FULL BENCH
REVISIONAL CIVIL.

Before G. D. Khosla, S. S. Dulat and R. P. Khosla, JJ.

THE STATE OF PUNJAB,—*Petitioner.*

versus

THE OKARA GRAIN BUYERS SYNDICATE LTD.,
AND ANOTHER,— *Respondents.*

Civil Revision No. 229 of 1953

1958

May, 19th

... *Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 2(6)(c) and 13—Debt due from Government— Whether debt within the meaning of Section 2(6)(c)*

—Application under section 13—Whether maintainable against the Government.

Held, that the real meaning of section 2(6)(c) of the Displaced Persons (Debts Adjustment) Act, 1951, is that if a debt is due from a person who ordinarily lives in India, which means who is ordinarily subject to the territorial jurisdiction of Courts in India, then the displaced creditor can maintain an application against him under section 13. It cannot be denied that the Union of India is subject to the territorial jurisdiction of Courts in India, and that being so, the Courts in India have jurisdiction to entertain an application under section 13. A "debt" is a debt which is due to a displaced person provided the debtor, whether he is real or juristic person, is subject to the territorial jurisdiction of Indian Courts. This is the only condition which must be satisfied. The meaning of clause (c) of section 2 (6) cannot be restricted to exclude juristic persons incapable of residing at any place, otherwise everybody except a human being shall have to be excluded. This clearly was not the intention of the Legislature. Had the Legislature intended to exclude debts due from Government, it could have expressed its intention simply and effectively by adding a short saving clause as has been done in other statutes where a special exception in favour of Government was sought to be made.

Held further, that an application under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, is maintainable against the State of Punjab.

Case-law discussed. Lakhmi Chand v. *Punjab State* (1), *and Amar Nath Issar v. Union of India* and *another* (2), overruled.

Case referred by Hon'ble Mr. Chief Justice A. N. Bhandari, on 27th August, 1957, to a Division Bench consisting of Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice Grover, who further referred it to a Full Bench for opinion of the legal point involved in the case and later on decided by the Full Bench consisting of Hon'ble Mr. Justice G. D. Khosla, and the Hon'ble Mr. Justice Dulat and the Hon'ble Mr. Justice R. P. Khosla on 19th May, 1958.

Petition under section 44 of Punjab Courts Act for revision of the order of Shri Ram Lal, Sub-Judge appointed

(1) 56 P.L.R. 139
(2) F.A.O. 40-D. of 1954

as Tribunal at Amritsar dated the 7th May, 1953, allowing the respondents to file the reply.

Claim.—Application under Section 13 of the Displaced Persons (Debts Adjustment) Act No. LXX of 1951.

Claim in revision.—For reversal of the order of the lower court.

L. D. KAUSHAL, Deputy Advocate-General, for Petitioner

H L. SIBAL, for Respondents.

ORDER OF REFERENCE BY DIVISION BENCH.

GROVER, J.—A common question of importance arises in Civil Revision No. 229 of 1953, and the connected cases. The facts may be briefly stated: The Okara Grain Buyers' Syndicate, Okara, now at Amritsar filed an application under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, (Act No. 70 of 1951) in the Court of Shri Ram Lal, Sub-Judge appointed as Tribunal under the Act for the recovery of Rs. 4,038-12-0. The case of the applicant was that under instructions from the Government of the United Punjab supply had been made of 210 bags of imported maize to Messrs Anil Starch Products, Ltd., Asarva, Ahmedabad, and that the Ahmedabad firm remitted the price to respondent No. 2 and therefore, both the respondents were liable to pay the amount of Rs. 3,059-9-0 being the price of goods and Rs. 979-3-0 as interest at the rate of 6 per cent per annum. The respondents raised a preliminary objection that the Tribunal had no jurisdiction to entertain the application as the provisions of section 13 of the Act could not be made applicable when the application was directed against the Government. On the pleadings of the parties the following issues were framed :— Grover, J.

(1) Is the application maintainable ?

The State of Punjab.
v.
The Okaa Garin Buyer Syndicate Limited and another

(2) What is the effect of the respondents not filing the reply within 15 days of the service of notice on them ?

