complaint for non-appearance of the complainant is wrong as it is the duty of the Magistrate in the interest of the general public to see whether an offence has been committed and to punish it if he thinks that the accused is guilty."

Similar observations were made in *Emperor* v. *Nazo alias Ali Nawaz* (15), which read as follows :—

"The acquittal of the accused under section 259 after the charge has been framed on the ground of the complainant's absence is wrong because section 259 does not provide for an acquittal of an accused person in the absence of the complainant but for his discharge, and such order of discharge can only be made at a time before a charge in the case has been framed. When the charge has been framed, the absence of the complainant can have no effect and the Magistrate is bound to proceed to dispose of the case on its merits."

Due to all reasons stated above, it is held that the learned Magistrate had no jurisdiction to pass the impugned order. This revision petition, therefore, fails and is dismissed.

R. P. KHOSLA, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

TULSI DASS AND OTHERS,—*Petitioners.*

versus

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

Civil Writ No. 54 of 1966

October 31, 1966.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 25(2)—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 67-A—Applicability of—Whether applies to transfer of proprietary rights in

(15) A.I.R. 1943 Sind. 148.

lands allotted under S. 10 by Punjab and Pepsu Governments—Grant of relief under—When can be granted—Deficiency in allotment due to clerical or arithmetical error—Whether can be made good without any limitation of time.

Held, that rule 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, has no application to the case of transfer of proprietary rights in land which had been allotted by the Punjab Government and the Pepsu Government under section 10 of the Act on quasi-permanent basis.

Held, that rule 67-A of the Displaced Persons (Compensation and Rehabilitation) Rules is intended principally to apply to cases where claimants, subsequently acquire proof of additional land left behind in Pakistan or whose claims are not fully satisfied for some reason other than an arithmetical or clerical error. Grant of relief under the purview of this rule is not barred by any provision of law. It is only the remedy in the hands of displaced persons to apply for making up deficiency under that rule which has been limited up to a particular date. This only means that in such a case to which that rule applies the affected displaced person could not ask the Rehabilitation authorities to re-open the matter and to recalculate the figures of his claim after the time prescribed in the rule.

Held, that deficiency in the allotment due to some clerical or arithmetical error can be rectified only under section 25(2) of Displaced Persons (Compensation and Rehabilitation) Act. Instead of laying down any period of limitation for seeking relief under that provision, it is clearly stated therein that such errors can be corrected by the competent authorities 'at any time'. An aggrieved person is entitled as a matter of right to request the Rehabilitation authorities to rectify the error in exercise of their powers under sub-section (2) of section 25 and to grant consequential relief to him, without any bar of time.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the impugned orders of respondents Nos.* 1, 2 *and* 3, *dated* 21*st October,* 1965, 12*th August,* 1965 *and* 21*st April,* 1965.

H. S. Wasu, Advocate, for the Petitioners.

N. S. Bhatia, Advocate, for the Respondents.

ORDER

Narula, J.—Godha Ram, father of the present petitioners, was a displaced person from West Pakistan who had left behind agricultural land there. In lieu of the same he was allotted 75-15 S. A. of land in two villages, namely, Alike in district Hissar and Nagar in district Rohtak. After the original allotment by the Custodian, which ripened into quasi-permanent allotment under section 10 of

the Displaced Persons (Compensation and Rehabilitation) Act, 44 of 1954 (hereinafter called the Act), the proprietary rights therein were also transferred to Godha Ram. After the death of Godha Ram a notice dated November 5, 1964 (Annexure 'A') was issued in the name of the deceased to appear before the Assistant Registrar, Jullundur, on November 17, 1964, along with his evidence for making a statement as to why the excess area of land allotted to him should not be cancelled from his permanent allotment as it has been noticed from the record that Godha Ram's permanent allotment in lieu of the area left behind by him in Pakistan was either partially or wholly in excess. The notice was served on the petitioners who appeared before the Assistant Registrar at the appointed time. There was no dispute about the area left behind by Godha Ram in village Arawan, tehsil Mailsi, in West Pakistan and all that was required to be done was to check up calculations. On checking up the same it was found that the petitioners were in fact entitled to 78-7½ S.A. of land as against only 75-15 S. A. already allotted to them. Despite the requests of the petitioners the Assistant Registrar did not make up the deficiency of 2-8½ S.A. in the permanent allotment of their land. The Assistant Registrar in his order (Annexure 'B') confirmed the mistake in question, but held that in the circumstances of the case no further action was called for. Not satisfied with the said order the petitioners went up in appeal to the Assistant Settlement Commissioner who dismissed the same by his order dated August 12, 1965 (Annexure 'C') on the solitary ground that the deficiency could not be made up because the petitioners had not applied for the same before 31st December, 1963. Further revision petition filed by the petitioners against the appellate order was dismissed by Shri J. M. Tandon, Chief Settlement Commissioner, Punjab, on October 21, 1965 (Annexure 'D') on the same ground. It is in the above-mentioned circumstances that the present writ petition was filed on January 6, 1966, praying for a writ in the nature of *certiorari* to quash the impugned orders mentioned above and for the issue of further suitable writs, orders or directions.

