasi-permanent allotment of the land had been made in favour of the respondent on the terms and conditions contained in the notification of the Custodian No. 4892-S, dated July 8, 1949, which had been issued in pursuance of the powers conferred on the Custodian by the East Punjab Evacuees' (Administration of Property) Rules, 1948, framed under sub-section (2) of section 22 of the East Punjab Evacuees' (Administration of Property) Act No. 14 of 1947 (hereinafter called the Punjab Act). According to para 3 of the said notification, allotments thereunder had to last in favour of a displaced person for the entire period during which the land remained vested in the Custodian subject to the provisions of the Punjab Act. Clause (c) of para 4 of the Notification dated July 8, 1949 was in the following terms:—

"The allottee shall—

(a) ....
(b) ....
(c) not, except as provided in clause 5 below, transfer or charge the land by any sale, gift, will, mortgage or other private contract, but may lease the land for a

period not exceeding three years and, with the consent in writing of the Custodian or Rehabilitation Authority first had and obtained, lease the land for more than 3 years. Any lease made by the allottee will not exonerate the allottee from his liability to pay rent or to observe the covenants and conditions of this allotment. The lease will, however, automatically terminate when for any reason the allotment terminates;

(d) ....;

(e) ...."

Clause 5, to which reference is made in the above provision, related to permitted exchange of evacuee property subject to certain conditions and not to the sale or transfer of it.

The Punjab Act was repealed by para 58 of the Administration of Evacuee Property Ordinance No. 27 of 1949, the provisions of which Ordinance ultimately took the shape of the Administration of Evacuee Property Act No. 31 of 1950 (hereinafter called the 1950 Act). The Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954 (hereinafter referred to as the Rehabilitation Act) came into force in December, 1954. Sub-sections (1) and (2) of section 12 of the Rehabilitation Act are in the following terms:—

12. (1) If the Central Government is of opinion that it is necessary to acquire evacuee property for a public purpose, being a purpose, connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances."

In exercise of powers conferred by sub-section (1) of section 12, the Central Government notified on March 24, 1955 (Notification No. SRO-697, page 114 of part VI of 1955 Lahore Law Times) that it had decided to acquire and had acquired by the said notification the evacuee properties specified in the Schedule thereto. The Schedule included "all evacuee properties which have been allotted or deemed to have been allotted to displaced persons" by the Custodian under the conditions published in the notification of the Government of Punjab, dated July 8, 1949, except certain categories of properties, in which exceptions the land in dispute did not admittedly fall. By operation of section 10 of the Rehabilitation Act, the respondent, who is admittedly a displaced persons, continued in possession of the property in question even after the property became part of and merged with the compensation pool consequent on its acquisition under section 12(1) of the said Act.

On November 22, 1955, the respondent executed a duly stamped agreement (Exhibit P. 1) with the appellants wherein she represented that she was an allottee of the land in question and that, at the time of the execution of the agreement, a permanent certificate of ownership in respect of the said land was ready and only remained to be issued, and the land was not under any charge and she had full authority to transfer the same. She agreed to transfer the said land to the appellants at the rate of Rs. 59 per marla within 15 days of the receipt of the certificate of permanent ownership and acknowledged having received a sum of Rs. 700 in cash from the appellants as earnest money. The rest of the terms and conditions of the agreement are not relevant for the decision of this case. On December 21, 1957, the rights of permanent ownership in the land in question were conferred by the Government of India on the respondent by Sanad Exhibit D. 1. In the Sanad, it is mentioned that the respondent was a quasi-permanent allottee of the land under the conditions published in the notification of the Punjab Government, dated July 8, 1949, that under section 10 of the Rehabilitation Act the said property could be transferred to the respondent for the purpose of compensation payable to her and that the President of India was pleased to transfer to the respondent, the right, title and interest in the said land which had been acquired by the Central Government. Para 2 of the Sanad mentioned that a sum of Rs. 25,414-10-0, including a loan of Rs. 22,212-13-0 taken by the respondent jointly with Sukh Ram Singh, etc., had been found due from the respondent as public dues and that, therefore, the land transferred by the Sanad shall be security for and be

