tinued to remain in possession and built upon a portion of the plaintiff's land. The strip of land upon which he has encroached is $2\frac{1}{2}$ feet$\times$60 feet on the southern side of the plaintiff's property. If the plaintiff is deprived of it, he will certainly be hard hit as the area which is already in his possession is less than 200 square yards.

For the foregoing reasons, I find that the plaintiff's suit for possession had been wrongly thrown out. I would, accordingly, accept his appeal (Regular Second Appeal No. 978 of 1957 with costs, and modifying the decree of the Courts below award him possession of the property by removal of the structure standing upon the encroached land. The defendant's appeal (Regular Second Appeal No. 928 of 1957) *ipso facto* fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

SANTOSH KUMAR,—*Petitioner.*

versus

THE CHIEF COMMISSIONER, DELHI, AND OTHERS,—*Respondents.*

C.W. 844-D of 1962.

1965

April, 2nd

Resettlement of Displaced Persons (Land Acquisition) Act (LX of 1948)—S. 3—Land acquired for resettlement of displaced persons—Whether can be utilised for establishing schools and dispensaries etc.—Resettlement of Displaced Persons (Land Acquisition) Rules, 1948—Rule 9—Whether ultra vires *the Act—Constitution of India* (1950)—*Art.*—14—*Plots of some owners returned while that of the petitioner utilised—Whether amounts to discrimination.*

Held, that the very object of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, is to resettle displaced persons. When colonies are established and plots of land allotted for residence of displaced persons, it would be far-fetched to suggest that no part of the land acquired under the Act can be used for establishing schools, hospitals and dispensaries for providing necessary amenities and facilities to the residents of the locality. So long as the utilisation for construction of schools and buildings is ancillary to or intended for the furtherance of the primary object of the Act. namely the resettlement of the displaced persons, no exception can be taken to the same.

Held, that rule 9 of the Resettlement of Displaced Persons (Land Acquisition) Rules, 1948, is not *ultra vires* the Act. The Act and the rules have to be read together and the rules and bye-laws must always take their colour from the statute under which they are framed. Tested in this light the proviso to the rule must be restricted to allotment by Government to non-displaced persons for achieving the object of the Act through the instrumentality of such non-displaced persons.

Held, that the fact that some of the plots have been returned to the owners because they were not required by the Government cannot constitute violation of Article 14 of the Constitution. In such matters the necessary latitude has to be given to the authorities as to how best the object of the Act is to be achieved. In case the authorities *bona fide* come to the conclusion that the petitioner's plot be utilised for construction of school building and other plots which are not capable of being utilized by them should be returned to the owners, the guaranteed right of equality or equal protection of laws is not infringed. The legislature has laid down the principles for the guidance of the agencies to whom the power to administer the Act has been committed. Some amount of discretion has to be left with the agencies in the matter of execution of laws. If land turns out to be surplus, it has to be returned and there is no violation of any right involved in leaving it to the authorities concerned as to which plots would be utilised and which plots returned.

Petition under Article 226 ***and*** 227 ***of the Constitution of India*** *praying that a writ in the nature of certiorari or any other appropriate writ or order may be issued quashing the impugned notification and all proceedings subsequent thereto in pursuance thereof and a writ in the nature of* Mandamus *or any other appropriate writ or order any be issued directing the respondents to re-deliver the possession of the said plot of land to the petitioner, etc.*

R. S. NARULA, AND R. L. TANDON, ADVOCATES, for the Petitioner,

P. NARAIN, ADDITIONAL CENTRAL GOVERNMENT COUNCEL, for the Respondent.

ORDER

Kapur, J.

KAPUR, J.—The dispute in this civil writ relates to a plot of land in block No. 56, Western Extension Area, Karol Bagh, New Delhi, measuring about 1,585.3 square yards.

In 1948, the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act 60 of 1948) was enacted with

the object of providing for speedy acquisition of land for the resettlement of displaced persons. Notification under section 3 of the Act and dated the 24th November, 1953 was published on 3rd December, 1953, with respect to the total area of 15,725.06 square yards. In the said notification it was *inter alia* stated that the land specified therein shall be acquired for the construction of shops for displaced persons on the seventh day after the date of this notification. This notification included the land in question as well. Compensation proceedings took place thereafter and the petitioner was paid a sum of Rs. 34,855 which the petitioner accepted. It appears that thereafter some plots of land comprised in the same notification were returned to the owners who paid back the money received by them. The petitioner's plot of land was allotted to the Ministry of Education for the construction of a School building and this has given rise to the grievance on the part of the petitioner who has filed this petition contending that (1) the respondents cannot use the land for any purpose (other than the resettlement of displaced persons) and the allotment to the Ministry of Education for construction of a school building is not such a purpose; (1) even if the land can be allotted to the Ministry of Education, it cannot be used for non-displaced persons; (3) the nature of user shows that the acquisition was made with a *mala-fide* intention; and (4) the petitioner has been illegally discriminated inasmuch as plots belonging to some other landowners and comprised in the same notification have been returned to them while the petitioner's plot has not been returned.

The learned counsel for the petitioner draws my attention to the preamble and section 3 of the Act and contends that the land could be acquired under the special Act only for the resettlement of the displaced persons. He then refers to rule 9 and submits that the proviso to the said rule is *ultra vires* the Act and cannot authorise the respondents to utilize the land for construction of school, being contrary to the express provisions of the Act. The learned counsel further draws my attention to paragraph 4 of the affidavit filed by Shri M. J. Srivastava, Settlement Commissioner, dated the 25th August, 1964, and submits that the respondents are under a wrong impression about the legal position when they contend that the property having vested absolutely in the Government, it is entitled to deal with it as it likes and that under rule 9 the land acquired

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can be used for construction of school building. According to the submission of the learned counsel utilisation for the construction of a school building is not utilisation of land for resettlement of displaced persons.