The writ petition has been contested on behalf of the respondents who have filed a written statement, dated 13th September, 1966, wherein it has been contended that additional area could not in fact have been allotted to the petitioners' father unless he had made an application for the same before December 31, 1963. The above narrative leaves no doubt about the facts of the case. It is admitted case of both sides that the petitioners were in fact entitled to get 78-7½ S. A. of land and have got 2-8½ S. A. less than their entitlement.

The only question of law which calls for decision in this case is whether the petitioners have disentitled themselves to obtain the land to which they were admittedly entitled merely because they had not made any application for allotment before 31st December, 1963. This limitation of time has been imposed by the first proviso to Rule 67-A of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (hereinafter called the Rules) added by the Central Government (Ministry of Rehabilitation) Notification, dated 24th September, 1965, published in the Gazette of India, Part II, section 3 (i), dated October 12, 1965. The said rule as amended by the said notification reads as follows :—

> "Notwithstanding anything contained in this Chapter, a displaced person from West Punjab or a displaced person who was originally domiciled in the undivided Punjab, but who before the partition of India had settled in North-West Frontier Province, Baluchistan, Bahawalpur or Sind, whose verified claim in respect of agricultural land has not been satisfied or has been satisfied only partially by the allotment of evacuee land under the relevant notification specified in section 10 of the Act shall not be paid compensation in any form other than the transfer of acquired evacuee agricultural land and rural houses and sites in the State of Punjab or Patiala and East Punjab States Union in accordance with the scales specified in the quasi-permanent allotment scheme operating in those States:
>
> Provided that the displaced person applies for payment of compensation in such form not later than the 31st day of December, 1963:
>
> Provided further that if any person has been allotted land in a State other than Punjab and his land claim has not been satisfied fully, he may, for the remaining claim, either be allotted land due to him in that State or issued a Statement of Account which he may utilise for purpose of property forming part of the compensation pool or for adjustment of public dues."

There does not appear to be any doubt in the fact that if the case of the petitioners' father is covered by rule 67-A and if he were to make an application for payment of compensation he had to do so before the 31st day of December, 1963, failing which he could make

no such application. This gives rise to two further questions, namely, (i) whether Chapter VIII of the Rules (which contains Rules 49 to 69) applies to the facts of this case at all or not; and (ii) if the answer to the first question is in the affirmative whether the claim of the petitioners can be equated to an application for grant of compensation.

Special procedure for payment of compensation in certain cases has been provided by section 10 of the Act. The category of cases covered by the said provision relates to payment of compensation to a displaced person to whom immovable property had been leased or allotted by the Custodian under the conditions published in the respective notifications which had been issued in that behalf by the Punjab Government on the 8th of July, 1949 and by the Pepsu Government on the 23rd of July, 1949. It is the admitted case of both sides that the original allotment of land to the father of the petitioners had been made by the Custodian of Evacuee Property in pursuance of the Punjab Government's notification, dated 8th July, 1949, referred to in clause (a) of section 10 of the Act and that the said land was subsequently acquired by the Central Government under the Act and formed part of the compensation pool. Detailed procedure for payment of compensation for agricultural land left behind by a displaced person in Pakistan to whom allotment of land had been made under section 10 of the Act has been laid down in Chapter X of the Rules commencing from Rule 71 and ending with Rule 76. Rule 67-A does not occur in Chapter X but in Chapter VIII of the Rules. Chapter VIII deals with payment of compensation in respect of verified claims for agricultural lands situated in a rural area. It is nobody's case that instead of giving land on temporary basis and subsequently on quasi-permanent basis to the father of the petitioners he was merely given verified claim in respect of the lands left behind by him in Pakistan.. Chapter VIII does not, therefore, seem to have any application to the case of transfer of proprietary rights in land which had been allotted by the Punjab Government and the Pepsu Government under section 10 of the Act on quasi-permanent basis. Rule 69, which is the last rule in Chapter VIII, seems to make this position still clearer. The said rule is as follows:—

> Nothing in this Chapter shall apply to agricultural land allotted in the States of Punjab and Patiala and East Punjab States Union under section 10 of the Act."

