

P L D 1963 (W. P.) Lahore 548

*Before Manzur Qadir, C. J., Muhammad Yaqub Ali,
Inamullah Khan, Wahiduddin Ahmed, Muhammad
Daud Khan and Sardar Muhammad Iqbal, JJ*

Syed HAIDER SHAH—Petitioner

versus

MUKHTAR HUSSAIN SHAH AND OTHERS—
Respondents

*Haider Shah
v.*

*Mukhtar
Hussain
Shah*

*Manzur
Qadir, C J,
Muhammad
Yaqub Ali,
Inamullah,
Wahiduddin
Ahmad,
Muhammad
Daud Khan
and Sardar
Muhammad
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Full Bench Reference in Writ Petition No. 880/R of 1962,
decided on 25th July 1963.

*Displaced Persons (Compensation and Rehabilitation) Act
(XXVIII of 1958), S. 2 (3)—“Displaced person”—Definition—
Amplification — Includes person having permanent residence or
continuous habitation in Indian Dominion with no immediate
intention of leaving same but for reasons mentioned in S. 2 (3)—
Words and phrases—“Residence”—“Reside” — Dictionary mean-
ing—Interpretation of Statutes—Preamble—Resort to, as showing
object and intent of Legislature — “Domicile” — “Residence” —
Distinction—“Two residences” of same person.*

*Held, per Inamullah, J., (Manzur Qadir, C. J., Muhammad
Yaqub Ali, Wahiduddin Ahmed and Muhammad Daud Khan, JJ.
agreeing).—In keeping with the dictionary meaning of the word
residence and also with the object and intent of the Legislature
under the Act (as appearing from the Preamble) a person in order
to qualify himself as a displaced person must have had a perma-
nent residence or such continuous habitation in that part of
British India which now forms India with no immediate inten-
tion of leaving the same but for the reasons given in the defini-
tion of the term displaced person. There is no difficulty in the
case of those who had their residence only in that part of
British India which now forms India but difficulty arises in the
case of persons who have their permanent residences in that
part of British India which now forms part of Pakistan. In their
case it would be a question of fact to be decided in the
circumstances and light of each case whether the residence of
these persons in that part of British India which now forms
part of India was of such a character and nature that they would
not have abandoned the same but for the civil disturbances or
the fear of such disturbances in that area. [p. 566]A*

*There is no contradistinction in the interpretation put by the
learned Judges in the two cases, namely, Mahboob Elahi and
others and that of Mrs. Keays Byrne. The difference is only in
the language but the principle laid down is the same.
[p. 559]B*

*Mahboob Elahi v. The Chief Settlement Commissioner,
Pakistan P L D 1963 Lah. 214 ; Mrs. Keays Byrne v. The Settle-
ment Commissioner and others P L D 1963 Lah. 88 and Imdadali
Malik v. The Settlement Commissioner, Lahore P L D 1962 Lah.
502 ref.*

*In the Shorter Oxford English Dictionary which is recognised
as a leading authority on the meaning of the words in the*

English language the word *reside* means "to settle", "to take up one's abode or situation", to dwell permanently or for a considerable time", "to have one's settled or usual abode", "to live in or at a particular place". The meaning of the word '*residence*' is given as : "to have one's usual dwelling place or abode", "the circumstance or fact of having one's permanent or usual abode in or in a certain place", "the place where a person resides", "his dwelling place". These are some of the meanings which are given in the Shorter English Dictionary. The meaning of the word *reside* from which residence is taken would indicate that one of the meanings of residence is permanent dwelling place or where a person lives for a considerable time. [p. 562]BB

The difficulty is whether "residence" occurring in the term "displaced person" means permanent, quasi-permanent or temporary residence or excludes temporary residence. [p. 562]C

The difficulty can be resolved by construing the word in accordance with the object and intent of the Act. [p. 562]D

The Preamble of a statute has been said to be a good means to find out its intent. [p. 563]E

It would appear from the Preamble of the Act that the intention of the Legislature was to provide for payment of compensation to displaced persons and to rehabilitate them; in other words, to compensate and rehabilitate the up-rooted persons from that part of British India which now forms part of India. It is clear that the person contemplated must have left or been displaced from his place of abode so as to need compensation or rehabilitation. The necessity to compensate and rehabilitate will arise only in the case of those who have left a permanent residence or semi-permanent abode. The question of compensation or rehabilitation would not arise in the case of a person who was on a casual or temporary visit to that part of British India which now forms India. The object under the Act being to provide payment of compensation to displaced persons for the losses suffered by them on account of expropriation by the Government of India of their rights and property in India, the persons who were on a temporary visit can hardly be said to need compensation or rehabilitation. The intention and the object of the Legislature would not be compatible with the construction of the word residence so as to include temporary residence in that part of British India which now forms India. [p. 563]F