The learned counsel for the respondents has drawn my attention to the lay-out plan of block Nos. 54, 56 and 57, Western Extension Area, Karol Bagh, New Delhi, prepared by Mr. Madan Gopal and filed in this Court with his affidavit, dated the 31st October, 1964, and points out that the various plots besides the plots covered by the said notification have been utilised for establishing a market and the shops have been constructed thereon. He further points out that several shops have been constructed on plots No. 9 and 10 which were acquired under the impugned notification and that there are shops also on plots Nos. 13, 14, 15 and 16. It is not disputed that all these shops have been allotted to the displaced persons. In the submission of the learned counsel utilisation of the land for the construction of a school building would be covered by section 3 of the said Act inasmuch as construction of school is necessary for and incidental to the resettlement of displaced persons. The said allotment, according to the learned counsel, is not hit by section 3 of the said Act. Mr. Parkash Narain, the learned counsel for the respondents, further submits that if large number of displaced persons are resettled by construction of shops, it may be necessary to provide facilities for the occupants of those shops. For instance construction of dispensaries, hospitals and schools would in that context be utilisation for resettlement of displaced persons because such schools and dispensaries can be utilised by displaced persons as well. He draws my attention to section 10 and particularly emphasises the words "deal with any land acquired under the provisions of that Act" and submits, that the language of the section precludes narrowness and shows that the words "settlement of displaced persons" are not restricted to the physical use and occupation of the land itself but include provision for facilities by establishment of schools and dispensaries. I am in agreement with the submission of the learned counsel for the respondents. The very object of the Act is to resettle displaced persons. When colonies are established and plots of land allotted for residence of displaced persons, it would be far-fetched to suggest that no part of the land acquired under the Act can be used for establishing schools, hospitals and dispensaries

for providing necessary amenities and facilities to the residents of the locality and yet if the rigid construction sought to be placed by the learned counsel for the petitioner is accepted, the whole object of the Act may be frustrated. So long as the utilisation for construction of schools and buildings is ancillary to or intended for the furtherance of the primary object of the Act, namely the resettlement of the displaced persons, no exception can be taken to the same. Regarding the argument of the learned counsel for the petitioner that rule 9 travels beyond the statute and is, therefore, *ultra vires* the Act, I do not agree. At first sight some sort of conflict may appear to exist between the Act and the proviso to the said rule but it muse be remembered that Act and the rule have to be read together and the rules and bye-laws must always take their colour from the statute under which they are framed. Tested in this light I would hold that the proviso must be restricted to allotment by Government to non-displaced persons for achieving the object of the Act through the instrumentality of such non-displaced persons. It is argued that the Government may utilise the land for allotting it to non-displaced persons for the construction of the schools, etc., for persons other than displaced persons. If an allotment is made contrary to the avowed object of the Act, it may be open to objection but as the facts of the present case stand, the utilisation seems to be unexceptional. Market has been established for displaced persons and it is not disputed that large number of shops have been constructed and allotted to displaced persons. It is not the case of the petitioner that any one of those shops has been allotted to a non-displaced person. In those circumstances it would not only be legitimate but expedient to provide necessary amenities and facilities which could be utilised by displaced persons as well. It is un-imaginable to visualise markets and residential colonies without the necessary amenities. It may at times be even necessary to provide recreation grounds, and yet the strict construction sought to be laid at the bar would exclude such user altogether. So read rule 9 would not be *ultra vires* the Act. By referring to Exhibit R. 1 and the affidavit filed on behalf of the respondent an attempt was made on the part of the petitioner's learned counsel to contend that the land in question could not be thrown into the compensation pool as is stated in Exhibit R. 1. It is unnecessary to resolve that controversy for in this petition the challenge is only to the utilisation of the

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land and whether the same is authorised by the Act or not. In view of what I have said above that question need not detain me at all. The words "deal with any land acquired" in section 10 and the language of section 14(2) (a) supplies further support to the view that I have taken.

That leaves the question of discrimination. The fact that some of the plots have been returned to owners because they were not required by the Government cannot constitute violation of Article 14 of the Constitution. In such matters the necessary latitude has to be given to the authorities as to how best the object of the Act is to be achieved. In case the authorities *bona fide* come to the conclusion that the petitioner's plot be utilised for construction of school building and other plots which are not capable of being utilised by them should be returned to the owners, the guaranteed right of equality or equal protection of laws is not infringed. The legislature has laid down the principles for the guidance of the agencies to whom the power to administer the Act has been committed. Some amount of discretion has to be left with the agencies in the matter of execution of laws. If land turns out to be surplus, it has to be returned, and there is no violation of any right involved in leaving it to the authorities concerned as to which plots would be utilised and which plots returned. So far as the allegations of *mala fide* are concerned, I find no material on this record for coming to that conclusion. In the result the petition fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

K. K. JAGGIA,—*Petitioner.*

versus

THE STATE OF PUNJAB.—*Respondent.*

Civil Writ No. 1645 of 1964

1965

May, 28th

Punjab Civil Services Rules, Volume I Part I—Rules 7.2 and 7.3—Petitioner, a government servant, was suspended on 16th May, 1956 pending departmental enquiry and dismissed on 6th October, 1961 as a result thereof—Order of dismissal quashed by High Court in a petition under Article 226 of the Constitution on 20th September,