charged with the payment of the said sums which would be recoverable in the same manner as arrear of land revenue, without prejudice to any other rights and remedies of the Government. According to the appellants, no intimation of the transfer of permanent rigths in the land in question was given by the respondent to the appellants in terms of her agreement but the appellants having come to know of the same claimed specific performance of the agreement, dated November 22, 1955. Respondent having failed or refused to transfer, the land in question to the appellants, they filed the suit, from which the present appeal has arisen, on March 21, 1958, for possession of the land in question on payment of the balance of Rs. 9,566 by specific performance of the agreement in dispute.

The suit was contested by the respondent. The execution of the agreement was denied. She also pleaded that the agreement had been brought about by misrepresentation and fraud. In the additional pleas taken up by the respondent in her written statement dated May 19, 1958, she pleaded that at the time of the alleged agreement the property in dispute vested in the Custodian and the respondent did not execute the agreement of her free will and consent. She also pleaded an encumbrance of the Central Government amounting to nearly Rs. 23,000 on the property in dispute which prevented her from transferring the land or even from entering into an agreement for its transfer without first paying the amount due to the Central Government. Plea of the agreement for sale being void and not enforceable in law and plaintiffs-appellants having no *locus standi* to claim specific performance thereof was also taken. She further averred in her written statement that at the time of agreement she was not the owner of the property and, therefore, she had no right or authority to enter into the said agreement.

In reply to the additional pleas of the respondent, the appellants stated in their replication dated June 9, 1958; that the respondent having become full owner of the land in question after the execution of the agreement she was legally bound to sell the same to the appellants, that the Custodian of Evacuee Property was not at all the owner of the land even when the agreement was executed and that the Central Government was the owner thereof on that day. It was further pleaded by the appellants that the total amount due to the Government had already been adjusted or paid to the Government out of the amount of compensation and that the land in question was at the time of the filing of the replication absolutely free from all

alleged charges of the Government; but that even if any such charge of the Government was proved to exist on the land in suit, the same could be firstly paid to the Government from the price of the land.

Before the framing of issues the Mukhtiar-i-am of the respondent made a statement in the trial Court on July 30, 1958, admitting the signatures of the respondent on the agreement in dispute as well as the acknowledgement of Rs. 700 therein.

From the pleadings of the parties the following issues were framed by the Senior Subordinate Judge, Karnal :—

"(1) Did Shrimati Gurdial Kaur defendant enter into an agreement on 22nd November, 1955, for the sale of the land in suit in favour of the plaintiffs?

(2) If issue No. 1 is proved whether Shrimati Gurdial Kaur defendant was not competent to enter into the said agreement because she had no right or title in the land in suit at that time?

(3) If issue No. 2 is proved whether the plaintiffs have *locus standi* to bring the present suit?

(4) Whether the Central Government has any encumbrances on the land in suit? If so, to what extent?

(5) If issue No. 4 is proved whether Shrimati Gurdial Kaur could not enter into agreement in question without the sanction of the Central Government?

(6) Whether the Central Government is a necessary party to the present suit?

(7) Relief."

By judgment dated March 31, 1959, the learned Senior Subordinate Judge found that the agreement had been executed by the respondent of her own free will and without there being any misrepresentation or fraud on the part of the appellants, that she had received Rs. 700 but she was not liable to specifically perform the agreement as the respondent was not competent to enter into the same because

she had no right or title in the land in suit at the time of the execution of the agreement and as there was an encumbrance of the Central Government on the land, subject to which the appellants were not prepared to buy the property. As a result the suit for specific performance was dismissed but a decree for Rs. 700 only was passed in favour of the appellants against the respondent without any order as to costs. Not satisfied with the said judgment and decree of the trial Court, the plaintiffs have perferred this regular first appeal in this Court.

