

the essential requirements of law but which failed to take into consideration an executive instruction issued by Government.

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v.
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and others

Bhandari, C. J.

After the case had been argued at length by the learned counsel for the parties, Mr. Doabia stated that the order passed by the learned Single Judge was not open to appeal under clause 10 of the Letters Patent as this order was passed under Article 227 of the Constitution and not under Article 226 thereof. This contention is in my opinion too flimsy to merit serious consideration. It is true that the application presented by Mr. Doabia's client was presented under Articles 226 and 227, but there is nothing in the order of the learned Single Judge to justify the assertion that the order was passed by him under Article 227. The order under appeal must in my opinion be deemed to have been passed under Article 226.

For those reasons I would accept the appeal, set aside the order of the learned Single Judge and direct that the petition be dismissed. I would order accordingly. There will be no order as to costs.

Tek Chand, J.—I agree.

Tek Chand, J.

APPELLATE CIVIL.

Before Bishan Narain and Chopra, JJ.

THE PUNJAB NATIONAL BANK, LTD.,—Appellant

versus

THE PUNJAB PROPERTY DEVELOPMENT COMPANY
K BLOCK, CONNAUGHT CIRCUS, NEW DELHI,
AND OTHERS,—Respondents.

F.A.O. No. 62-D of 1955

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 2(10)—Whether firm a displaced person

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within the meaning of section 2(10) of the Act.—Interpretation of statutes—Express exclusion of matters from the operative part of the section—Necessity of.

Held, that there is no acceptable reason why a firm should not be taken to have been intended to fall within the definition of a “displaced person” in section 2(10) of the Act. There appears to be no reason why the individuals, who may admittedly be displaced persons under the Act, should be deprived of the benefits of the provisions of the Act, if they had formed into a partnership. On the other hand, the intention of the Legislature to include a firm within that definition is sufficiently indicated by the definition itself. The concluding portion of the definition creates an express exception in the case of a banking company, which clearly means that other companies would be included in the definition. If a corporation were not to fall within the operative part of the section, no exception need have been made in the case of a banking company.

Held, that it is a familiar principle of construction that where you find in the same section express exceptions from the operative part of the section, it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary, as otherwise the subject-matter of the exceptions would have come within the operative provisions of the section.

Messrs Steel and General Mills Co., Ltd. v. General Accident, Fire and Life Assurance Corporation, Ltd. (1), followed, *Messrs. Pacca Arhtis Wheat Association, Chuharkana, Ltd., Delhi v. The Punjab National Bank, Ltd., Delhi, and others* (2), over-ruled. *Cesena Sulphur Co. v. Nicholson* (3), *Gasque v. Inland Revenue Commissioner* (4), *De Beers Consolidated Mines, Ltd. v. Howe* (5), *Fouad Bishara Jabbour v. State of Israel* (6), *Thorn v. Central R. Co.* (7), discussed.

(1) 54 P.L.R. 139

(2) 57 P.L.R. 246.

(3) (1876) 1 Ex. D. 428

(4) (1940) 2 K.B. 80

(5) (1906) A.C. 455

(6) (1954) 1 A.E.R. 145

(7) 26 N.J.L. (2 Dutch.) 122, 124

First Appeal from the order of Shri G. K. Bhatnagar, Special Tribunal, Delhi, dated the 27th January, 1955, holding that the respondent (Appellant in this case) Bank is entitled to take the course of action, as it is done in the case.

RADHEY LAL AGGARWAL, for Appellant.

HARDYAL HARDY, A. N. MONGA and C. R. MITTAL, for Respondents.

JUDGMENT

Chopra, J.—The short question referred to this Bench is whether the respondent, the Punjab Property Development Company, New Delhi, falls within the definition of “displaced person” given in section 2(10) of the Displaced Persons (Debts Adjustment) Act, No. 70 of 1951. The reference was made by my learned brother to the two conflicting Single Bench decisions of this Court in *Messrs Steel and General Mills Company Ltd. v. General Accident, Fire and Life Assurance Corporation, Ltd., and another* (1), and *Messrs Pacca Arhtis Wheat Association, Chuharkana, Ltd., Delhi v. The Punjab National Bank, Ltd., Delhi and others* (2).

