

the accused kidnapped the girl although, as I have said, he did not press the matter to extremes.

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I am therefore of the opinion that the accused Falshaw, C. J. was wrongly acquitted and that he was guilty of an offence under section 366 Indian Penal Code. In view of the fact that it will appear that the girl was a consenting party and the accused did not persist very resolutely in his object of sexual intercourse although he had every opportunity, I consider that a heavy sentence is not called for. The accused was arrested about four months ago and has been in jail pending the appeal since then and I would sentence him to six months rigorous imprisonment.

JINDRA LAL, J.—I agree.
R. S.

Jindra Lal

CIVIL MISCELLANEOUS

Before S. B. Kapoor and Prem Chand Pandit; JJ.

ATMA SINGH;—*Petitioner*

versus

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

Civil Writ No. 598 of 1961. ...

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 30—Whether applies in a case where more than one are in occupation of acquired evacuee property; only one of whom holds verified claim—Such occupant—Whether entitled to the transfer of the property.

1963

May, 8th.

Held that explanation to rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, makes the provisions of the Rule applicable to a case in which more than one person are in occupation of the acquired evacuee property and only one of them holds a verified claim. In such case the occupant; who has a verified claim; being entitled to compensation; will have a better claim to the transfer of the property as against

the other occupant or occupants whose compensation is nil on account of the fact that they hold no verified claim.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ; order or direction be issued in favour of the petitioner against the respondents setting aside the order; dated 2nd February, 1960 of Shri T. C. Gupta, Settlement Commissioner, New Delhi and awarding costs of this petition.

N. S. KEER and D. S. KEER; ADVOCATES; for the Petitioner.

B. S. WASU; ADVOCATE; for the Respondent.

JUDGMENT

Capoor, J.

CAPOOR, J.—The dispute in this Civil Writ petition under Articles 226 and 227 of the Constitution of India relates to the eligibility for allotment under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954) (hereinafter to be referred to as the Act), and the rules framed thereunder, of house No. 697/13, Mohalla Sharifpura, Amritsar, which was an evacuee property and was subsequently acquired by the Central Government under section 12 of the Act. Atma Singh, the petitioner in this writ petition, claims to be a displaced person and the ground floor consisting of the larger portion of the house was allotted to him, while the room on the first floor was allotted to Mohinder Singh, also a displaced person. Neither of these two has any verified claim. Ajit Singh, respondent No. 3 and the contesting respondent to this petition, had a verified claim and he is either the father or the step-father of Mohinder Singh. According to the findings by the Settlement Commissioner with delegated powers of Chief Settlement Commissioner in his order, dated the 2nd of February, 1960, which is the impugned order (copy Annexure 'C'), Ajit Singh was residing with Mohinder Singh in the portion of the property

which was allotted to the latter. On the 30th of July, 1959, the Assistant Settlement Officer, Amritsar, ordered the transfer of the entire house in favour of Ajit Singh against his compensation claim in C.A. No. P/ASR/11693. Atma Singh thereupon appealed and the Assistant Settlement Commissioner, Amritsar, by his order, dated the 30th of October, 1959 (copy Annexure 'B'), allowed the appeal directing that the property be transferred to the appellant, i.e., Atma Singh, the present petitioner. Against this order Ajit Singh went up in revision to the Chief Settlement Commissioner (respondent No. 1 to the petition), who accepted the revision petition and sent the case to the Regional Settlement Commissioner with the direction that the property in question be transferred to Ajit Singh,—*vide* his order, dated the 2nd of February, 1960 (Copy Annexure 'C') Atma Singh then made an application under section 33 of the Act to the Central Government (respondent No. 4 to the petition), which by the letter, dated the 18th of August 1960 (copy Annexure 'B'), declined to interfere. Hence this present writ petition, which originally came up before Dua, J., but by his order, dated the 16th of January, 1963, was referred to a Division Bench. Respondents, other than Ajit Singh, have not put in any return contesting the petitioner.

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The various contentions raised by the petitioner are as follows:—

- (1) Ajit Singh is not the father of Mohinder Singh, but merely his stepfather and he never lived in the house in dispute either along with Mohinder Singh or separately.
- (ii) Ajit Singh gave an application, dated the 27th of February, 1958 (copy Annexure 'A' to the petition), in which he prayed that compensation be given to him in cash

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and not by way of adjustment of the value of house No. 697/13, Mohalla Sharifpura, Amritsar, with which he had no concern.

