

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

HARBANS SINGH,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 1482 of 1962.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 2 (d) and Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 14 and 15—Loan obtained by displaced person from government—Whether a “public due” and must

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be deducted from compensation payable to that displaced person even if the instalments of loan have not fallen due—Displaced person—Whether entitled to the adjustment of the loan from the compensation payable to him.

Held, that a displaced person, who has obtained a loan from the government, is entitled to the adjustment of the compensation payable to him in respect of his verified claim towards that loan. Rule 14 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, makes it incumbent on the Government before determining the net amount of compensation to deduct "public dues" due from the claimant. A loan incurred by the displaced person having a verified claim from the government is a "public due" within the meaning of section 2(d) of the Displaced Persons (Compensation and Rehabilitation) Act 1954, and is recoverable from him even if the instalments of the loan have not fallen due. The moment a loan is incurred the relationship between the lender and the borrower is that of creditor and debtor. From the date of the loan, so far as the creditor is concerned, the amount is due and is recoverable. The mere fact that its recovery is postponed does not in any manner detract from the fact that it is recoverable. In a contract of loan, recoverability is inherent. Otherwise it is not a contract of loan. Moreover the scheme of Chapter IV of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, puts the recovery of "Public dues" on a priority basis. The object is that all "public dues" or, in other words, loans advanced by the Central or the State Governments to displaced persons should be adjusted before compensation is paid to them. The non-adjustment would defeat the very purpose of the Rules.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the orders of the respondents and further praying that the respondents Nos. 1 to 4 be directed to adjust the loans in question against the compensation due to the petitioner and not to issue U. P. Zamindari Abolition Bonds in lieu of his compensation.

H. S. WASU, WITH L. S. WASU, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL, for the Respondents.

ORDER

Mahajan, J. MAHAJAN, J.—In this petition under Articles 226 and 227 of the Constitution of India there is no dispute as to facts. The petitioner is a displaced person. He had left property in West Punjab and in lieu thereof was entitled

to compensation under the Displaced Persons (Compensation and Rehabilitation) Act. On the 7th of May, 1957, he incurred a loan of Rs. 25,000 from the Industries Department, Punjab. On the 20th of August, 1960, the Department issued a notice to the petitioner (copy Annexure 'B') demanding payment of the instalments due. In case of default the Department would proceed to recover the entire amount of the loan. The petitioner approached the Department with a request that a sum of Rs. 25,419.70 was due to him as compensation from the Central Government under the Act and this amount be adjusted and whatever balance still remained due the petitioner would pay. The Punjab Government took the position that it was not concerned with this matter of adjustment and the petitioner was advised to approach the Central Government in this behalf. The petitioner then approached the Central Government, which refused the petitioner's request. Hence the present petition.

The contention of the learned counsel for the petitioner is that under the Act and the Rules framed thereunder the compensation has to be adjusted towards the loan due from the petitioner, the loan being a "public due". In section 2(d) of the Act "public dues" has been defined as under:—

"'public dues' in relation to a displaced persons, includes—

- (i) arrears of rent in respect of any property allotted or leased to the displaced person by the Central Government or a State Government or the Custodian;
- (ii) any amount recoverable, whether in one lump sum or in instalments, from the displaced person on account of loans granted to him by the Central Government or a State Government or the Rehabilitation Finance Administration constituted under the Rehabilitation Finance Administration Act, 1948 (XII of 1948), and any interest on such loans;
- (iii) the amount of purchase money or any part thereof and any interest on such amount or part remaining unpaid and recoverable from

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the displaced person on account of transfer to him of any property or interest therein by—

- (a) the Central Government; or
- (b) any State Government; or
- (c) any body corporate or other authority or person financed by the Central Government or a State Government for the purpose of the acquisition, development or construction of any immovable property for the rehabilitation of displaced persons;
- (iiia) any dues payable, whether in one lump sum or in instalments, to a co-operative society, registered as such under any law for the time being in force, by the displaced person on account of loans granted to him by the co-operative society, where such loans have been granted out of funds placed at the disposal of the co-operative society by the Central Government or a State Government and such dues have been declared by the Central Government, by notification in the Official Gazette, to be public dues;
- (iv) any other dues payable to the Central Government, a State Government, or the Custodian which may be declared by the Central Government, by notification in the Official Gazette, to be public dues recoverable from the displaced persons."

The Rules under which the petitioner claims the adjustment are Rules 14 and 15, and these Rules are in these terms—

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

- (i) public dues;

- (ii) the amount, if any, referred to in clause (a) Harbans Singh
of Rule 13;
- (iii) the amount, if any, referred to in clause (b)
of Rule 13.

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15. *Determination of net Compensation.*—After deducting the amount referred to in Rule 14, the Regional Settlement Commissioner or an Assistant Settlement Commissioner or a Settlement Officer, or an Assistant Settlement Officer, having jurisdiction and duly authorised by the Regional Settlement Commissioner, shall pass an order determining the net amount of compensation payable to the applicant in respect of his verified claim and shall prepare a summary in the form specified in Appendix VII (Abstract of particulars)."

It appears from the combined reading of these provisions that the contention of the petitioner that he is entitled to the adjustment of his claim amounting to Rs. 25,419.70 towards the loan is correct. Rule 14 makes it incumbent on the Government before determining the net amount of compensation to deduct "public dues" due from the claimant. The short question that arises for determination; therefore, is whether the loan of Rs. 25,000 was a "public due" and should have been adjusted when the final certificate as to compensation was given to the petitioner on the 28th of February, 1959. This is a date on which both the parties are agreed. The loan was incurred before this date. The learned Advocate-General's contention is that as the amount could not be demanded by the Punjab State inasmuch as the instalment had not fallen due, the amount cannot be said to be recoverable within the meaning of the definition in section 2(d)(ii). I am, however, unable to agree with this contention. The moment a loan is incurred the relationship between the lender and the borrower is that of creditor and debtor. From the date of the loan, so far as the creditor is concerned, the amount is due and is recoverable. The mere fact that its recovery is postponed does not in any manner detract from the fact that it is recoverable. In a contract of loan, recoverability is inherent. Otherwise it is not a contract of loan. Moreover the scheme of Chapter IV of the Displaced Persons (Compensation and Rehabilitation)

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Rules, 1955, puts the recovery of "public dues" on a priority basis. The object is that all "public dues" or, in other words, loans advanced by the Central or the State Governments to displaced persons should be adjusted before compensation is paid to them. The non-adjustment would defeat the very purpose of the Rules. I am, therefore, clearly of the view that the Central Government was in error in not acceding to the request of the petitioner for adjustment of the loan due from him to the industries Department, Punjab, towards the amount of compensation payable to him.

For the reasons given above, I allow this petition and direct the Central Government to adjust this loan towards the petitioner's claim. If the petitioner has paid anything towards this loan, he will be afforded credit to that extent. There will be no order as to costs in this petition.