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The Punjab Property Development Company is a partnership firm, constituted under an agreement dated the 20th April, 1944, of three limited concerns as its partners, namely, the Builders and Traders, Limited, Lahore, the Punjab Electrics, Limited, Lahore, and the All-India Finance and Commerce, Limited, Lahore. The firm and its partners were carrying on business in Lahore and their registered offices were also in Lahore. On account of the partition of the country in 1947, the firm and its three partners shifted their business and offices first to Jullundur and then to Delhi and

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(2) 57 P.L.R. 246

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got their offices registered accordingly. The firm owed a debt to the Punjab National Bank, Limited, the appellant, on the basis of a cash credit account opened with the Bank's Branch at Jullundur. The respondent firm presented an application under sections 5, 16 and 21 of the Displaced Persons (Debts Adjustment) Act, No. 70 of 1951 (hereinafter to be referred to as the Act) for adjustment of its debt as claimed by the Bank. The application was presented to the Tribunal, Delhi, constituted under the Act. One of the objections raised by the Bank was that the applicant firm could not be regarded as a "displaced person" and, therefore, the application was not competent. A preliminary issue on the point was framed by the Tribunal and it was decided in favour of the applicant. This is an appeal by the Bank. With the other points involved in the appeal we are not at present concerned.

Section 2(10) of the Act defines "displaced person" for the purposes of the Act thus—

"2(10). 'displaced person' means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has after the 1st day of March, 1947, left or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, but does not include a banking company."

It is not disputed that the firm as well as its three partners were carrying on business and held their registered office in Lahore (now within the territory of West Pakistan) and that after the particular date, on account of the civil disturbances, they shifted their business and offices first to Jullundur and then to Delhi (which form part of India) and are still carrying on business and having their offices there. The contention of Mr. Radhey Lal Aggarwal on behalf of the appellant is that the above definition of "displaced person" by its very nature can apply only to a natural person. Use of the phrases "has left, or been displaced from, his place of residence" and "who has been subsequently residing in India", it is urged, strongly leads to the inference that the residence contemplated is a human residence and it does not apply to a corporate body, which cannot be said to have a place of residence. It is further submitted that a partnership or a corporate body cannot think or act as a living person or have any "fear". It is therefore, contended that the respondent firm could not be regarded as a "displaced person" under the Act and could not derive the benefit of its provisions. To me the contention appears to be devoid of force.

According to section 3(42) of the General Clauses Act, 1897, the word "person", in all Central Acts, is to include any company or association or body of individuals whether incorporated or not. The question then is whether a company is capable of having a residence or of having a particular intention. Para 27 of Halsbury's Laws of England (Volume 9), *inter alia* says—

"A corporation does not in a natural sense reside anywhere, and questions as to its residence must be determined as nearly as possible upon the analogy of an individual. Where a corporation is by its

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constitution and functions linked to a particular locality, as for instance a borough council, it is no doubt to be regarded as resident there for all purposes."

Para 30 of the same volume further states—

"By analogy with an individual a corporation has the attribute of domicile. The place of incorporation fixes its domicile of origin, which clings to it throughout its existence."

Rule 68 of Dicey's 'Conflict of Laws' (Sixth Edition) relates to the jurisdiction of the Courts in a foreign country in an action in personam in respect of any cause of action. Dealing with the case of a corporation, the author at page 354 observes—

"In the case of a corporation *residence*, of course, involves 'some carrying on of business at a definite, and, to some reasonable extent, permanent place', and not the mere presence within the jurisdiction of the foreign Court of a representative of the corporation."

Mr. G. C. Cheshire in his valuable commentary on Private International Law (Third Edition) at page 244 says—

"A company is regarded by the law as resident in the country where the centre of control exists, i.e., where the seat and directing power of the affairs of the company are located. The place of incorporation is only one of the evidentiary facts to be considered in the course of ascertaining where the control resides. This test of control was laid

down by the Exchequer Division in *Cesena Sulphur Company v. Nicholson* (1), a decision which has been repeatedly approved and followed, and which cannot now be overruled."

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On the question of domicile, the author at page 252 refers to the decision in *Gasque v. Inland Revenue Commissioner* (2), and observes—

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"Every person, natural and artificial, acquires at birth a domicile of origin by operation of law. In the case of the natural person it is the domicile of his father, in the case of the juristic person it is the country in which it is born, i.e. in which it is incorporated."

