

I do not agree with Mr. Rajindar Nath that "displaced land-holder" in this Para means only a displaced person who died after his migration to India after the 1st August, 1947. A "displaced person" has been differently defined for the purposes of different enactments. There is nothing in the Para to restrict it to the definition given in any particular Act. The allotment is to be made in favour of the person in whose name the land in Pakistan stands, even though he be already dead. It is immaterial whether he died before or after migrating to India. I do not, therefore, see any illegality in the order either.

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As regards the penalty, it is conceded by Shri Lachhman Dass, learned counsel for the respondents, that it did not amount "to public dues" as defined by Rule 7 of the Rules and, therefore, it could not be legally imposed by the Managing Officer. To that extent the order of the Managing Officer and those of the higher authorities are beyond their authority and jurisdiction.

In the result, the petition is accepted only to the extent that the order of imposition of penalty is quashed. Rest of the prayer is refused. No order is made as to costs.

K.S.K.

APPELLATE CIVIL.

Before Gosain, J.

PT. TIRATH RAM-LAL CHAND,—*Appellants.*

versus

M/s. MEHAR CHAND-JAGAN NATH,—*Respondents.*

Execution First Appeal No. 75-C of 1956.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Sections 8 and 15—Compensation payable to a displaced person—Whether attachable in execution of a decree against him.

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Held, that having regard to the provisions of section 8 of the Displaced Persons (Compensation and Rehabilitation) Act 1954, it cannot be said at this stage whether the Government will pay any amount at all in cash nor can it be said as to what form the compensation will ultimately take. At the moment, therefore, the Government cannot be deemed to have become the debtor *qua* any particular sum payable by it nor can the claimants be deemed to be creditors *qua* the said amount. Till the Government make a tender of any cash amount the money lying in the compensation pool remains part of that pool and is exempt from attachment under the provisions of section 15 of the Act. There is no debt as yet in existence which is liable to be attached.

Execution first appeal from the order of Shri J. M. Tandon, Sub-Judge, 1st Class, Delhi, dated 21st January, 1956, refusing to attach the claim and ordering to file the application.

D. R. MANCHANDA and M. R. CHHIBBER, for Appellant.
S. L. PURI, for Respondent.

JUDGMENT

Gosain, J.

K. L. GOSAIN, J.—In suit No. 50 of 1950, the Senior Sub-Judge Amritsar passed a decree in favour of Messrs. Tirath Ram-Lal Chand plaintiffs for a sum of Rs. 35,478-5-6 and costs against a firm Mehar Chand-Jagan Nath. Application for execution of this decree was made in the Court of Shri Jag Mohan Tandon, Sub-Judge 1st Class, Delhi, and the decree-holder sought to attach the amount of compensation which may be payable to Jagan Nath partner of the judgment debtor firm under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. On that a notice was issued to the Union of India through Mr. Bishamber Dayal, standing counsel to the Government. It appears that the standing counsel sent the notice to the Settlement Commissioner who wrote a letter to the Court on the 7th November, 1955, reading as under:—

“With reference to the notice dated 26th August, 1955, addressed to Union of

India through Shri Bishamber Dayal, Pt. Tirath Ram-
Government Advocate, Delhi, issued Lal Chand
from your Court in the above noted v.
Civil Suit, I am to state that compensa- M/s. Mehar
tion money payable to displaced persons Chand-Jagan
is not a debt within the meaning Nath
of Order 21 Rules 46 and 52 of the Civil
Procedure Code and is not attachable. Gosain, J.
It is an *exgratia* Rehabilitation grant.
The amount is exempt from attach-
ment under section 15 of the Displaced
Persons (Compensation and Rehabili-
tation) Act, 1954."

Under the amendment made by the Punjab High Court in section 60 by adding clause (6) to subsection 2 of section 60, Civil Procedure Code, "no order for attachment shall be made unless the Court is satisfied that the property sought to be attached is not exempt from attachment or sale," the executing Court agreeing with the contentions raised by the Settlement Commissioner, came to the conclusion that the compensation amount was not liable to be attached and therefore passed an order on the 21st January, 1956, refusing to attach the said amount. The decree-holder feeling aggrieved against the said order has come up in first appeal to this Court.