The Tribunal by an order dated the 7th May, 1953, held that the State of Punjab could be sued and there was no reason to hold that the provisions of the Act did not apply to applications against the Government. The second issue was found in favour of the respondents. Against the order of the Tribunal the Punjab State filed a petition for revision which came up before Bhandari, C.J., who made an order on 27th August, 1954, referring the matter to a larger Bench in view of the general public importance of the point of law involved, and that is how all these cases have been placed before us for decision.

Mr. Lachhman Das Kaushal has raised the question that the Tribunal constituted under Act 70 of 1951, has no jurisdiction to entertain an application under section 13 whereby a claim is made against the Punjab State or the Government. His main contention is that for a matter to fall under section 13, two conditions must be satisfied (1) the displaced creditor should claim a 'debt' as defined by the Act, and (2) the claim should be directed against a person who is not a displaced person. It is contended that any amount which is claimed from the State or the Government cannot be regarded as a debt within the meaning of section 2(6) of the Act. It is further submitted that the Government cannot be said to be ordinarily residing in the territories within the meaning of section 2(6)(c) and the aforesaid provisions can have reference only to natural persons who are capable of residing at a particular place or places. He urges that the word 'person' as used in section 13 has reference to a natural person who is capable

of actually and voluntarily residing within the local limits of the jurisdiction of a Tribunal. He has placed reliance on *R. J. Wyllie and Co. Secretary of State* (1), and on *Govindarajulu Naidu* v. *Secretary of State* (2), which was followed by the learned Lahore Judge. In these cases the words 'actually and voluntarily resides' which occur in section 20 of the Code of Civil Procedure were considered with reference to the Government and it was held that they referred only to natural persons and not to legal entities such as limited companies and Government. Our attention has been invited to a decision of Bhandari, C.J., and Khosla, J. in *Shiv Parshad* v. *Punjab State* (3), where, while considering whether section 44 of the Provincial Insolvency Act was violative of Article 14 of the Constitution, it was observed that neither a State nor a juristic person could fall within the ambit of the expression 'person' appearing in Article 14 of the Constitution. At page 37 Bhandari, C.J., made the following observations:—

> "It has been held repeatedly that the expression 'person' does not include the State *Simla Hills Transport Service* v. *The Punjab State* (4), and *Kapur Textile Finishing Mills J.H.F. Concern* v. *The Province of East Punjab* (5), and that the expression 'reside' appearing in section 19 of the Code of Civil Procedure refers only to natural persons and not to legal entities such as limited companies or Government *C. Govindarajulu Naidu* v. *Secretary of State* for India in Council (6).

(1) A.I.R. 1930 Lah. 818
(2) A.I.R. 1927 Mad. 689
(3) 1957 P.L.R. 35
(4) C.W. 545 of 1950
(5) A.I.R. 1954 Punj. 49
(6) I.L.R. 50 Mad. 449

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

Grover, J.

There is another decision of this Court in *K. T. F. Mills* v. *E. P. Province* (1), where the word 'person as occurring in section 43 of the East Punjab Public Safety Act, 1949, was held not to include the State. It will be noticed that in all these cases the meaning of the word 'person' was considered with reference to the State or the Government in a different context although the observations in *Shiv Parshad* v. *Punjab State* (2) lend support to the contentions raised on behalf of the State. There are, however, two cases of the Bombay and Patna High Courts which deal with the point which is before us directly. In *Lachmandas* v. *Union of India* (3), it was held that where a displaced person made an application under section 13 against the Union of India, it could not be predicated of the Union that it ordinarily resided in the territories to which the Act extended as contemplated by the definition of 'debt' in section 2(6)(c) and, therefore, the application was not maintainable. Chagla, C.J., in the Bombay case followed a previous decision of the same Court in *Bata Shoe Co.* v. *Union of India* (4), The Patna Case *Punjab State* v. *Mangal Singh* (5), takes the opposite view, that the definition of the word 'person' in section 3(42) General Clauses Act would cover the expression 'any other person' occurring in section 13 of the Act.