Findings of the trial Court on issues 2 and 5 have been impugned by the appellants. The trial Court decided issue No. 2 against the plaintiff-appellants on the following findings, viz.,—

(1) The quasi-permanent allotment under which the respondent held the land in suit at the time she entered into the agreement suggests that she had no right or title in the land which could constitute property.

(2) The ownership in the property still vested in the evacuee and the quasi-permanent allotment was liable to resumption or cancellation in accordance with the provisions of the Administration of Evacuee Property Act.

(3) One of the conditions under which the allotment had been made in favour of the respondent laid down that she was not entitled to transfer the land by way of sale. The transfer of such rights in the land was strictly forbidden by the very law under which the allotment had been made to the respondent.

(4) The contract or the agreement to sell being forbidden by law was void *ab initio* and that being so it could not be legally enforced merely because the respondent had subsequently acquired ownership in the land on the grant of the Sanad in her favour.

(5) Section 18 of the Specific Relief Act and section 43 of the Transfer of Property Act have absolutely no application to the facts of the present case, as the said provisions presuppose the existence of a valid contract enforceable at law.

Each one of the above findings have been hotly contested on behalf of the appellants. So long as a property is already in existence and the person concerned has made definite arrangements for securing the same and the getting of the rights of ownership in the property by such person is not in the nature of *spes successionis* or dependent on some mere chance or mere possibility, there is nothing in law to bar the right of such a person to enter into an agreement to transfer the said property after obtaining rights of ownership in it. Transfer of what is normally called "after-acquired property" provided it does not fall within the three categories of property mentioned in section 6(a) of the Transfer of Property Act is not prohibited by law. Such transfers have always been held to be perfectly valid and legal. Agreements to transfer property which an intended vendor has made arrangements to acquire and which he in fact acquires after entering into the agreement for sale, have been regarded by Courts in this country as contracts to transfer property after the vendor acquires title therein. It was held in *Prem Sukh Gulgulia and another* v. *Habib Ullah and others* (1), by a Division Bench of that Court that a contract for sale of property which is not of the vendor at the time of the contract, but which the vendor thinks of acquiring by purchase later on, is not bad in law. No authority to the contrary has been cited before us. In fact, it has been frankly conceded by the learned counsel for the respondent that the mere fact that the intended vendor has yet to obtain the property in question himself is not by itself a bar to such a vendor entering into an agreement for the sale of the property to an intended buyer after the vendor actually secures the same. The mere fact, therefore, that the respondent was not the owner of the property at the time of the execution of the agreement for sale does not render the contract void and unenforceable. Nor it is correct to state that a quasi-permanent allottee of land under the Punjab Government notification dated July 8, 1949, had no right, title or interest at all in the land in question. All that their Lordships of the Supreme Court said in *Amar Singh and others* v. *Custodian, Evacuee Property, Punjab and another* (2), was that a quasi-permanent allottee of land who continues in possession under section 10 of the Rehabilitation Act does not possess an indefeasible right to obtain transfer of that very land of which he is such an allottee if such land is acquired under section 12 of that Act, and that the rights of such an allottee are subject to powers of cancellation exercisable by the appropriate authorities in accordance

(1) A.I.R. 1945 Cal. 355.
(2) A.I.R. 1957 S:C: 599.

with the changing requirements of evacuee property law and its administration. On that basis it was held by the Supreme Court in *Amar Singh's* case that such an interest of a quasi-permanent allottee does not constitute "property" within the meaning of Articles 19, 31 (1) and 31(2) of the Constitution. Their Lordships held that the sum total of the rights of the quasi-permanent allottee does not constitute ownership of the allotted land. At best, observed the Supreme Court such rights are analogous to what is called '*jus in re aliena*' according to the concept of Roman Law and may be some kind of interest in land. Their Lordships of the Supreme Court further observed in the said case that "the interest so recognised, is in its essential concept, provisional, though with a view to stabilisation and ultimate permanence". All that emerges from the judgment of the Supreme Court in *Amar Singh's* case is that their Lordships found themselves unable to hold that the interest of a quasi-permanent allottee is "property" within the concept of that word "so as to attract the protection of fundamental rights". No such question arises in the instant case. I have already held above that even if the respondent had no interest whatever in the property and so long as the agreement was not hit by section 6(a) of the Transfer of Property Act, she could certainly enter into a valid agreement to transfer the property on and after becoming its owner.