Ex Parte Breull, In re Bowie 16 Ch. D 484; *Ford v. Drew* 5 C. P. D. 59; *Lewis v. Graham* 20 Q B D 780; *Madho Pershad v. A. L. Walton* 18 C. W. N. 1050; *Muhammad Shuffi v. Laldin Abdulla* I L R 3 Bom. 227 and *Maxwell* : "Interpretation of Statutes", 11th Ed. ref.

There is a clear distinction between the two words ("domicile" and "residence"); while a person may have two or three places of residence he will have only one place as his domicile. [p. 565]G

The word residence may be used in two senses, the one denoting the personal habitual habitation, the other the construc-

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tive, technical and legal habitation. When a person has a fixed abode where he dwells with his family, there can be no doubt as to the place where he resides; the places of his personal and legal residence are the same. When, on the other hand, a person has no permanent habitation or family, but dwells in different places as he happens to find employment, there can equally be no doubt as to the place where he resides; he must be considered as residing where he actually or personally resides. But some individuals have permanent habitations, where their families constantly dwell, yet they pass great portions of their time in other places; such persons have a legal residence with their families and a personal residence in the other places, and the word "reside" may, with respect to such persons, be used in relation to either their personal or their legal residence. From this point of view, it is manifest that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion; what may be said to be the place of personal residence during one portion of the year thus becomes the place of legal residence during the remainder of the year and vice versa. [p. 564]H

Walcot v. Botfield 101 R R 719; *Sophia Orde and another v. Alexander Skinner* I L R 3 All. 91 and *Srinivasa v. Venkata* I L R 34 Mad. 257 ref.

S. M. Zafar with Muhammad Sadiq, Raja Abdur Razaq and Istikhar Ali Sheikh for Petitioner.

Raja Muhammad Anwar with Abdul Majid Sheikh for Respondents Nos. 1 to 3.

Major Ishaq Muhammad Khan, Settlement Commissioner (Legal) for the Rest.

Dates of hearing: 2nd April 1963 (before S.B.) 20th and 27th February 1963.

ORDER OF REFERENCE

SARDAR MUHAMMAD IQBAL, J.—The dispute relates to House No. S.W. III-90-S-5, situate at Guru Teg Bahadur Road, Lahore, which was in possession of three persons, namely, Muhammad Din, Syed Jafar Husain Shah deceased and Syed Haider Shah. Muhammad Din and Jafar Husain Shah submitted their C.H. forms, whereas Syed Haider Shah applied as a non-claimant displaced person. The Deputy Settlement Commissioner, by his order dated the 25th of May 1960, declared the residential premises to consist of two independent houses and transferred one to Muhammad Din and the other to Syed Haider Shah petitioner. It was contended before him that Syed Haider Shah was not a displaced person, but the Deputy Settlement Commissioner observed in this behalf, "the learned counsel for Syed Haider Shah produced sufficient documentary evidence to prove that Syed Haider Shah is a displaced person from Bombay. This was agreed to by the learned counsel for Ch. Muhammad Din, etc." He, therefore, ordered a portion shown in red and in actual occupation of Syed Haider Shah to be transferred to him on the prevailing market price. No reference was made in the operative part of the order as to the merits of the case of Syed Jafar Husain Shah; though it was clearly stated that

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he was an applicant and had submitted form C.H. 6731, with a declaration of eligibility showing his possession since the 9th of March 1953, and that he was in occupation of two rooms and one kitchen.

2. Muhammad Din is not a party in these proceedings and I will, therefore, not make any reference to any proceedings initiated by or against him before the Additional Settlement Commissioner and the other Settlement Authorities thereafter. Syed Jafar Husain Shah felt aggrieved by the order of the Deputy Settlement Commissioner and preferred an appeal which was decided by Ch. Nasar Ullah Khan, Additional Settlement Commissioner, by his order dated the 5th of August 1960. It was contended before him that Syed Haider Shah was a local and had gone to "Bombay in connection with his business in film industry. The learned Additional Settlement Commissioner held Syed Haider Shah petitioner to be a local and not a displaced person, and the basis of his order seems to be that he had not permanently settled at Bombay. The relevant portion of his order reads as under:—

"In his statement before the A. S. C., Haider Ali Shah stated that he originally belonged to Peshawar and from there he came to Lahore and then to Amritsar and hence migrated to Bombay, but he had not acquired any property in any of these cities. Haider Ali Shah has no documentary proof that he had permanently settled at Bombay and had to migrate to Pakistan due to partition of the country."