In England it has never been doubted that a company is capable of having a "dwelling" or a place of residence. Reference to the dwelling or residence of a company is found to have been made in cases where the dispute was with respect to the actual place where a particular company could be regarded as having its residence or dwelling. Reasoning based on the analogy of a human being may appear to be somewhat forced or strained, but the analogy has generally been followed by the Courts in England. In *De Beers Consolidated Mines, Ltd. v. Howe* (3), Lord Loreburn in a well-known passage at page 458 says—

"In applying the conception of residence to a company we ought, I think, to proceed as nearly as we can on the analogy of an individual. A company cannot eat or

(1) (1876) 1 Ex. D. 428
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sleep but it can keep house and do business. We ought therefore to see where it really keeps house and does business. The decision of Kelley, C.B. and Huddleston, B. in the *Calcutta Jute Mills Co. v. Mills and Cesena Sulphur Company v. Nicholson* now thirty years ago, involves the principles that a company resides, for the purposes of income-tax, where its real business is carried on. These decisions have been acted on ever since. I regard that as the true rule; and the real business is carried on where the central management and control actually abide.”

In *Fouad Bishara Jabbour v. State of Israel* (1), the question for determination was where should the defendant company be taken to be residing. Pearson, J. at page 152 of his judgment, applying the general test, arrived at the following conclusion:—

“A corporation resides in a country if it carries on business there at a fixed place of business, and, in the case of an agency, the principal test to be applied in determining whether the corporation is carrying on business at the agency is to ascertain whether the agent has authority to enter into contracts on behalf of the corporation without submitting them to the corporation for approval.”

Dr. Fransworth at page 150 of his book “*The Residence and Domicile of Corporations* (1939 Edition)” says:—

“In the eye of English law, a corporation can have legal existence beyond the bounds

(1) (1954) 1 A.E.R. 145

of the country of its incorporation and can also be resident thereout with just the same legal consequences as would flow from the residence of an individual."

At page 151, the author gives the principle deducible from the English as well as American laws as regards the place of residence of a corporation as follows:—

"The principle that has been evolved in English Law—and as we shall see also in American law, though to a somewhat different degree and upon other lines—has been that if a foreign corporation is carrying on business in this country at a fixed place, either through its own officers or through agents who have authority to make binding contracts here for it, then such a corporation is 'resident', 'present', or 'found' here in such a way as to be able to be served with a writ and thereby to become amenable to the jurisdiction of the Courts of this country."

Referring to the American decisions on the point of residence or citizenship of a corporation, Mr. Seymour D. Thompson in his "Commentaries on the Law of Corporations" at page 565 of Vol. 1 (Third Edition) says:—

"A corporation is regarded as a citizen of a particular state or country, and a resident of a particular part of a state, for many purposes. The first and prime rule is that a corporation is a resident, or has its legal domicile in the state or country by and under whose laws it was organized."

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In *Thorn v. Central R. Company* (1), it was
observed:—

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“For the purpose of laying the venue, the principal office or place of business of a corporation is technically the place of ‘residence’ of the corporation. Ordinarily its books are there, and its directors and executive officers meet and transact its business there. Its residence may certainly be with more propriety said to be there than at any other place.”

In *Iron and Hardware (India) Company v. Firm Shamlal and Brothers* (2), an application for recovery of damages on the breach of a contract was brought by a firm under section 13 of the Act. The argument put forth was that it would be impossible to suggest that a firm can reside in the sense in which that word is used in the definition of a “displaced person” in section 2(10) of the Act. Chagla, C.J., refuted the contention saying—

“In my opinion it is clear that there is no such legal entity as a firm. A firm is merely a compendious way of describing certain number of persons who carry on business as partners in a particular name, but in law and in the eye of the law the firm really consists of the individual partners who go to constitute that firm. Therefore, the persons before the tribunal are the individual partners of the firm and not a legal entity consisting of the firm. Therefore, if the individual partners of the firm satisfy the definition of ‘displaced person’ given in the Act, I see no reason

(1) 26 N.J.L. (2 Dutch.) 121, 124
(2) A.I.R. 1954 Bom. 423

why such an application cannot be maintained, and as I said before, it is not disputed that all the partners of this firm satisfied the definition of 'displaced person'."

In Steel and General Mills Company, Ltd. v. General Accident, Fire and Life Assurance Corporation, Ltd., and another (1), an identical definition of "displaced person" in section 3 of the Displaced Persons (Institution of Suits) Act, No. 47 of 1948, came up for consideration before Soni, J. and the question for determination was whether the plaintiff company could be regarded as a "displaced person" under that Act. After a detailed discussion of the English as well as the Indian decisions, the learned Judge arrived at the conclusion that "it is not correct to say that the phrase 'displaced person' refers only to natural persons and not to artificial persons", like a company. The learned Judge in the course of his judgment refers to an unreported case (C.O. No. 91 of 1949) decided by the then Chief Justice in which a similar view was taken. I am in respectful agreement with this view.