The finding of the trial Court to the effect that the ownership of the property still vested either in the evacuee or in the Custodian on the date of the agreement for sale is patently incorrect. On and with effect from the 24th March, 1955 (the date of publication of notification under section 12(1) of the Rehabilitation Act), the right, title and interest of the evacuee in the property in question stood extinguished by operation of sub-section (2) of section 12. With effect from that date, the evacuee property stood vested absolutely in the Central Government "free from all encumbrances". The necessary result of the operation of section 12 of the Rehabilitation Act and of the notification of the Central Government, dated March 24, 1955, is that the evacuee's interests came to an end when the property went out of the evacuee pool under the 1950 Act into the compensation pool, defined in section 14 of the Rehabilitation Act, and neither the evacuee nor the Custodian could deal with the property any further. I do not, therefore, feel any hesitation in reversing even the second finding recorded by the trial Court on issue No. 2.

Nor does the finding of the learned Senior Subordinate Judge to the effect that the agreement for sale was void as being in contravention of the bar against transfer of the land created by the Punjab

Government notification dated July 8, 1949, which still applied to the property, appear to be correct. Learned counsel for the respondent sought to justify the said finding of the Court below on three grounds. It was firstly contended by him that the Punjab Act prohibited the sale. No such provision in the Punjab Act has been shown to us. Moreover there does not appear to be any force in this argument as the Punjab Act had been repealed long before the agreement in dispute was executed between the parties. It is secondly argued by counsel that a similar provision exists in section 41 of the 1950 Act, which is in the following terms:—

> "Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian."

Reliance was lastly placed on para 4(c) of the Punjab Government notification dated July 8, 1949, which has already been quoted in an earlier part of this judgment. It does stand to reason that if there is an absolute statutory bar to the transfer of certain property, an agreement in contravention of such a statutory prohibition would be void under section 23 of the Contract Act as being opposed to public policy and its specific performance may be refused by Courts on that ground. The question still remains whether there was in fact any statutory bar or prohibition of the kind pleaded by the respondent at the time of the execution of the agreement? All arguments of such prohibition have been based either on the provisions of 1950-Act or on notifications made under rules framed by Punjab Government in exercise of its powers under sub-section (2) of section 22 of the Punjab Act, which are alleged to have remained in force on account of various subsequent repealing and saving provisions. In view of the law that has been authoritatively laid down by their Lordships of the Supreme Court in *Basant Ram and others* v. *Union of India, and another* (3), it does not appear to be necessary to go into the minute details of the arguments of the learned counsel for the respondent. It was held by the Supreme Court in *Basant Ram's* case as follows:—

> "It is not in dispute that the evacuee property in these two villages was notified under section 12(1) of the Act on March 24, 1955. The consequence of that notification is

(3) A.I.R. 1962 S.C. 994:

that all rights, title and interest of the evacuees in the property ceased with the result that the property no longer remained evacuee property. Once, therefore, the property ceased to be evacuee property it cannot be dealt with under the *Central Act No. XXXI of* 1950 *or the Rules framed thereunder.* The property in these two villages became part of the compensation pool after the notification of March 24, 1955, and could be dealt with under the provisions of the Act and any variation or cancellation of any lease or allotment thereafter could only be made under section 19 of the Act. This is the position which emerges on a consideration of sections 12, 14, 16 and 19 of the Act after the notification under section 12(1) was made with respect to the evacuee property in these two villages on March 24, 1955" (underlining by me, herein italicised).

