opinion arises out of the emphasis placed on the words of rule 50, sub-rule (2) of Order XXI in one case and the language of section 42 of the Civil Procedure Code in the other, and, as far as I can see, there is no reason why full effect should not be given to the language of section 42 and why its import should be cut down. As I have said, that has been the view of the Lahore High Court which this Court ordinarily follows, and nothing has been said in the present case to persuade us to depart from it. No inconvenience of any kind seems to result from the adoption of this view and it seems, on the other hand, only proper that the Court, seized of the execution proceedings for the time being, should be allowed to decide whether it would at the instance of the decree-holder permit execution to be taken out against a partner of a firm. I would, therefore, in agreement with the decision of the Lahore High Court, hold that in such a case as the present the transferee-Court is competent to entertain an application under Order XXI, rule 50 (2) of the Civil Procedure Code. The present revision petition must, on this view, fail and I would dismiss it but, in all the circumstances, not burden the petitioner with costs.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

ASA NAND,—*Petitioner.*

versus

THE CENTRAL GOVENRMENT OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 1065 of 1961.

1962

December, 3rd.

Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 30 as amended on 24th March, 1961—Whether applies to pending proceedings.

Held, that the proceedings were pending before the Chief Settlement Commissioner and he could, under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, set aside the order passed by the Regional Settlement Commissioner and the Settlement Officer. This means that the rights of the parties were still in a fluid state and were not complete and finally settled. Under these circumstances, it cannot be said that the petitioner had got any vested rights in the property in dispute. Therefore, the amendment in question would apply to the present case. Moreover, by this amendment, the pending proceedings have not been excluded from its operation.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the orders of respondents No. 1 and 2, dated the 22nd July, 1961 and 27th April, 1961, respectively and directing the respondents to transfer the house No. F/86, Karnal, in favour of the petitioner in accordance with Rule 30 of the Rules before its amendment of 24th March, 1961, or in the alternative in favour of the petitioner and his brother respondent No. 6, jointly in accordance with amended Rule 30 if this amended rule be found applicable.*

D. C. GUPTA, ADVOCATE, for the Petitioner.

G. P. JAIN, WITH B. S. GUPTA, ADVOCATE, for the Respondents.

ORDER

Pandit, J. PANDIT, J.—This is a petition under Article 226 of the Constitution challenging the validity of the orders dated 27th April, 1961 and 22nd July, 1961 passed by the Chief Settlement Commissioner, respondent No. 2, and the Under Secretary to the Government of India, Ministry of Rehabilitation, respectively.

According to the allegations of the petitioner, he, his brother, Uttam Chand, respondent No. 6, and Khem Chand respondent No. 5 were displaced

persons from West Pakistan and were residing in evacuee house No. F/86, situate in Karnal, as allottees paying rent to the Rehabilitation Department. In addition to the petitioner and respondents 5 and 6, there were three other displaced persons who were also occupying various portions of this house. They had no verified claims in their favour, whereas respondent No. 5 had a verified claim of Rs. 11,000 against which he was entitled to a gross compensation of Rs. 4,391. The petitioner, along with his brother, respondent No. 6, and third brother, Bodh Raj, who was not in occupation of this house, had a joint verified claim against which the gross compensation admissible to them was Rs. 9,332. The compensation allowable to the two brothers, namely, the petitioner and respondent No. 6, who were the occupants of this house, therefore, came to Rs. 6,220. Each of them individually was, consequently, entitled to Rs. 3,110 only. The house in dispute was found by the Rehabilitation Authorities to be indivisible and its value was assessed as a single unit at Rs. 2,545. The Settlement Officer, Karnal, respondent No. 4, ordered that Khem Chand, respondent No. 5, was entitled to receive this property under rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules), because the 'gross compensation' to which he was entitled was nearer to the value of this property than the gross compensation admissible to the two brothers, namely, the petitioner and respondent No. 6, both of whom should be taken as a joint allottee of a portion of this house.

Against this order, the petitioner went in appeal before the Regional Settlement Commissioner, Jullundur, respondent No. 3. He came to the conclusion that, according to rule 30, every person with a verified claim living in an evacuee

Asa Nand
v.
The Central Government of India and others

Pandit, J.

property had, on the basis of his individual gross compensation, a right to be considered for the transfer of the same irrespective of whether he was a joint allottee or a member of a joint Hindu family. Since there were three displaced persons holding verified claims living in the house in dispute, namely, the petitioner, his brother, respondent No. 6, and respondent No. 5, each of them had a right to be considered for the transfer of the same under this Rule. Respondent No. 6, however, submitted an application dated 26th August, 1960 before respondent No. 3 to the effect that he was not willing to accept this house against his compensation, which should be paid to him separately from his brother, Asa Nand, petitioner. There were, thus, only two persons, namely, the petitioner and respondent No. 5, with verified claims, whose rights had to be considered for the transfer of the house in dispute under Rule 30. The petitioner's gross compensation worked out to Rs. 3,110 and that of respondent No. 6 to Rs. 4,391. The value of the property was Rs. 2,545. The gross compensation of the petitioner being nearer than that of respondent No. 6, he was, therefore, entitled to the transfer of this property. The order of the Settlement Officer was, consequently, set aside.