He further held that even if it be assumed that Syed Haider Shah was a non-claimant, he could not be preferred to Syed Jafar Husain Shah who was a claimant. He did not, however, consider relevant provisions of the Schedule to the Displaced Persons (Compensation and Rehabilitation) Act, 1958, wherein it is clearly provided that a claimant not in possession cannot succeed against a non-claimant in possession of the property and the possession has to be understood in terms of section 2, clause (6) of the Act, which should be obtained in pursuance of an order of allotment. It has all along been the case of Syed Haider Shah that Syed Jafar Husain Shah, though in occupation of a portion of the property, was not in possession as he had no allotment order in his favour, and, moreover, once the property was declared by the Deputy Settlement Commissioner to consist of two independent houses, Syed Jafar Husain Shah had no right whatsoever to ask for a transfer of the portion in possession of Syed Haider Shah petitioner, because he was not in occupation of any portion of that house. The argument of Syed Haider Shah was that whether or not, he could be transferred this house, Syed Jafar Hussain Shah, at any rate, could not be given this house, because by virtue of the division it became an independent house, and unless he had been in possession of this house or a part of it, he had no right to its transfer. Syed Haider Shah, therefore, challenged this order of the Additional Settlement Commissioner in revision before the Settlement Commissioner, who, by his order dated the 8th of August 1962, (Annexure 'E/2'), dismissed the same by holding that the petitioner was not a displaced person and observed that "mere

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residence for some time in India cannot confer upon a person the status of a displaced person". He also dismissed the revision petition on the ground that the petitioner could not be preferred to the legal representatives of Syed Jafar Hussain Shah who was a claimant displaced person. The second revision petition was dismissed by Mr. Muhammad Rafiq, Settlement Commissioner with the powers of the Chief Settlement Commissioner, Lahore, on the 18th of April 1962, without giving any reasons.

3. Syed Haider Shah filed a petition to have the orders of the Chief Settlement Commissioner, the Settlement Commissioner, and the Additional Settlement Commissioner quashed by a writ of *certiorari*, and, among other grounds, took two main pleas, namely—

(a) that respondents Nos. 1 to 3, the legal representatives of the deceased, Syed Jafar Hussain Shah, being not in possession of any portion of the house, which was in possession of the petitioner, could not be transferred that house and the orders, therefore, were in flagrant violation of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act 1958, which authorises the transfer of the houses only to persons in possession; and

(b) that the petitioner was a displaced person within the meaning of section 2, clause (3) of the Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958).

4. The parties are agreed on the point that the value of the house in dispute is more than Rs 10,000. If the petitioner is in fact a local and not a displaced person, he will have no right to the transfer of that house under any circumstance. It was, therefore, contended by the learned counsel for the respondents that the petitioner being not entitled to the transfer of the house, had no *locus standi* to challenge the transfer of the same in favour of the respondents.

5. The important question which arises for determination in the case, therefore, is if, on the facts brought on the record of the Settlement Authorities, Syed Haider Shah petitioner can be held to be a displaced person. "Displaced person" is defined in section 2, clause (3) of the Act, which reads as follows :—

"2. In this Act, unless there is anything repugnant in the subject or context,—

(3) 'displaced person' means any person who, on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances in any area now forming part of or occupied by India, has, on or after the first day of March 1947, left or been displaced from, his place of residence in such area and has subsequently become a citizen of Pakistan, or is residing therein, and includes any person who, being a resident of any territory outside India, is for that reason unable to manage, supervise or control any property belonging to him in India or in any area occupied by India, and also includes the successors-in-interest of any such person."