Mr. Hira Lal Sibal on behalf of the respondents has challenged the correctness of the Bombay decision. He submits that even in that case it was conceded that the Union of India was an 'artificial' or a juristic person. His argument is that the Punjab State or the Punjab Government is a juristic person and has all the attributes of a corporate and legal entity. He refers to the statement

(1) A.I.R. 1954 Punj. 49
(2) 1957 P.L.R. 35
(3) A.I.R. 1956 Bom. 43
(4) A.I.R. 1954 Bom. 129
(5) A.I.R. 1956 Pat. 91

contained at page 8 in Halsbury's Laws of England (Simond's Edition, Vol. 9), where examples of 'corporations sole' are given. The English Sovereign is described as a corporation sole. He also refers to the definition of 'corporation aggregate' as given at page 4 of the same volume and suggests that the State or the Government may be a corporation sole or a corporation aggregate. In Thompson on Corporations, Third Edition Vol. I, section 26, the United States is stated to be a public corporation; so each of the several states, and it is further stated that it has been similarly held with regard to a territory and counties. Mr. Sibal urges that if the Government or the State is like a corporation, or if any analogy can be drawn from a corporation in regard to this matter it certainly would fall within the definition of the word 'person' as given in the General Clauses Act. The only other question will be whether such a person can be said to ordinarily reside at a particular place. A distinction is sought to be made between the words 'ordinarily resides' occurring in section 2(6)(c) of the Act and the words 'actually and voluntarily resides' occurring in section 20 of the Code of Civil Procedure as well as in the latter part of section 13 of the Act. The words 'ordinarily resides' are said to have a different connotation and different meaning from the expression 'actually and voluntarily resides'. In support of the proposition that a corporation can have residence and can be said to ordinarily reside where it has its central management and control, we have been referred to *Union Corporation* v. *I. R. Comrs* (1), as well as to *Swedish Central Ry. Co.* v. *Thompson* (2). So far as our Court is concerned, a company has been held to be a displaced person within the meaning of section

(1) (1952) I.A.E.R. 646 at pages 650, 654, 655
(2) 1925 A.C. 495

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

Grover, J.

2(10) of the Act,—*vide The Punjab National Bank, Ltd.* v. *The Punjab Property Development Company and others* (1), In *De Beers Consolidated Mines, Ltd.* v. *Howe* (2), Lord Loreburn's observations at page 458 have been taken to be settled law in England on the question of applying the conception of residence to a company by taking the analogy of an individual. Mr. Sibal submits that if a corporation can be said to be ordinarily residing where its central Control and management is, there seems to be no reason why by analogy the Government or the Punjab State should not be considered to be ordinarily residing in a similar way. These questions do not seem to have been debated or examined in the Bombay judgment case, (3) seems to have been followed. Referring where the previous decision in *Bata Sheo Company* to that case it is to be found that the learned Judges there were interpreting section 18(b) of the Presidency Small Cause Courts Act, 1882, and the discussion centered largely on the meaning of the expression 'carry on business' within the meaning of that enactment. The *Bata Shoe Company case*, (3) therefore, could not be regarded as an authoritative decision on the question involved in the later Bench decision of the Bombay Court and the present cases.

As the point involved is of general public importance and has arisen and is likely to arise in a number of other cases, we are of the opinion that it should be decided by a larger Bench. The matter should, therefore, be placed before my Lord the Chief Justice for constituting a Full Bench for deciding the following point of law :—

"Whether an application under section 13 of the Displaced Persons (Debts Adjust-

(1) I.L.R. 1957 Punj. 1529
(2) 1906 A.C. 455
(3) A.I.R. 1954 Bom. 129

ment) Act, 1951, is not maintainable against the State of Punjab."

ORDER

G.D. KHOSLA, J.—The following question has been referred to the Full Bench :—

"Whether an application under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951, is not maintainable against the State of Punjab."

The relevant facts giving rise to this reference may be briefly stated. The Okara Grain Buyers Syndicate whose place of business is now Amritsar, filed an application under section 13 of the Displaced Persons (Debts Adjustment) Act (hereinafter called the Act) against the Punjab State for the recovery of Rs. 4,038. The amount was claimed on account of a liability incurred before partition in Pakistan. The Punjab State raised a preliminary objection to the effect that the Tribunal had no jurisdiction to entertain the application as no application against the State Government could lie under section 13 of the Act. The learned Tribunal framed the following two issues :—

(1) Is the application maintainable ?