- (iii) The Chief Settlement Commissioner committed an error of jurisdiction in holding that Ajit Singh was entitled to transfer of the property in question under rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and actually it is rule 31 which is applicable to the case.

As regards the first point, it is not really material whether Ajit Singh is the father or the step-father of Mohinder Singh and the crucial question for determination, whether the case is to be treated as one under rule 30 or rule 31, is if Ajit Singh was in occupation of the property. While it is true that the allotment stood not in his name but in that of Mohinder Singh, yet the Settlement Commissioner with delegated powers of Chief Settlement Commissioner,—*vide* his order, dated the 2nd of February 1960, has found as a matter of fact that Ajit Singh was originally living with Mohinder Singh in the house in dispute and as such was in lawful possession of a portion of it. In this connection reference was made by him to ration cards, Exhibits A. 1 and A. 2. This is a finding by the Chief Settlement Commissioner on a question of fact. Firstly, there is nothing cogent to show that it is erroneous, and secondly, even if the finding on this question of fact was wrong, this Court would not in the exercise of its writ jurisdiction interfere with this finding : See *Nagendra Nath v. Commissioner of Hills Division* (1), as well as a Division Bench judgment of this Court reported as *Ram Dass T. Chugani v. Custodian-General of Evacuee Property* (2).

(1) A.I.R. 1958 S.C. 398.

(2) (1961) 63 P.L.R. 339.

The second argument based on Ajit Singh's application, dated the 27th of February, 1958, was advanced before the Settlement Commissioner with delegated powers of Chief Settlement Commissioner also, who observed as follows:

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"The mere fact that he (Ajit Singh) gave the application, dated the 27th of February, 1958 stating that he wanted to get the compensation in cash and was not anxious to obtain the property in question, does not in any way affect his rights to get the property transferred in his favour, as his request was not accepted and the property was available for transfer and was actually transferred to him against his compensation."

This appears to be the equitable view to take on the facts of the present case, Mr. N. S. Keer, learned counsel for the petitioner, wants the Court to treat this application as creating some sort of estoppel, but this is taking much too legalistic view of the matter. One has to keep in mind the real consideration when the application was made by Ajit Singh, which was to get in cash the amount of compensation due to him on the basis of his verified claim, possibly Mohinder Singh wanted to utilise that claim towards adjustment of the price of the house, but Ajit Singh preferred to get cash compensation and that is why he stated that he had no concern with that house. Since his application for payment of compensation in cash was turned down, it would obviously be not fair to rule out also his eligibility for transfer of the house. That is a consequence which could not be in his contemplation when he made the application.

There remains the last and the most important point, viz., the rule under which liability for transfer of the property is to be determined. On behalf of

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the petitioner it was contended that rule 31 is applicable, which so far as relevant is as follows:—

“31(1) Where an acquired evacuee property which is an allottable property is in occupation of more than one displaced person none of whom holds a verified claim, the property may be transferred to the displaced person who occupies the largest portion of the property or where two or more such displaced persons occupy a portion of the property which is equal in area, the property may be transferred to the displaced person who has been to occupation of such portion for a longer period.”

This rule is attracted where none of the displaced persons in occupation of the property holds a verified claim. However, Ajit Singh, who is admittedly a displaced person, on the finding of fact as given in the impugned order, was one of the persons in occupation of the property and hence rule 31 would not be applicable. One further objection in this connection made by Mr. B. S. Wasu on behalf of the contesting respondent was that, as alleged in paragraph 1 of the objections on merits in the return. Ajit Singh was not a displaced person. But this is not a tenable objection because it was not raised before any of the authorities under the Act and the orders (copies Annexure ‘B’ and ‘C’) proceed on the assumption that both the contesting claimants, i.e., Atma Singh and Ajit Singh, are displaced persons. Mr. B. S. Wasu further objected that in an order made under rule 31, it was discretionary with the authorities under the Act whether to transfer the property to a displaced person or not and in this connection he pointed out that the words used are “the property may be transferred” and not “the property shall be transferred”. Reference was in this connection

made to *Sondhi Harbaksh Singh, v. The Central Government and others* (3).