6. It is clearly mentioned in the judgment of the Deputy Settlement Commissioner that sufficient documentary evidence was produced before him to prove that Syed Haider Shah was a displaced person from Bombay, and this was agreed to by the counsel for Muhammad Din. The admission on behalf of Muhammad Din cannot, however, bind respondents Nos. 1 to 3, but the fact remains that some documentary evidence was produced before the Deputy Settlement Commissioner and he, therefore, ordered the transfer of the house to the petitioner. The Additional Settlement Commissioner did not discuss this documentary evidence, nor did he disbelieve the same, but held the petitioner not to be a displaced person only on the ground that he had not acquired any property in Bombay and there was no documentary proof to show that he had permanently settled there. He seems to have interpreted the definition reproduced above to mean that before a person could be a displaced person, he must have had property in India or settled there permanently. I am not surprised to find this view, because this was consistent with a departmental interpretation, and a memorandum, on an advice of Major Ishaq Muhammad Khan, Settlement Commissioner (Legal), had been issued by the Settlement Department and relevant directions were issued in its tenth paragraph, which reads as under :—

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“To sum up—

(i) ‘residence’ means ‘fixed habitation’ which should amount to ‘domicile’.

(ii) One has, therefore, to prove to the satisfaction of the Settlement Authorities that it was a fixed or permanent residence which was left in India. Besides (i) the fact of physical residence, the intention to reside at a place is to be proved satisfactorily. The Settlement Authority will then give a finding of fact.

(iii) A man is not to be deemed to have taken up his fixed habitation in India merely by reason of his residing there in the civil, military, naval or air force, or in the exercise of any profession or calling.

(iv) In a case where originally a person had a residence then he had to prove to the satisfaction of the Settlement Authority that he had abandoned his original residence and had acquired a new residence elsewhere.

(v) Length of residence at a new residence, however, long it may be, is not by itself sufficient to prove *animus mendi* and *animus non-revertendi* to the original residence.

(vi) As a rule the Courts will be reluctant to believe permanent change in residence unless it is proved beyond all possible doubts.”

The learned Settlement Commissioner also, it seems, on the basis of the same directions, had held that mere residence for some time in India could not confer upon the petitioner the status of a displaced person.

7. In holding that a person should be a displaced person,

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besides other conditions, it is necessary to establish that he had left or had been displaced from his place of residence in India. The definition does not contain any such word as a "domicile" or a "permanent residence". The Settlement Authorities, acting on the directions issued on the advice of the Settlement Commissioner (Legal), rejected the applications of a number of persons, who had been doing business in India and had migrated to Pakistan after partition or on account of civil disturbances or the fear of such disturbances, by holding that they were not displaced persons within the meaning of section 2, clause (3). These decisions were challenged, and a number of writ petitions were entertained. Since a common question of law arose, they were consolidated and were decided by a Letters Patent Bench, consisting of the Chief Justice and Shabir Ahmad, J., in *Mahboob Ilahi v. The Chief Settlement Commissioner* (Letters Patent Appeal No. 133 of 1961), on the 2nd of January 1963. This was reported as P L D 1963 Lah. 214. Shabir Ahmad, J., who wrote the judgment, interpreted the term "displaced person" and summed it up by his conclusions in paragraph 10 which, for convenience of reference, is reproduced *in extenso* :

"(a) A person who, though a resident of a place which on partition of British India fell to the share of Pakistan, was on a casual visit to a place which fell to the share of India cannot be treated as a 'displaced person' for the purpose of the Displaced Persons (Compensation and Rehabilitation) Act, 1958.

(b) A person who, though an original resident of a place which on Partition of British India fell to the share of Pakistan, was residing at the time of that Partition at a place which fell to the share of India and had no immediate desire of leaving the place but had not made it his permanent abode, would be a 'displaced person' for the purposes of the Act.

(c) A person who ordinarily did business at two places and on Partition of British India one such place fell to the share of Pakistan and the other to that of India, such a person would be a 'displaced person' for the purposes of the Act if at the time when Partition of British India took place in August 1947 he had to leave the place where he was at that time doing business and where he would have continued to do business if he had (had) not to leave it because it fell to the share of India."

The learned counsel for the petitioner relied on clause (b) of paragraph 10 and contended that though petitioner Syed Haider Shah originally belonged to Lahore, he was residing at the time of Partition in Bombay and had no immediate desire to leave the place, though he might not have made it a permanent abode.

8. It will be clear from the orders of the Settlement Authorities that they did not apply this test at all, and one is not sure as to what would have been their decisions if this test had been applied. The test so laid down does not contemplate permanent residence. It also includes temporary residence and a reference to clause (a) of paragraph 10 of the aforesaid judgment

would show that only a person on a casual visit to a place in India was held not to fall within the definition of a "displaced person", which clearly implies that a residence, though temporary, can also entitle a person to claim himself a displaced person. In view of this decision, the error becomes patent on the very face of the orders of the Settlement Authorities.