(2) What is the effect of the respondents not filing the reply within 15 days of the service of notice on them ?

It is only the first issue which is relevant for our purposes. The Tribunal held that the application was maintainable and that the Punjab Government could be sued and was not exempt from the provisions of the Act. Against this order the Punjab State filed a revision petition in this

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Khosla, J.

Court which came up in the original instance before Bhandari, C.J., sitting singly. The learned Chief Justice was of the view that the matter was of some importance and should, therefore, be considered by a larger Bench. It was accordingly referred to a Bench consisting of Bishan Narain and Grover JJ., The Division Bench heard the arguments of both parties and considered a number of cases in which this matter had come up both before this Court and other Courts. There was some conflict in the various decisions and so the Division Bench decided to refer the matter to a Full Bench. So finally the matter was brought before us and we have heard learned counsel for both sides at considerable length. Our attention has been drawn to a larger number of cases which have a bearing on the point in dispute and we are now in a position to reply to the question referred to us.

In order to understand the nature of the objection raised it is necessary to quote section 13 and section 2(6)(c) of the Act. Section 13 is in the following terms :—

> "At any time within one year after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt *from any other person who is not a displaced person* may make an application in such form as may be prescribed, to the Tribunal within the local limits of whose jurisdiction he or the respondent or, if there are more respondents than one, any of such respondents, actually and voluntarily resides, or carries on business or personally works for gain, together with statement of the debt owing to him with full particulars thereof."

(I have underlined the words to which specific reference will be made in interpreting the section.)

Section 2(6)(c) runs as under :—

"'Debt' means any pecuniary liability, whether payable presently or in future, or under a decree or order of a civil or revenue court or otherwise, or whether ascertained or to be ascertained, which—

(a) * * * *

(b) * * * *

(c) is due to a displaced person from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends ;

* * * *".

The contention urged on behalf of the Okara Grain Buyers Syndicate is that the "Punjab State" comes within the meaning of the expression "any other person ordinarily residing in the territories to which this Act extends" and, therefore, an application under section 13 of the Act is competent. It is contended on the other hand that the Punjab State is not a person as that word is ordinarily understood in law Courts, and, in the second place, the Punjab State cannot be said to be ordinarily residing anywhere, because the State is not capable of residing ; it is only individuals and persons who reside and not a State.

The matter under discussion raises a large issue and it is necessary to consider it from several aspects. I shall first consider what the position of a State or Government is in the field of litigation. It is a matter of common knowledge that the Governments can sue and be sued in Courts

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Khosla, J.

of Law in the same way as ordinary persons sue and are sued, although there may in certain cases be limitations and reservations or exceptions specifically provided by the legislature. Article 300 of the Constitution contains the legal authority for the Government of India or the Government of any State to sue or be sued. This authority, is however, not comprehensive and all-embracing, because it relates back to the earlier provisions of law which conferred similar rights and liabilities on the Dominion of India and the Provinces and Indian States. When the matter is considered historically, we find that the East India Company, like any other corporation or firm, could sue and be sued. In 1858 the British Crown took over the Government of India from the East India Company and section 65 of the Government of India Act, 1858 provided—

> "Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858, had not been passed."

A similar provision was made and the rights and liabilities of the Secretary of State were continued by section 32 of the Government of India Act of 1915 and section 176(1) of the Government of India Act of 1935. In 1947, when India was split into two Dominions, provision was made for the filing of suits by and against the Dominion of India and the same remedies were available against the Dominion of India as were available against the Secretary of State. The Constitution provided the last link in this chain of continuity.

So, it is seen that right from the btginning, a suit can be brought against the authority which

had at various times represented the Government of India or the Governments of the States (formerly Provinces).