Aggrieved by this order, respondent No. 5 filed a revision before the Chief Settlement Commissioner, respondent No. 2, who held that respondent No. 3 had rightly decided that every person with a verified claim living in an evacuee property had on the basis of his individual gross compensation a right to be considered under Rule 30 for the transfer of that property irrespective of whether he was a joint allottee or a member of the joint Hindu family. But since Rule 30 had been amended on 24th March, 1961 and, according to this amendment, the property had to be transferred to the occupant whose gross compensation

was the highest, he came to the conclusion on 27th April, 1961 that this amendment would apply to all the pending proceedings and, therefore, the property should be transferred to respondent No. 5, whose compensation was, admittedly, higher than the compensation payable to the petitioner.

Against this order, the petitioner and respondent No. 6 filed an application under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act), before the Central Government, respondent No. 4, but the same was rejected on 22nd July, 1961. This led to the filing of the present writ petition on 8th August, 1961.

The question for decision in this case is whether in determining the rights of the parties, the amended Rule 30 would apply or not.

It is conceded by the learned counsel for the respondent that if the old rule has to be applied, then the impugned order of the Chief Settlement Commissioner has to be quashed. It is undisputed that right up to the stage when the Regional Settlement Commissioner passed his order on 16th January, 1961, the old Rule was applicable and the amendment in Rule 30, by which the words "the highest" were substituted for the words "nearest to the value of the property" occurring in Rule 30, came into force on 24th March, 1961. At that time, the revision filed by respondent No. 5 was pending before the Chief Settlement Commissioner. Learned counsel for the petitioner submitted that the Chief Settlement Commissioner was in error in holding that this amendment would apply to all the pending proceedings. Since it affected the vested rights of the petitioner, this amendment was prospective in its operation and

Asa Nand
v.
The Central Government of India and others

Pandit, J.

these vested rights could not be taken away by the Legislature, unless it manifested its intention of doing so in express terms or by necessary and distinct implication, which was not the position in the present case.

The question, therefore, arises whether the petitioner had some vested rights, which had been affected by this amendment.

What is then a vested right? A Full Bench of this Court in *Messrs. Gordhan Dass Baldev Das* v. *The Governor-General in Council* (1), answered this question thus—

> "A right is said to be vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest, independent or a contingency. It is a right which cannot be taken away without the consent of the owner".

A later Full Bench of this very Court in *Risaldar Major Amar Singh* v. *R. L. Aggarwal and others* (2), has observed as under—

> "that rights are said to be vested when they are complete and consummated, so that nothing remains to be done to perfect them. A vested right is a right or interest in property that has become fixed and established, and is no longer open to doubt or controversy. A right in order to be vested must be perfected in the sense that the person to whom it belongs cannot be divested of it without his consent."

(1) I.L.R. 1951 Punj. 395=1952 P.L.R. 1.
(2) I.L.R. 1960 (1) Punj. 791=1960 P.L.R. 115.

In the present case, the proceedings were pending before the Chief Settlement Commissioner and he could under section 24 of the Act set aside the order passed by the Regional Settlement Commissioner and the Settlement Officer. This means that the rights of the parties were still in a fluid state and were not complete and finally settled. Under these circumstances, it cannot be said that the petitioner had got any vested rights in the property in dispute. Therefore, the amendment in question would apply to the present case. Moreover, by this amendment, the pending proceedings have not been excluded from its operation. In my opinion, therefore, no interference is called for in the impugned order.

It may be mentioned that the learned counsel for the petitioner made a reference to the judgment of Shamsher Bahadur J. in *Dr. Khushi Ram* v. *The Union of India and others* (3) in which it was held—

> "that the amendment made in rule 30, whereby the word 'gross' for the word 'net' was substituted could by no stretch of reasoning be said to be merely procedural amendment which could be given retrospective operation. Even if retrospective operation could be given to statutory rules, it would not be possible to do so in the present case as such intention is not manifested."

On the other hand, learned counsel for the respondent referred to an unreported decision of the same learned Judge in *Sajjan Singh* v. *The Chief Settlement Commissioner and others*, Civil Writ No. 32 of 1960, decided on 28th October,

(3) 1962 P.L.R. 755.

Asa Nand
v.
The Central Government of India and others

Pandit, J.

1960, where a contrary view appears to have been taken. I would prefer to follow the decision in *Sajjan Singh's case.*

The result is that this petition fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in these proceedings.

B.R.T.

19760 HC—1000--8-3-63—C., P. & S., Pb., Chandig.rh