Mr. D. R. Manchanda, learned counsel for the decree-holder, contends that the order passed by the executing Court is contrary to law. He has drawn my attention to the provisions of sections 7, 8, 9, 12, 13 and 15 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and has contended that section 15 exempts from attachment only the property which forms part of the compensation pool. Under section 14(a) all evacuee property acquired under section 12,

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including the sale proceeds of any such property and all profits and income accruing from such property, do form part of compensation pool, but Mr. Manchanda contends that his clients are not attaching any part of the compensation pool and all that the decree-holders wish to attach is the money which will be ultimately payable to Jagan Nath judgment-debtor if and when the Government decide to pay any money in cash. Subsection (1) of section 8 of the aforesaid Act lays down:—

“8(1) A displaced person shall be paid out of the compensation pool the amount of net compensation determined under subsection (3) of section 7 as being payable to him, and subject to any rules that may be made under this Act, the Settlement Commissioner or any other officer or authority authorised by the Chief Settlement Commissioner in this behalf may make such payment in any one of the following forms or partly in one and partly in any other form, namely:—

- (a) in cash;
- (b) in Government bonds;
- (c) by sale to displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him;
- (d) by any other mode of transfer to the displaced person of any property from the compensation pool and setting off the valuation of the property against the compensation payable to him;
- (e) by transfer of shares or debentures in any company or corporation;
- (f) in such other form as may be prescribed.”

It cannot, therefore, be said at this stage whether the Government will pay any amount at all in cash nor can it be said as to what form the compensation will ultimately take. At the moment, therefore, the Government cannot be deemed to have become the debtor *qua* any particular sum payable by it nor can the claimants be deemed to be creditors *qua* the said amount. Till the Government make a tender of any cash amount the money lying in the compensation pool remains part of that pool and is in my opinion exempt from attachment under the provisions of section 15 of the aforesaid Act. I am supported in this view by the observations made in a Division Bench judgment of the Lahore High Court reported as *Sunder Das v. Secretary of State and others* (1), in which it was held that the compensation money awarded under the Land Acquisition Act was not liable to attachment at the instance of the creditors of the persons whose lands had been acquired until the money was actually tendered as till that stage the money in the hands of the Collector must be taken to be belonging to the Government. In *Spence v. Coleman* (2), a somewhat similar point was decided by the Court of Appeal. In that case the proportion of the surplus assets of a company in liquidation belonging to a shareholder who could not be found and which was in compliance with subsection 3 of section 15 of the Companies (Winding up) Act, 1890, paid by the liquidator to the "Companies Liquidation Account" with the Bank of England was sought to be attached in a decree against the shareholder and it was held that the said sum was not a "debt" due to the shareholder, and that it could not be attached by his judgment-creditor by means of a garnishee order. I am, therefore, definitely of the opinion that there is no debt as

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(1) A.I.R. 1938 Lah. 533.

(2) (1901) 2 K.B. 199.

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yet in existence which is liable to be attached. If and when the Government ultimately decide to pay the compensation in any particular form, the decree-holders may take such steps as they may then be advised. The present prayer for attachment seems to be wholly misconceived and agreeing with the view taken by the executing Court, I dismiss this appeal with costs.

B.R.T.

CIVIL WRIT

Before Falshaw, J.

SHRI BHAGWAT DAYAL AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 264-D/57.

1957
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Constitution of India (1950)—Article 31—Acquisition of land for a Co-operative House Building Society—Whether acquisition for a public purpose Article 226—Land notified to be acquired—No objections filed by the owners—Award made by the Collector—Objections to the amount of compensation raised and reference to the District Judge under section 18 of the Land Acquisition Act (L of 1890), requested—Whether entitled to challenge acquisition by writ—Land Acquisition Act (L of 1890)—Section 6—Notification under for acquiring land for a company—Whether bad merely because no part of the compensation is to come out of the public funds—Land Acquisition Collector—Nature of his functions—Whether administrative—Collector taking proceedings and making award while his powers as such Collector not notified—Omission, whether can be rectified retrospectively by a later notification.

Held, that it is perfectly legitimate policy on the part of the Government, in view of the extraordinary shortage of house accommodation, to encourage the development of Co-operative House Building Societies on a non-profit basis,