The Government whether it represented the Government of India or the State Government occupied in the field of litigation the status of a juristic person. It was subject to the same rights and liabilities as an ordinary individual, corporation, company, etc. unless specific provision to the contrary was made in any special instance. The Government could be decree-holder and enjoy all the rights conferred upon a decree-holder under the Civil Procedure Code. It could be a judgment-debtor and be subject to the obligations to which any individual judgment-debtor would be subject. It could enter into contracts and enforce them in case the other contracting party was guilty of breach. If the Government was guilty of breach, the other contracting party could claim relief against it. Indeed, it has never been disputed that the Government has always been in a position to sue and be sued exactly as if it were a person. Whenever the Legislature wanted to exempt Government from some particular form of liability, it made specific provision for the occasion. Instance may be cited of section 90 of the Registration Act whereby certain documents executed by or in favour of Government were exempted from the provisions of the Registration Act. Section 2(a) and (b) of the Indian Easement Act and section 135 of the Indian Railways Act are other exceptions of a similar nature. Government buildings are exempt from the operation of the Rent Control Act. On the other hand, there is no such exemption from the provisions of the Court-fees Act. It will be seen that whenever any exemption from the operation of any statute was made in favour of Government it was so stated expressly

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Khosla, J.

in the statute. No such saving or exemption appears in the Debts Adjustment Act. Unless there is express provision for such exemption in the statute or unless exemption is a necessary or logical consequence of the phraseology used in the statute it will not be held that the State has no liability under the Act.

On the partition of India the Governor-General promulgated the Indian Independence (Rights, Property and Liabilities) Order, 1947. The object of this Order was to safeguard the interests of people who may have claims against the Government of India where these claims could not be enforced under the ordinary law. Where some contractual liability was incurred within the territory of the newly constituted State of Pakistan, it would be difficult to say whether a suit could be brought to enforce this liability against the Government of India. So, *inter alia*, a provision was made that where a contract was made on behalf of India or the Province of the Punjab and the contract was for purposes which as from 15th August, 1947, were exclusively the purposes of India or the Province of East Punjab, the contract must be deemed to have been made on behalf of India or the East Punjab as the case may happen to be. The object of the Order promulgated by the Governor-General was that certain types of claims which originated in that part of India which had become foreign territory should be enforceable against the Government of India. In other words, the Government of India assumed liability in respect of certain obligations incurred on behalf of the Government of united India. These claims could be enforced in ordinary Courts of law by persons who had migrated to India. Displaced persons also had claims against other displaced persons or non-displaced persons arising out of

transactions which had taken place in Pakistan. Suits to enforce these claims could not be brought in Courts of India under section 20 of the Civil Procedure Code. So the Displaced Persons (Institution of Suits) Ordinance was promulgated in 1948. This Ordinance provided that a displaced person could institute a suit in a Court within whose jurisdiction he resided or carried on business or personally worked for gain, provided the defendants were not displaced persons. Some relief was also given by extending the period of limitation. This Ordinance was followed a few months later by the Displaced Persons (Institution of Suits) Act, 1948. This contained only minor alterations and modifications of the terms of the Ordinance. The displaced person could bring a suit at a place where he resided provided the defendant was not a displaced person and resided or carried on business or personally worked for gain in India. Finally came the present Act No. LXX of 1951 which extended the provisions of the previous Ordinance and Act in certain respects and gave further relief to displaced persons. It provided that a displaced person could make an application against a debtor whether the debtor was a displaced person or not and the only requirement was that the debtor should be a person who ordinarily resides in the territories to which the Act extends.

The question arises whether the Legislature intended to exclude all State liabilities from the purview of this Act. The Government of India had been at pains to assume liability in respect of contractual obligations and some other obligations incurred at places which are not within the territory of India, and it seems inconceivable that after assuming this liability it should have destroyed the means whereby it could be enforced. The

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Khosla, J.