It is, therefore, apparent that neither any provision in the 1950 Act nor of any rule made thereunder or deemed to have been made thereunder, can furnish any good defence to the claim of the appellants to enforce the agreement of sale which was admittedly executed long after the publication of the above-said notification of acquisition of the property by the Central Government under section 12(1) of the Rehabilitation Act. It is also significant that in para 3 of 1949, notification of the Custodian (Punjab) for the administration of evacuee property, it was specifically stated that the allotment under the law was to remain in force so long as the property vested in the Custodian and remained subject to the provisions of the Evacuee Act. That situation admittedly came to an end on March 24, 1955. Thereafter, the rights of the quasi-permanent allottees became subject to the Rehabilitation Act. It has been conceded by the counsel for the respondent that there is no provision in the Rehabilitation Act imposing any absolute statutory bar to the transfer of the property which might be acquired by a quasi-permanent allottee in lieu of compensation payable to such an allottee. The finding of the trial Court to the effect that the transfer sought to be enforced by the appellants was strictly forbidden by law at the time of the execution of the agreement is, therefore, wholly incorrect and is set aside.

Nor does the observation of the learned Senior Subordinate Judge to the effect that section 18 of the Specific Relief Act and section 43 of the Transfer of Property Act have no relevance to the case appear to be correct. Both the provisions appear to be relevant for

deciding this case. Section 18(a) of the Specific Relief Act is in the following words:—

> "18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights:—
>
> (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;"

As observed above, it has been specifically ruled by the Supreme Court in *Amar Singh's* case that the interest of a quasi-permanent allottee is provisional, though such interest is with a view to stabilisation and ultimate permanence. All that it means is that such an allottee is not the owner of the property and has an imperfect title thereto. The moment the vendor acquires the rights of ownership the purchaser is entitled under clause (a) of section 18 of the Specific Relief Act to compel the vendor to make good the contract for sale. The appellants appear to be etitled to enforce the agreement even under section 43 of the Transfer of Property Act. The respondent had made an express representation in writing in the agreement in dispute that the permanent certificate of ownership in respect of the land had already been prepared and only remained to be issued. It was on this representation that the appellants had entered into the agreement. She had also represented that the land was not under any charge and that she had "full authority to transfer the same". Whether the said representations were fraudulent or merely erroneous makes no difference for invoking the provisions of section 43 of the Transfer of Property Act which are in the following terms:—

> "43. Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferer may acquire in such property at any time during which the contract of transfer subsists.
>
> Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

It does not lie in the mouth of the respondent to say that the representations made by her in the agreement in dispute were false and she is, therefore, entitled to back out of the contract. There is no doubt that sections 18 and 43 aforesaid presuppose the existence of a valid contract enforceable at law. But it is clear to me that there was no invalidity in the agreement for sale. In this view of the matter, the subsequent acquisition of the rights of ownership by the respondent in the land in dispute was certainly material and relevant and straightway entitled the appellants to claim specific performance of the contract.

It was then argued by Mr. Baldev Singh Jawanda, the learned counsel for the respondent, that the agreement sought to be enforced is hit by section 6(a) of the Transfer of Property Act. The said section is in these words:—

> "6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force;
>
> (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred."

It is nobody's case that what was agreed to be transferred by the contract in question was either a chance of an heir-apparent succeeding to an estate or the chance of a relation obtaining a legacy on the death of a kinsman Mr. Jawanda's argument is that what was agreed to be sold by the respondent was "a mere possibility of a like nature", that is, a mere possibility of the same kind, as that of an heir-apparent or of a relation obtaining a legacy on the death of a kinsman. I regret I am unable to agree with this contention. The rights of a quasi-permanent allottee of land originating with the notification of the Punjab Government, dated July 8, 1949, and continuing in force by operation of section 10 of the Rehabilitation Act after the notification under section 12(1) of that Act, but ultimately ripening into ownership of the allotted land in lieu of compensation payable to such an allottee, cannot, in my opinion, be described as a "mere possibility" of the nature envisaged in the first two categories enumerated in clause (a) of section 6 of the Transfer of Property Act. Section 10 of the Rehabilitation Act entitled a quasi-permanent allottee covered by the notifications mentioned in clause (a) and (b) thereof, to