9. The learned counsel for the respondents, however, relied on a decision of another Letters Patent Bench pronounced subsequently on the 3rd of January 1963 in *Mrs. Keays Byrne v. The Settlement Commissioner, Rawalpindi, and others* (1). The facts of this case were that Mrs. Keays Byrne was running a hotel in three evacuee bungalows in Rawalpindi. She submitted a KNCS form for the transfer of the bungalows and alleged that she had been running a hotel in Srinagar and also one in Gulmarg. She, therefore, claimed to be a displaced person within the meaning of section 2, clause (3), of the Displaced Persons (Compensation and Rehabilitation) Act, 1958. The whole case before their Lordships of the Letters Patent Bench depended on the meaning and the scope of the term "displaced person". They held Mrs. Keays Byrne not to be a displaced person and relied on the meaning which was attached to the word "residence" in *Imdad Ali Malik v. The Settlement Commissioner (Policy), Lahore* (2) and reproduced in *extenso* the observation of Bashir Ahmad, J., in that case, which reads as under :—

"A survey of the relevant law, therefore, leaves no room for doubt that the person contemplated by the definition of the displaced person in the Act can refer only to a person who has either been displaced from a place of residence or has left it, but in either case the place of residence will be in the nature of a permanent or quasi-permanent abode. The element of displacement in some form or other will cling to the act of leaving as well, the only difference that I could see being that he leaves by volition for the reasons specified in the definition and is displaced by coercion or by combination of circumstances which partake of that character."

It was, therefore, held by them that "before a person can qualify under the first part of the definition of the term 'displaced person' it must be shown that the permanent or quasi-permanent place of his residence was in any area now forming part of or occupied by India." It will, therefore, be seen that this interpretation was in contradistinction to the interpretation placed in the earlier case referred to above. The difference will become more prominent if I reproduce the observations of Anwar-ul-Haq, J., in paragraph 12 of the judgment, which are :

... the appellant herself admits that she used to return to Rawalpindi during the winter where her husband, Col: Keays Byrne, was practising as a lawyer. In other words, the appellant must be regarded as a permanent resident of Rawalpindi on the relevant date, i.e., the 1st day of March 1947. This being so, she cannot be said to have her permanent or quasi-permanent place of residence in occupied Kashmir where she only happened to live temporarily for the purpose of

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managing her hotels in Gulmarg and Srinagar. She does not, therefore, satisfy the basic ingredient of the first part of the definition."

Towards the end of paragraph 12, it was held :

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"However, as Mrs. Keays Byrne was already a permanent resident of Rawalpindi on the relevant date and had not been displaced from Srinagar for the reasons given in the definition, her subsequent return to Rawalpindi and residence therein does not confer the status of a displaced person on her."

10. The definition of the term "displaced person" has obviously received two interpretations by two Letters Patent Benches of this Court and they are irreconcilable. I may with advantage reproduce the decision in Writ Petition No. 318-R of 1961 given in paragraph 3 of Letters Patent Appeal No. 133 of 1961, decided by the Chief Justice and Mr. Justice Shabir Ahmad, to show that if the principle laid down therein had been adopted, the decision in *Mrs. Keays Byrne v. The Settlement Commissioner, Rawalpindi and others* would have been different. The relevant portion reads as under :—

"The ultimate order of the Settlement was that Fazal Din was not a displaced person.

The claim of Fazal Din to be a displaced person rested on his assertion that he had been working at Simla, a place which is now within the territory of India, and had to leave it on account of the Partition of British India in August 1947. It appears that though Fazal Din used to work at Simla during the summer each year, he worked during winter at Siālkot, his place of birth, which town is in Pakistan. The Settlement Authorities held that the circumstances relied upon by Fazal Din did not justify a finding that he was a displaced person, and it was against this order of the Settlement Authorities that Fazal Din has come to this Court praying for issue of a writ."

On these facts, the writ petition of Fazal Din was accepted as is clear from the operative part of the judgment in paragraph 11.

11. In view of the fact that there are conflicting decisions about the interpretation of the term "displaced person", it is necessary that this conflict should be resolved, which can be done only by a reference to a larger Bench and I, therefore, send this case to my Lord the Chief Justice for considering this matter, and if he thinks necessary, he may constitute a Full Bench to interpret the term "displaced person" used in section 2, clause (3), of the Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958).