general view of the law has always been that while interpreting section 20, Civil Procedure Code, in reference to a suit against Government, the forum is the place where the cause of action arose, otherwise absurd consequences would follow because the Government may be said to reside or transact its business at all points of the country. The activities of the Government extend to every corner of the country and so a plaintiff could choose to bring a suit wherever his caprice led him. Under section 20 the suit must be brought in the Court within whose jurisdiction the cause of action arose or the defendant "actually and voluntarily resides or carries on business or personally works for gain". The plaintiff would not be deprived of his right to file a suit by holding that the Government does not reside or work for gain or carry on business, for he could always bring the suit at the place where the cause of action wholly or in part arose. Any other view would have led to chaotic results, but the partition of the country changed this state of affairs with respect to those suits of which the cause of action lay outside the territory of India. This meant that a person who had a claim against the Government could not bring a suit under section 20 of the Civil Procedure Code, for the cause of action lay in Pakistan and since persons who had claims against private individuals would be similarly affected, the Displaced Persons (Institution of Suits) Ordinance was promulgated. No express exemption with regard to claims against Government was made in this Ordinance, and it is reasonable to infer that a person who had a claim against the Government could take advantage of the provisions of the Ordinance. In all other statutes wherever the word "person" appears it has always been taken to include the Government as well as a company, or association, or body of in-

individuals, whether incorporated or not (*vide* section 3(42) of the General Clauses Act). In the subsequent enactments dealing with the institution of suits by displaced persons also no express saving in favour of Government was made, and there is no reason to believe that the Legislature intended to annihilate the liability of the State which had been so carefully assumed in 1947.

Let us now examine the definition of "debt" as given in section 2(6)(c). A creditor can make an application under section 13 if the debt is due to him from any other person (whether a displaced person or not) ordinarily residing in the territories to which this Act extends. The first point to consider is whether the word "person" does not include "State". I have already shown that in all other statutes the word "person" has been understood to include a State, and as there is no express saving in favour of Government, here too, the word "person" must be deemed to include the State. The second argument of the learned Deputy Advocate-General was that the word "person" is qualified by the phrase "ordinarily residing in the territories to which this Act extends" and since the State is not capable of residing anywhere an application against the State under section 13 is not competent. If this argument is valid, then clause (c) may be expanded to read as follows :—

> "is due to a displaced person from any other person (whether that person has been displaced or not) provided always that he is capable of residing in the ordanarily understood meaning of that word and provided also that he is actually residing in the territories to which this Act extends."

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Khosla, J.

We see, however, that the word "person" includes "any company or association or body of individuals" and a person whether he is real or juristic is capable of residing or transacting business at a particular place. It will not be denied that if the debtor is such a juristic person having his office or place of business in India, an application under section 13 can be brought against him. The object of the adjectival clause which follows the bracket is to limit the category of debtors to those who are not residing outside India. For instance, a foreigner who is a casual visitor to India cannot be deemed to be a person who ordinarily resides in this country, and clearly, if a debt is due from him, no application against him under section 13 would be competent. To argue that because the State of Punjab or the Government of India is not capable of residing (and Courts of law have taken the view that they are not capable of residing with reference to section 20 of the Civil Procedure Code). would be to defeat the objects of the Displaced Persons (Debts Adjustment) Act, for it would deprive the displaced persons of all remedies in respect of their claims against the State Government and this clearly was not the intention of the Legislature. To hold that the State Government is capable of residing in all parts of India would not lead to absurd results because the creditor will have to bring the suit at the place where he resides. Therefore, in a suit against the Government in which the cause of action arose in Pakistan the creditor will have to go to a Court within the jurisdiction of which he himself resides. It would be unreasonable to hold that because the Punjab State or the Government of India cannot reside in the way a man or a woman can reside, the debt due from it is not a debt at all.

Our attention was drawn to a number of ruling in which it has been held that the Government does not reside or carry on busines anywhere. The earliest of these is *Doya Narain Tewary* v. *The Secretary of State for India in Council* (1). It was held in this case that a suit against the Secretary of State for India was not a suit against a person who was capable of carrying on business, dwelling or personally working for gain anywhere and that in order to determine the forum for a suit against the Secretary of State the place where the cause of action arose was the relevant factor. *Rodricks* v.*Secretary of State for India* (2), was a case which merely followed the decision of the earlier case cited above. In this case, too, the cause of action arose outside the civil jurisdiction of the Court in which the suit against the Secretary of State was instituted and it was held that since the Secretary of State for India in Council did not dwell or carry on business or personally work for gain within the local limits of Calcutta, although Calcutta was the Capital of India at that time, a suit could be instituted in the Calcutta Court. The suit could, undoubtedly, be instituted in a Court within the local jurisdiction of which the cause of action arose. *The Dominion of India* v. *R. C. K. C. Nath and Co.* (3), is another exactly similar case. *Govindarajulu Naidu* v. *Secretary of State* (4), rose out of simliar circumstances. *Bata Shoe Co., Ltd.*, v. *Union of India* (5), was also a case of the same type. In this case goods were sent from the Agra Fort to Bikaner by the B.B. & C.I. Railway. The entire consignment was damaged and a suit to recover the value of the goods short-delivered was instituted in the Court of Small Causes at Bombay on the ground that the head