two sets of rights. The first right is to continue in possession of such property on the same conditions on which he held it immediately before the date of acquisition. The conditions referred to in that part of the section may vary from case to case but have no reference to the provisions of the 1950-Act or rules and notifications issued thereunder. The second right that accrues to such an allottee is to have the rights of ownership in the property transferred to himself in lieu of compensation to which he may be entitled. This right is dependent on two further things. Firstly, such allottee must be a displaced person. This is not disputed in the present case. The second thing is that the transfer of the property has to be effected in favour of a quasi-permanent allottee under section 10 of the Rehabilitation Act" on such terms and conditions as may be prescribed". "Prescribed" has been defined in section 2(f) of this Act to mean "prescribed by rules made under this Act". Chapter X containing rules 71 to 76 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, deals with "payment of compensation under section 10 of the Act". Those rules show that after going through certain procedural formalities, a quasi-permanent allottee of agricultural land under the aforesaid Punjab Government notification is, in the absence of holding in excess any area and in the absence of any misrepresentation or fraud, etc., entitled as a matter of right to obtain the ownership of the allotted land in lieu of compensation for agricultural and left behind in Pakistan. The Sanad granted to the respondent in this case clearly shows that she was a displaced person, that compensation was payable to her under the Rehabilitation Act and that the area agreed to be sold by her to the appellants was not in excess of her legal entitlement and was in fact ultimately transferred to her. This kind of entitlement cannot, in my opinion, be termed as a "mere possibility of the like nature" referred to in clause (a) of section 6 of the Transfer of Property Act. It would be different matter if for any valid reason even such an allotment is cancelled by the appropriate authorities and an agreement of sale of the erstwhile allotted land is, therefore, frustrated.

In *Jumma Masjid, Mercara* v. *Kodimaniandra Daviah and others* (4), it was held that where a person transfers property representing that he has a present interest therein, whereas he has, infact, only a *spes successionis*, the transfree is entitled to the benefit of section 43 of the Transfer of Property Act if he has taken the transfer on the faith of that representation and for consideration. Such a construction of section 43, it was held by the Supreme Court, has not the effect

(4) A.I.R. 1962 S.C. 847.

of nullifying section 6(a) as the two sections relate to two different subjects and there is no necessary conflict between them. Their Lordships held that section 43 deals with representations as to title made by a transferor who had no title at the time of transfer and provides that transfer shall fasten itself on the title which the transferor subsequently acquires. Section 43 was held to embody a rule of estoppel and enacts that a person who makes a representation shall not be heard to allege the contrary as against a person who acts on that representation irrespective of whether the transferor acts *bona fide* or fraudulently in making the incorrect representation. I think the appellants are entitled to succeed even on the basis of the law laid down by the Supreme Court in *Jumma Masjid's* case.

For the foregoing reasons the decision of the trial Court on Issue No. 2 is reversed and it is held that the respondent was competent to enter into an agreement for sale and the said agreement is legally enforceable.

The finding of the trial Court on issue No. 5 is substantially based on a misapprehension of fact in the judgment. The learned Senior Subordinate Judge held, *inter alia,* under issue No. 5 as below:—

"The plaintiffs have not expressed their willingness to get the land subject to all the encumbrances as stated above."

In fact, the appellants had offered in the replication to take the property subject to the encumbrances and Sewaji, plaintiff-appellant, further stated on solemn affirmation in the witness-box as P.W. 4 on March 2, 1959, as below:—

"We are still prepared to perform our part of the contract to purchase the land from the defendant as agreed by Exhibit P. 1. We are prepared to purchase the land subject to any encumbrance or the charge of the Government on it on account of loans advanced to the defendant which may be proved."

The observation of the trial Court to the effect that so long as the land was subject to the encumbrances and was not released by the Central Government, the respondent could not validly transfer it to the plaintiffs by way of sale appears to be wholly misconceived.