Once it is conceded that agricultural land in question had been allotted to the father of the petitioners in Punjab under section 10 of the Act, it is clear that the said land and its allotment are saved from the operation of all the provisions in Chapter VIII by the force of the

express mandate contained in Rule 69. The entire approach of the Rehabilitation authorities to the question raised by the petitioners appears to have been misconceived as neither the purview not the proviso to Rule 67-A has any application to the claim of the petitioners. All that was required by the petitioners was to correct the calculation according to which their entitlement under section 10 of the Act had been determined and to make up the resultant deficiency. This is not the kind of deficiency envisaged by Rule 67-A. The solitary ground on which the right to which they have been found to be entitled has been refused to them is obviously non-existent in law and this is enough to justify the setting aside of the impugned orders and for directing the respondents to pass appropriate orders in accordance with the relevant provisions of the Act and the Rules.

On the second question, the argument of Mr. H. S. Wasu, the learned Senior Counsel for the petitioners, is that not only does Rule 67-A not apply to the facts of this case but it is the provision of section 25 (2) which has in fact been invoked by the petitioners. Section 25 (2) of the Act reads as follows:—

> "(2) Clerical or arithmetical mistakes in any order passed by an officer or authority under this Act or errors arising thereto from any accidental slip or omission may, at any time, be corrected by such officer or authority or the successor-in-office of such officer or authority."

On a perusal of all the impugned orders it is clear that the deficiency in the allotment of the petitioners' land was due to some Clerical or arithmetical error. That being so the relief in this respect can be claimed by the petitioners only under sub-section (2) of section 25 of the Act. Instead of laying down any period of limitation for seeking relief under that provision, it is clearly stated therein that such errors can be corrected by the competent authorities 'at any time'. The petitioners were, therefore, entitled as a matter of right to request the rehabilitation authorities to rectify the error in exercise of their powers under sub-section (2) of section 25 and to grant consequential relief to them, and this is precisely what they appear to have done. The error of law is apparent on the face of the impugned orders in so far as the relief to which the petitioners were found to be entitled has been denied to them, merely on the ground that it was supposed to be barred by time, which ground is clearly erroneous. Even if rule 67-A could be applicable to the petitioners, it merely laid down a limitation of time for making an application for payment of compensation. The

petitioners had made no such application. Grant of relief under the purview of rule 67-A is not barred by any provision of law. It is only the remedy in the hands of displaced persons to apply for making up deficiency under that rule which has been limited up to a particular date. This only means that in such a case to which that rule applies the affected displaced person could not ask the Rehabilitation authorities to re-open the matter and to recalculate the figures of his claim. This was, however, done in the instant case by the Department *suo motu*. Having arrived at the correct figure of the area of land to which the petitioners were entitled without any application having been made by the petitioners in that behalf, it was not open to the respondents to deny the just claim of the petitioners merely on the ground that they had not applied for it. It is only the remedy by way of application to have the amount of compensation refixed by settling some disputed questions or claiming an area not admittedly due, which is barred by the first proviso to Rule 67-A in cases to which that rule applies. The rule appears to be intended principally to apply to cases where claimants subsequently acquire proof of additional land left behind in Pakistan or whose claims are not fully satisfied for some reason other than an arithmetical or clerical error. To apply the rule to cases of such errors would bring it into conflict with section 25 (2) of the Act. Moreover, to place such a construction on the relevant provisions of the Act and the Rules, appears to me to be not only violative of the rule of law, but also directly opposed to the very object of the Act, i. e. to rehabilitate displaced persons and to compensate them for property left behind by them in Pakistan. It is settled principle of law that no one can be made to suffer for the mistake of the Court or the Department. If, therefore, the lawful rights of the petitioners had been denied to them due to the fault of the Department, there was no justification in continuing to deprive the petitioners of that right on a ground which is not valid in law.

For the foregoing reasons this writ petition is allowed, the impugned orders of the Assistant Registrar, dated 21st April, 1965, the Assistant Settlement Commissioner, dated 12th August, 1965, and the Chief Settlement Commissioner dated 21st October, 1965, holding the claim of the petitioners to be barred by time are set aside and the respondents are directed to make up the deficiency of 2-8½ S. A. found to exist in the land allotted to the petitioners in accordance with law. The petitioners will have their costs from respondent No. 1 in his official capacity.

K.S.K.