OPINION OF FULL BENCH

Inamullah, J

INAMULLAH, J.—This reference to the Full Bench raises the question of the interpretation of the term "displaced person" as defined in the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (Act XXVIII of 1958) hereinafter called the Act. Before attempting to interpret the term it would be useful to set

out briefly the relevant facts giving rise to the reference and to mention the two decisions which our learned brother Muhammad Iqbal, J. considered to have taken conflicting views of the term "displaced person". I propose to set out these in order.

2. Muhammad Din and Jaffar Hussain Shah submitted their C. H. Forms in respect of a house situated in Lahore. Syed Hyder Shah also applied for the same house as a non-claimant. The Deputy Settlement Commissioner declared the premises to consist of two independent units and transferred one to Muhammad Din and the other to Syed Hyder Shah. It was urged before him that Syed Hyder Shah was not a displaced person but the contention was overruled by the learned Deputy Settlement Commissioner. On appeal before the Additional Settlement Commissioner it was contended that Syed Hyder Shah was a local and had gone to Bombay in connection with his business in film industry. The learned Additional Settlement Commissioner held Syed Hyder Shah to be a local. The relevant portion of his order reads as under :—

"In his statement before the A. S. C., Hyder Shah stated that he originally belonged to Peshawar, and from there he came to Lahore and then to Amritsar and hence migrated to Bombay, but he did not acquire any property in any of these cities. Hyder Shah has no documentary proof that he permanently settled at Bombay and had to migrate due to partition of the country."

It would appear from the above that the basis on which the learned Additional Settlement Commissioner held Hyder Shah to be a local was that he had not permanently settled at Bombay. Syed Hyder Ali Shah went in revision before the Settlement Commissioner against the order of the Additional Settlement Commissioner who dismissed the same holding that "the mere residence for some time in India cannot confer upon a person the status of a displaced person." The second revision was dismissed by Mr. Muhammad Rafiq, Settlement Commissioner who had the powers of the Chief Settlement Commissioner. He did not assign any reason for his order.

3. Syed Hyder Ali Shah filed a petition before the High Court challenging the various orders passed by the Settlement Authorities against him on several grounds. The ground giving rise to the reference was that he was a displaced person within the meaning of section 2, clause (3) of the Act.

4. The important question that arose before the learned Single Judge was whether on the facts brought on the record Syed Hyder Ali Shah could be held to be a displaced person within the definition of the term given in the Act. A fair analysis of the facts found by the various Settlement Authorities against Syed Hyder Ali Shah come to this :—

(1) that Syed Hyder Ali Shah had no documentary proof that he had permanently settled at Bombay or acquired any property in Bombay and that he had to migrate to Pakistan because of the setting up of the two Dominions;

(2) that mere residence (of Syed Hyder Ali Shah) for some

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time in India cannot confer upon him the status of a displaced person.

5. The learned counsel for the petitioner before the Single Judge relied on the case of *Mahboob Elahi v. The Chief Settlement Commissioner, Pakistan* (1). Shabir Ahmad, J., summed up his conclusions as to the interpretation of the term "displaced person" in the following words:—

"(a) A person who, though a resident of a place which on Partition of British India fell to the share of Pakistan, was on a casual visit to a place which fell to the share of India cannot be treated as a "displaced person" under the Displaced Persons (Compensation and Rehabilitation) Act, 1958.

"(b) A person who, though an original resident of a place which on Partition of British India fell to the share of Pakistan, was residing at the time of that Partition at a place which fell to the share of India and had no immediate desire of leaving the place but had not made it his permanent abode would be a "displaced person" for the purposes of the Act.

"(c) A person who ordinarily did business at two places and on Partition of British India one such place fell to the share of Pakistan and the other to that of India, such a person would be a "displaced person" for the purposes of the Act if at the time when Partition of British India took place in August 1947 he had to leave the place where he was at that time doing business and he would have continued to do business if he had not to leave it because it fell to the share of India."

On behalf of the petitioner reliance was placed on conclusion (b) reproduced above. It was urged that Syed Hyderali Shah was residing at the time of Partition in Bombay and had no immediate desire to leave the place, though he had not made it his permanent residence; he was therefore a displaced person.