(1) I.L.R. 14 Cal. 256
(2) I.L.R. 40 Cal. 308
(3) A.I.R. 1950 Cal. 207
(4) A.I.R. 1927 Mad. 689
(5) A.I.R. 1954 Bom. 129

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Khosla, J.

office of the B.B. & C.I. Railway was located at Bombay. The cause of action arose outside the jurisdiction of the Court of Small Causes, Bombay and it was held that the Union of India representing the B.B. & C.I. Railway could not be said to carry on business within the meaning of section 18(b) of the Presidency Small Cause Courts Act. The plaintiff, therefore, should have instituted the suit at the place where the cause of action wholly or in part arose. *Calcutta Motor Cycle Co.* v. *Union of India* (1), was another case in which it was held that the Union of India could not be said to carry on business anywhere and so the suit against the Union of India must be brought at the place where the cause of action arose. In all these cases the plaintiff was not being non-suited because he had a perfectly good remedy and could go to the place where the cause of action arose. To allow him to file the suit on the basis that the Union of India resided everywhere in India would be to give indulgence to his caprice and such a view might lead to absurd or even chaotic results. It seems to me that the weight of these rulings must have overwhelmed the Judges when they came to consider the provisions of the Debts Adjustment Act. A Division Bench consisting of Chagla, C.J., and Desai, J., in *Lachmandas H. Advani and another* v. *Union of India* (2), took the view that where a displaced person made an application under section 13 against the Union of India claiming from the latter a sum of money being the sum paid by him in respect of a contract entered into with the Punjab Government before partition and for damages for breach of contract, the application was not maintainable because the Union of India could not be said to reside in the

(1) A.I.R. 1953 Cal. 1
(2) A.I.R. 1956 Bom. 43

territories to which the Act extends as contemplated by the definition of "debt" in section 2(6)(c). Chagla, C.J., while discussing the matter, referred to a number of previous Bombay decisions in which the provisions of section 20, Civil Procedure Code, and clause 12 of the Letters Patent were considered. The learned Judge observes in paragraph 8 of the report.—

> "The language of section 13 also seems to lend support to the view that we have formed that it was not the intention of the Legislature to permit displaced persons to recover their debts from the Union of India by the special machinery set up under the Act. Section 13 deals with jurisdiction and the application under that section is to be made to the Tribunal within the local limits of whose jurisdiction the displaced person or the respondent or, if there are more respondents than one, any of such respondents actually and voluntarily resides or carries on business or personally works for gain, together with a statement of the debt owing to him with full particulars thereof."

Looking at section 13 in the way section 20, Civil Procedure Code, was interpreted, all that can be said is that the suit cannot be brought at a place chosen capriciously by the creditor but must be brought at the place where he himself resides. With great respect to Chagla, C.J., I find myself unable to subscribe to the view that the debts due from the Union of India, were, by implication and necessary intendment, excluded from the ambit of section 13, nor am I persuaded that definition of "debt" given in section 2(6)(c) is to be so

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Kharla, J.