It is the right, title and interest of the respondent which she had agreed to sell to the appellants and the latter are merely claiming enforcement of the contract for the purchase of the same. It might or might not have been open to the appellants to claim the land without the encumbrance but the fact remains that they have specifically claimed it subject to the encumbrance and have gone to the length of swearing in Court that they are prepared to have it subject to the charge, if any, on the property itself. Specific performance of the agreement in question could not have, therefore, been refused to them on that ground.

The learned Senior Subordinate Judge was completely in error in remarking that the claim of the appellants for specific performance of the contract was "further weakened by the fact that the land is subject to encumbrances of Rs. 25,000 or more in favour of the Central Government and cannot legally be transferred to the plaintiffs until and unless it is released or is free from any such encumbrances. The plaintiffs are thus not entitled to a decree for specific performance of the contract against the defendant". Respondent has not been able to show any stipulation in the Sanad granted in her favour by the Central Government prohibiting the sale or transfer of the land in question by the respondent to a third person without obtaining the prior sanction of the Government. There is, therefore, no question of the agreement being void or voidable for want of such sanction. Even if provision for such sanction had existed in the Sanad, I would have followed the law laid down by the Privy Council in *Moti Lal and others* v. *Nanhelal and another* (5) and would have held that a stipulation to obtain such sanction of the appropriate authority was implied in the agreement in dispute. The judgment of the Privy Council in *Moti Lal and others* v. *Nanhelal and another* (5) has been followed by a Division Bench of this Court in *Dr. C. L. Katial and others* v. *Mrs. C. W. V. Madden* (6), and has been approved by their Lordships of the Supreme Court in their authoritative pronouncement in the appeal which was taken against the judgment of the Division Bench, in *Mrs. Chandnee Widya Wati Madden* v. *Dr. C. L. Katial and others* (7). In view, however, of the fact that no such stipulation of sanction has been shown to us, there appears to be no necessity of making a direction of the kind given by the Supreme Court in *Mrs. C. W. V. Madden's*

(5) A.I.R. 1930 P.C. 287.
(6) A.I.R. 1963 Punj. 136.
(7) A.I.R. 1964 S.C. 978.

case. In these circumstances, the finding of the trial Court on issue No. 5 is also reversed.

In the view I have taken of the matters covered by issue No. 2, on account of the judgment of their Lordships of the Supreme Court in *Basant Ram* v. *Union of India* (3) it is not necessary to deal with some of the cases including *Kirodimal Ganesh Lal Bani* v. *Haji Suleman, Haji Wali Mohd. and another* (8), *Shree Ambarnath Mills Corporation, Bombay* v. *D. B. Godbole, Custodian of Evacuee Property and another* (9) and *Bal Mukand and others* v. *The Punjab State and others* (10) to which reference was made by Shri Jawanda, in support of his contention that the property continued to be evacuee property even after its acquisition by the Central Government and the 1950-Act and the Rules framed thereunder were still applicable to it.

No other point has been argued before us in this appeal

. The findings of the trial Court on both the issues decided against the appellants having been reversed, this appeal must succeed and is accordingly allowed with costs and the judgment and decree of the trial Court is set aside and for it is directed to be substituted a decree in favour of the plaintiff-appellants for possession of 8 Kanals and 14 Marlas of land entered at Khewat No. 1445, Khatuni No. 63, bearing Khasra No. 5453/1 attached to Chak Mohammad Ali Khanwala (the subject-matter of the agreement of sale) on payment (by the appellants to the respondent) of the remaining sum of Rs. 9,566 within three months from today. If the remaining sale-price of the land is not paid by the appellants to the respondent, or deposited in the trial Court, within the aforesaid period, the appeal shall be deemed to have been dismissed. On the failure or refusal of the respondent to execute a formal deed of sale of the property in question at the cost of the appellants, the trial Court will be entitled to execute and sign the conveyance in favour of the appellants in accordance with law.

D. K. MAHAJAN, J.—I agree.

B.R.T.

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(8) A.I.R. 1960 M.P. 136.
(9) A.I.R. 1957 Bom. 119.
(10) I.L.R. 1957 Punj. 712=1957 P.L.R. 40.