6. On behalf of the respondents reliance was placed on the case of *Mrs. Keays Byrne v. The Settlement Commissioner and others* (2). Mrs. Keays Byrne was running a hotel in three evacuee bungalows in Rawalpindi. Describing herself as a non-claimant displaced person from Jammu and Kashmir she submitted a KNCS Form for the transfer of the said bungalows. She alleged that she had been running a hotel in Srinagar and also in Gulmarg. In that case their Lordships while interpreting the words "place of residence" appearing in the definition of displaced person, relying upon the decision in the case of *Imdadali Malik v. The Settlement Commissioner Lahore* (3) held that before a person can qualify under the first part of the definition of the term displaced person it must be shown that the permanent or quasi-permanent place of his residence was in any area now forming part of or occupied by India. It was found, as a matter of fact, in that case that Mrs. Keays Byrne was a permanent resident of Rawalpindi on the 1st of March 1947, and therefore "she cannot be said to have her permanent or quasi-permanent place of residence in occupied Kashmir where she only happened

(1) P L D 1963 Lah. 214

(2) P L D 1963 Lah. 88

(3) P L D 1962 Lah. 502

to live temporarily for the purpose of managing her hotels in Gulmarg and Srinagar." It was further observed that she did not leave Srinagar because of the Partition of the sub-continent or on account of civil disturbances or the fear of such disturbances in Srinagar.

7. Mr. Justice Muhammad Iqbal has come to the conclusion that the interpretation put on the term "displaced person" in *Mrs. Keays Byrne* case is in contradistinction to the interpretation placed in the case of *Mahboob Elahi and others*. With great respect to the views of my learned brother I do not find any contradistinction in the interpretation put by the learned Judges in the two cases namely *Mahboob Elahi and others* and that of *Mrs. Keays Byrne*. The difference is only in the language but the principle laid down to my mind is not the same. Their Lordships along with the Letters Patent Appeal of *Mahboob Elahi* disposed of six other Letters Patent Appeals. The question involved in all the Letters Patent Appeals was the interpretation of the expression "displaced person". The common feature in all these appeals on the factual side was this:—

"It was contended by the learned counsel who appeared for persons who, in the matters under consideration claim to be displaced persons that as each of the persons, whose status is under consideration by the Court, was residing in and doing business at a place which, on the Partition of British India into Pakistan and India, fell to the share of the latter and had to leave the place where he had been residing and doing business as a result of the Partition of British India into two separate countries, he is to be deemed to be a displaced person for the purposes of the Act notwithstanding the fact that he was born at a place which has fallen to the share of Pakistan but had gone to the place where he was residing and working at the time of the Partition of British India."

The question was whether the appellants who were residing in and doing business at a place which on the Partition of British India into Pakistan and India fell to the share of the latter and had to leave the place because of the Partition could be said to be displaced persons for the purposes of the Act notwithstanding the fact that they were born and had a residence at a place which has fallen to the share of Pakistan. Their Lordships did not hold any one of the appellants to be a displaced person or otherwise. All that they did was to have set aside the order of the Settlement Authorities and to have directed them to decide their cases in the light of the observations made regarding the meaning of the expression 'displaced person'. In order to find out whether the interpretation put on the term "displaced person" in *Mrs. Keays Byrne's case* is in contradistinction with the interpretation put in *Mahboob Elahi's case* all that is necessary is to see whether a different result would follow in the case of *Mahboob Elahi* if the interpretation put in *Mrs. Keays Byrne* was applied to it. I have no doubt that the result in *Mahboob Elahi's case* would be the same. I would consider the case of *Fazaldin* which has been mentioned by His Lordship, Mr. Justice

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Muhammad Iqbal. The relevant portion of the judgment relating to Fazaldin reads as under :—

“His case before the Settlement Authorities had a rather tortuous course but the ultimate order of the Settlement Authorities was that Fazaldin was not a displaced person. The claim of Fazaldin to be a “displaced person” rested on his assertion that he had been working at Simla, a place which is now within the territory of India, and had to leave it on account of the Partition of British India in August 1947. It appears that though Fazaldin used to work at Simla during the summer each year he worked during the winter at Sialkot, his place of birth which town is in Pakistan. The Settlement Authorities held that the circumstances relied upon by Fazaldin did not justify a finding that he was a displaced person.”

It was against this order of the Settlement Authorities, that Fazaldin came to the High Court. Applying the principle laid down in *Mrs. Keays Byrne's case* the order would have been the same, namely, to set aside the orders of the Settlement Authorities and to direct them to decide the case of Fazaldin in the light of the definition of the term “displaced person” given in that case (*Mrs. Keays Byrne*). The Settlement Authorities in the light of that case had to determine whether Fazaldin had a permanent or *semi*-permanent residence at Simla.