In my opinion, there is no acceptable reason why a firm should not be taken to have been intended to fall within the definition of a "displaced person" in section 2(10) of the Act. There appears to be no reason why the individuals, who may admittedly be displaced persons under the Act, should be deprived of the benefits of the provisions of the Act, if they had formed into a partnership. On the other hand, the intention of the Legislature to include a firm within that definition is sufficiently indicated by the definition itself. The concluding portion of the definition creates an ex-

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press exception in the case of a banking company, which clearly means that other companies would be included in the definition. It is a familiar principle of construction that where you find in the same section express exceptions from the operative part of the section, it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary, as otherwise the subject-matter of the exceptions would have come within the operative provisions of the section. If a corporation were not to fall within the operative part of the section, no exception need have been made in the case of a banking company.

Reliance on behalf of the appellant is being placed on *Govindrajulu Naidu v. Secretary of State* (1) and *R. J. Wyllie and Co. v. Secretary of State* (2). But these were cases in which the Secretary of State for India in Council was impleaded as a defendant and it was held that Government could not be regarded as "residing" or "carrying on business" for the purposes of section 19 or 20, Civil Procedure Code. Evidently, the observation regarding limited companies was obiter in the former case and the same was simply repeated by Hilton, J. in the Lahore case.

A contrary view was taken by Kapur, J. in *Messrs Pacca Arhtis Wheat Association, Chuhan-kana, Limited, Delhi v. The Punjab National Bank, Limited, Delhi and others* (3). This was a similar case under the Displaced Persons (Debts Adjustment) Act, wherein it was held that a person means a living person and not a juristic person such as a corporation, and that a displaced person as

(1) A.I.R. 1927 Mad. 689

(2) A.I.R. 1930 Lah. 818

(3) 57 P.L.R. 246

defined by section 2(10) of the Act means a living person and not a juristic person. The first of these observations is based upon an 'accepted view' of the Court, but no reference to any particular decision has been made. Mr. Radhey Lal Aggarwal has expressed his inability to lay his hands on any authority in support of that view, except the judgment of Hilton, J., in *R. J. Wyllie and Company v. Secretary of State* (1). As already observed, that was a case in which the question for determination was whether the Government could be regarded as residing or carrying on business within the jurisdiction of the Court in which the action was tried, so as to attract the provisions of section 20, Civil Procedure Code. The observation with respect to the application of the rule to a corporation was not based upon any discussion of the matter and was simply obiter. Moreover, to hold it as a general rule that the word "person" used in any statute means only a living person and not a juristic person, such as a corporation, would be contrary to what is laid down in section 3(42) of the General Clauses Act. On a reference to the definition of a "displaced person" in section 2(10) of the Act, the learned Judge observes—

"Now it is only a living person who on account of civil disturbances or fear can be displaced from his place of residence. As a matter of fact residence must be taken to point to something living and not a juristic person like a company, because a company does not reside excepting when it is so specifically stated in a statute."

For the reasons already stated, with very great respect, I am unable to subscribe to this view. A corporation is nothing more than a compendious

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way of describing the persons who carry on business in partnership in that name. The "intention" or "fear" of the members of a corporation would be the intention or fear of the corporation. On the same analogy a corporation is capable of having a residence or a dwelling.

I would, therefore, answer the question in the affirmative and hold that the respondent company can be regarded as a "displaced person" under section 2(10) of the Act. No order is made as to costs.

Bishan Narain, J.

Bishan Narain, J.—I agree.

SUPREME COURT.

Before N. H. Bhagwati, B. Jagannadhadas, Syed Jafar
Imam, P. Govinda Menon and J. L. Kapur, JJ.

SHRI SOHAN LAL,—Appellant.

versus

THE UNION OF INDIA AND ANOTHER,—Respondents.

Civil Appeal No. 132 of 1954.

1957

March, 7th

Constitution of India—Article 226—Mandamus—Mandamus against private individual—Whether can issue—Person illegally evicted from premises by the Union Government—Possession given to another person—Bona fide possession of such person without any knowledge that another person had been illegally evicted therefrom—Whether Mandamus can issue against such person—Public Premises (Eviction) Act 1950—Section 3—Rival claims to property, whether can be enquired into under Article 226 of the Constitution.

Held, that where a person is evicted from premises by the Union of India in contravention of the provisions of section 3 of the Public Premises (Eviction) Act, 1950, a writ of mandamus can issue to or an order in the nature of mandamus can be made against the Union of India to restore