narrowly interpreted as to exclude from it money due from a debtor who is not capable of residing like an ordinary individual. *Lakhmi Chand* v. *Punjab State* (1), was a case in which a claim was made by a displaced person against the Punjab State. The matter came up before a Division Bench consisting of my Lord the Chief Justice and myself and it was held (a) that the Punajb Government was not capable of carrying on busines or personally working for gain and (b) that the liability in question was not the liability of the Punjab Government under the Indian Independence (Rights, Property and Liabilities) Order, 1947, and therefore, the plaintiff could not maintain his claim. In coming to the conclusion (a) the Chief Justice relied on the previous decisions to which I have already made a reference including the early Calcutta case, *Doya Narain Tewary* v. *The Secretary of State for India in Council* (2). In this case there were two grounds upon which the plaintiff could be non-suited. In my view, the first ground relating to the non-maintainability of the suit on the ground that the Punjab State could not be said to carry on business anywhere was erroneous. There is another Division Bench unreported ruling of this Court in *Amar Nath Issar* v. *Union of India and another* (3), in which the same view was taken. This decision too, was based on the large number of previous rulings referred to above. The learned Judges did not take into consideration the fact that in all those previous cases where it was held that the Secretary of State for India or the Union of India could not be said to reside anywhere the plaintiff had a perfectly good remedy open to him by going to the place where the cause of action arose. He,

(1) 56 P.L.R. 139
(2) I.L.R. 14 Cal. 256
(3) F.A.O. 40—D of 1954

however, did not choose to pursue this remedy. In the present case we are not interpreting section 20 but another section which is not exactly analogous to section 20. The result of holding that a State Government or the Union of India does not reside anywhere would be that the plaintiff is completely non-suited and is deprived of his remedy against the Government. This obviously was not the intention of the Legislature, because the original Ordinance of 1948, and the two subsequent statutes were intended to give relief to displaced persons and not to divest them of their claims against the State. There is one decision of a Single Bench of the Patna High Court in which a contrary view was taken. In *State of Punjab* v. *Mangal Singh Nagpal* (1), Sinha, J., held that the expression "any other person" occurring in section 13 of the Displaced Persons (Debts Adjustment) Act covers the State of Punjab. The judgment does not contain a very full discussion of the matter, but I find myself in agreement with the conclusion that an application against the State Government under section 13 of the Act is maintainable. I may also refer to a decision of Kapur, J., in *Nagi Brothers* v. *Dominion of India* (2), in which it was held that the Dominion of India could not be said to carry on business anywhere. This case followed the previous Calcutta decisions to which a reference has already been made.

Upon a consideration of the cases to which a reference has been made by me it appears that in all those cases in which the Union of India or a State Government was held to be not capable of residing anywhere, it was the provisions of section 20, Civil Procedure Code, which were being considered. The plaintiff had, in all those cases, the right to bring a suit at the place where the cause

(1) A.I.R. 1956 Pat. 91
(2) A.I.R. 1951 Punj. 92

The State of Punjab
v.
The Okara Grain Buyers Syndicate Limited and another

G. D. Kharla, J.

of action arose. He, however, chose to go elsewhere by saying that the Union of India was living at that latter place. The Courts correctly took the view that the plaintiff could not choose his forum in a capricious and arbitrary manner by merely saying that the Union of India was an all-pervading ubiquitous person. In the case before us the emphasis is not on where the Union of India resides but that the Union of India is subject to the territorial jurisdiction of the Debts Adjustment Tribunal. That seems to me the real meaning of section 2(6)(c). If a debt is due from a person who oridinarily lives in India, which means who is ordinarily subject to the territorial jurisdiction of Courts in India, then the displaced creditor can maintain an application against him under section 13. It cannot be denied that the Union of India is subject to the territorial jurisdiction of Courts in India, and that being so, the Courts in India have jurisdiction to entertain an application under section 13. A "debt" is a debt which is due to a displaced person provided the debtor, whether he is real or juristic person, is subject to the territorial jurisdiction of Indian Courts. It seems to me that this is the only condition which must be satisfied. We cannot restrict the meaning of clause (c) to exclude juristic persons incapable of residing at any place, otherwise we should have to exclude everybody except a human being. This clearly was not the intention of the Legislature. Had the Legislature intended to exclude debts due from Government, it could have expressed its intention simply and effectively by adding a short saving clause as has been done in other statutes where a special exception in favour of Government was sought to be made.

I would, therefore, hold that an application under section 13 against the State of Punjab is

maintable. The decision of this Court in *Lakhmi Chand* v. *Punjab State* (1), and *Amar Nath Issar* v. *Union of India and another* (2), would be considered as having been overruled.

DULAT, J.—I agree. Dulat, J.

R. P. KHOSLA, J.—I agree. R. P. Khosla, J.

B.R.T.