

CIVIL MISCELLANEOUS

*Before Inder Dev Dua and Daya Krishan Mahajan, JJ.*

MANOHAR LAL RATNA,—Petitioner.

*versus*

UNION OF INDIA AND OTHERS,—Respondents

Civil Writ No. 1670 of 1961.

*Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954) — S. 12 — Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 26 — Evacuee property requisitioned by District Magistrate and allotted to a government servant — After acquisition under S. 12 of the Act (XLIV of 1954) property found to be allottable — Government servant continuing in sole occupation thereof — Whether entitled to its transfer.*

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1964

September, 21st

An evacuee property was requisitioned by the District Magistrate and allotted to a government servant who remained in sole occupation thereof till after it was acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, when the question of its disposal arose.

Held, that the government servant, being in sole occupation thereof and the property being allottable, was entitled to its transfer, under rule 25 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955.

*Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 8th January, 1964, to a larger Bench for decision owing to the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice D. K. Mahajan, on 21st September, 1964.*

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the orders passed by Respondents Nos. 1 and 2, dated the 11th March, 1961 and 14th July, 1960, respectively.*

B. S. WASU, ADVOCATE, for the Petitioner.

ROOP CHAND, K. L. SACHDEVA AND S. C. CHOWDHRY, ADVOCATES, for Respondents.

#### ORDER OF THE DIVISION BENCH

The judgment of the Court was delivered by :—

Dua, J.

DUA, J.—This writ petition has been placed before us in pursuance of an order of reference passed by my learned brother Mahajan, J., *inter alia* on account of Single Bench decisions which were considered not to be reconcilable; those decisions being in *Nand Lal v. The Regional Settlement Commissioner*. (Civil Writ No. 1135 of 1957) decided by Gurnam Singh, J., on 9th May, 1958, and *Jaswant Singh Gyani v. The Regional Settlement Commissioner* (Civil Writ No. 1076 of 1958) decided by Grover, J., on 18th May, 1959. The other point necessitating reference has, however, not been pressed.

The facts giving rise to the present proceedings as stated in writ petition are that an evacuee property No. BII/236 at Ludhiana was requisitioned by the District Magistrate, Ludhiana, under the Punjab Requisitioning and Acquisition Act and was allotted by the District Magistrate to Kesho Nath Raheja respondent No. 3 in this Court who was at that time in the Government service and posted at Ludhiana. Later he was transferred to Simla and thereafter to Chandigarh. According to the averments in the writ petition he was no longer in occupation of the above property after his transfer from Ludhiana. On acquisition of the said property by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the question of disposal of the property arose before the Rehabilitation authorities. As this property did not stand allotted in favour of anyone, it was auctioned and the petitioner gave a bid of Rs. 12,000 which being the highest bid was accepted. On behalf of respondent No. 3 his son gave a bid for Rs 11,500. The sale in favour of the petitioner was duly confirmed, the letter of confirmation having been received by the petitioner on 7th March, 1958. Respondent No. 3 preferred an appeal against the order of the District Rent and Managing Officer accepting the petitioner's bid and it was urged that the property in question should not have been sold by auction. It was rejected by the Assistant Settlement Commissioner, but on revision the Chief Settlement Commissioner reversed the order. A further revision by the petitioner to the Central Government under section 33 of the Act was rejected. It is in these circumstances that the matter has come before us and the only ground on which the impugned order has been assailed is that respondent No. 3 could not be considered to be in sole occupation of the house in question so as to attract rule 25 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. In the written statement by respondent No. 3 it has been asserted that after his transfer to Simla his family and children who were studying at Ludhiana remained in this house with the result that the house remained in the occupation of the answering respondent. Indeed the department has also admitted his occupation by charging rent from him up to 30th September, 1955. According to this written statement the District Rent and Managing Officer had illegally and improperly auctioned the house and the said auction has been rightly set aside by respondent No. 2.

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Dua, J.

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 Dua, J.

The petitioner's learned counsel has submitted that this case is covered by the decision of Grover, J., in *Jaswant Singh Gyani v. The Regional Settlement, etc.* (Civil Writ No. 1076 of 1958) decided on 18th May, 1959. In that case Jaswant Singh, had in June, 1948, been allotted a house at Hoshiarpur as a displaced person on payment of a rent of Rs. 6 per mensem. Since he was serving as a Giani teacher in a Government School, on his transfer to Ludhiana he was allotted the disputed house by the District Magistrate in July, 1957, of which he had been paying rent. It is this house which he wanted to be allotted to him under rules 25 and 26 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The respondents in that case urged that Jaswant Singh Gyani had been allotted a house as a displaced person at Hoshiarpur and that the house at Ludhiana which had been originally requisitioned by the District Magistrate had been allotted to T. N. Kapoor of the Civil Supplies Department and on his transfer it was allotted to Jaswant Singh. On its acquisition by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the requisition had come to an end and that Jaswant Singh's occupation could not be considered to be authorised. The learned Judge on these pleadings observed that rule 26 could only be attracted where allottable acquired property is in the sole occupation of a displaced person, who does not hold a verified claim. Jaswant Singh had, according to the learned Judge, not been allotted the property at Ludhiana in the capacity of a displaced person but the same had been allotted to him under a misapprehension that that property was still under requisition and that it could be allotted to him as a Government servant. Rule 26 was thus held inapplicable to an unauthorised occupation or "such occupation as is the result of an allotment on some ground other than the one on which an evacuee property could be allotted to a displaced person". The only property allotted to Jaswant Singh, as a displaced person was the one at Hoshiarpur whereas the house at Ludhiana had been allotted to him in the capacity of a Government servant. The contention that Jaswant Singh was paying the rent regularly which was being accepted by the office of the Regional Settlement Commissioner was negatived because in the opinion of the learned Judge this was being done all the time on the assumption that the requisitioning was continuing although it may have ended when the

the learned Judge nothing to justify the unusual construction on the word "may" as suggested. Reading Rules 25 and 26 together, it was expressly observed that the expression "may" used in Rule 26 could not be taken as "must". The decision of Gurnam Singh, J., in *Nand Lal's case* is, in my opinion, no authority on the directory or mandatory nature of Rule 26, for it neither contains any illuminating discussion nor any helpful reasoning to usefully aid us in the interpretation of Rule 26. It may be remembered that the decision of Grover, J., in *Jaswant Singh's case* was unsuccessfully assailed on Letters Patent Appeal in *Jaswant Singh v. Regional Settlement Commissioner* Letters Patent Appeal No. 168 of 1959 and the Bench took the view that Rule 26 does not confer any right on the claimant and it is open to the authorities whether or not to transfer the property to the occupant.

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Dua, J.

In view of what has been stated above, it is clear that the decision of Gurnam Singh, J. in *Nand Lal's case* is no authority for the proposition that Rule 26 is mandatory. In case, however, that judgment is open to be so construed, then, in our opinion, it does not lay down a correct rule of law

The result, therefore, is that this writ petition fails and is hereby dismissed but without costs.

B.R.T.