However, I need not go into this question, because, as already pointed out, rule 31 is not attracted to the facts of the case.

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The only other rule which relates to the payment of the compensation where an acquired property, which is an allottable property, is in occupation of more than one person, rule 30, which as it now stands, omitting the proviso which is not material, is as follows:—

“30. If more persons than one holding verified claims are in occupation of any acquired evacuee property, which is an allottable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and other persons may be allotted such other acquired evacuee property, which is allotable, as may be available:

Provided * * * * *

Explanation. The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property, which is an allottable property, hold verified claims and some do not hold such claim.”

Mr. N. S. Keer contended that this rule is not in terms applicable because even if Ajit Singh was treated as being in occupation of a part of the property, he is the only one of the occupants who has got a verified claim, while the rule speaks of property in occupation of more persons than one holding verified claims. His

(3) I.L.R. (1962) 2 Punj. 712; (1962) 64 P.L.R. 629.

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interpretation of the rule is that if only one of the occupants has a verified claim, the question of his being in competition with any other of the occupants could not arise and in that event the provision of the rule, that "the property shall be offered to the person whose net compensation is nearest to the value of the property", would be inapt. There would have been some cogency in this argument if the Explanation was not appended to the rule. No doubt the Explanation speaks of "persons" in occupation who hold "verified claim", but according to section 13 of the General Clauses Act, 1897 (Act No. 10 of 1897), words in the singular shall include the plural, and *vice versa* and I can see no real difficulty in reading this Explanation as also applying the provisions of the rule to a case in which only one person out of those in occupation of the property holds a verified claim, while the other occupant or occupants do not hold a verified claims. Even in such a case the occupant, who has a verified claim and is entitled to compensation, will have a better claim to the transfer of the property as against the other occupant or occupants whose compensation is nil on account of not having a verified claim. The argument put forward by Mr. Keer would in fact mean that the rules do not make any provision at all for the payment of compensation by means of transfer of the property in a case in which there are two occupants in it, one of whom holds a verified claim and the other does not hold such claim. It is not easy to conceive that such a lacuna would be left in the rules.

The only authority cited by Mr. Keer in support of his contention was Dr. *Khushi Ram v. The Union of India* (4). This case has, however, been over ruled by the Letters Patent Bench of this Court in *Kewal Krishan v. Government of India*, (5), and the learned counsel for the petitioner has been unable to persuade

(4) (1962) 64 P.L.R. 755.

(5) I.L.R. (1963) 1 Punj. 836—(1963) 65 P.L.R. 288.

us that the view taken by the learned Judges constituting the Letters Patent Bench is incorrect.

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Accordingly none of the contentions advanced on behalf of the petitioner is correct and I would dismiss the petition, but in the circumstances of the case leave the parties to bear their own costs.

Capoor, J.

PREM CHAND PANDIT, J.—I agree.

K. S. K.

REVISIONAL CRIMINAL

Before H. R. Khanna; J.

MATA DIN SINGH;—Petitioner.

versus

THE STATE;—Respondent.

Criminal Revision No. 1516 of 1962.

Penal Code (XLV of 1860)—Ss. 441 and 448—Landlord breaking open the locks and taking possession of the premises in the absence of the tenant—Whether guilty of an offence under S. 448.

1963

May' 8th.

Held that there is nothing in section 441 of the Indian Penal Code which requires that the intimidation, insult or annoyance, which is caused to the person in possession of a property as a result of the entry upon that property, should be instantaneous and confined only to the moment of entry and not caused subsequent to the entry. All that this section requires is that the accused should make the entry with the intention to insult; intimate or annoy the person in possession and it is immaterial that the actual intimidation, insult or annoyance is caused not at the time of the entry but subsequently. To hold that criminal trespass implies an instantaneous intimidation, insult or annoyance upon the entry into possession of property; would be going not only against the plain language of the section but would also lead to state of lawlessness and highhanded activities. The mere temporary absence of the person in possession would not make any difference if the other ingredients of the offence of criminal trespass are established. A landlord who breaks open the locks and