8. The conclusions arrived at in *Mahboob Elahi's case* do not warrant the deduction that a person who has a temporary residence in that part of British India which now forms India and has a permanent residence in that part of British India which forms Pakistan would be entitled to the benefit of a displaced person under the Act. To my mind, there is not much difference between a person who is a casual visitor to a place which fell to the share of India and a person who is on a temporary visit to that place. Both the persons would not fulfil the various ingredients of the term “displaced person”. From the conclusions arrived at in *Mahboob Elahi's case* it cannot be construed that the word “displaced person” means temporary residence. The conclusion drawn in the case of *Mahboob Elahi* has to be read with the discussion embodied in the judgment. A person who had a temporary residence in that part of British India which now forms India cannot be said that he would have continued to do business but for the Partition. He would have returned to his permanent residence in that part of British India which now forms Pakistan irrespective of the reasons mentioned in the term displaced person. The return perhaps in some cases may have been accelerated because of the grounds mentioned in the term displaced person.

9. I would now proceed to consider the term “displaced person” as defined in the Act. It would be useful to reproduce the definition as given in subsection (3) of section 2 of the Act. It runs as under :—

“Displaced persons” means any person who, on account of the setting up of the Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances in any area now forming part of or occupied by India, has,

on or after the first day of March 1947, left or been displaced from, his place of residence in such area and has subsequently become a citizen of Pakistan, or is residing therein, and includes any person who, being a resident of any territory outside India, if for that reason unable to manage, supervise or control any property belonging to him in India or in any area occupied by India, and also includes the successors-in-interest of any such person."

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It would appear from the above that the definition of the term "displaced person" is divided into two parts; the first part is based on the residence of the person in an area now forming part of or occupied by India; and the other is based on his non-residence in any area now forming part of or occupied by India. There is no difficulty so far as the second part of the definition of displaced person is concerned. All that would be necessary for a person who claims to be a displaced person under this part of the definition is to prove his inability to manage the property in India because of the reasons given in the definition. The difficulty arises only in interpreting the first part of the term.

10. On a fair analysis the first part of the definition resolves to this :—

(1) that prior to first of March 1947, the person who claims to be a displaced person must have had his place of residence in any area now forming part of or occupied by India;

(2) that he must have left or been displaced on or after the 1st of March 1947, from his place of residence;

(3) that he must have left his place of residence on account of civil disturbances or the fear of such disturbance in any area now forming part of or occupied by India;

(4) that after leaving his place of residence in the aforesaid area he should have subsequently either become a citizen of Pakistan, or resides therein.

11. The difficulty that arises in the construction of the first part of the definition is because of the meaning to be given to the word "residence".

12. It is not of much assistance to trace the history of the various laws promulgated since after the Partition to rehabilitate the up-rooted people and to administer property left by evacuees. It would be unnecessary to encumber the judgment with these laws. It would be sufficient to state that the object of these laws was to make provision for the restoration and maintenance of the social and economic life of Pakistan and the orderly settlement of persons who took refuge in Pakistan and to administer the evacuee property. These laws do not offer much assistance in interpreting the word "residence". In this connection I may also mention that the departmental interpretation of the term displaced person also is not of much aid. Major Muhammad Ishaq for the Department candidly conceded that the interpretation put by the department as envisaged in the departmental instructions does not satisfactorily explain the term "displaced person".

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12-A. The principal word which has to be interpreted is the word 'residence'. The meaning of the word has not been limited by any statutory definition. In the absence of any statutory definition the only place where an authoritatively accepted meaning can be sought is in a standard dictionary.

In the Shorter Oxford English Dictionary which is recognised as a leading authority on the meaning of the words in the English language the word *reside* means "to settle", "to take up one's abode or situation", "to dwell permanently or for a considerable time", "to have one's settled or usual abode", "to live in or at a particular place". The meaning of the word 'residence' is given as: to have one's usual dwelling place or abode, "the circumstance or fact of having one's permanent or usual abode in or in a certain place", "the place where a person resides", "his dwelling place". These are some of the meanings which are not given in the Shorter English Dictionary. The meaning of the word *reside* from which *residence* is taken would indicate that one of the meanings of *residence* is permanent dwelling place or where a person lives for a considerable time.

13. The word *residence* was considered in *Ex Parte Bruell*, *In re Bowie* (1); *Ford v. Drew* (2); *Lewis v. Graham* (3) and *Madho Pershad v. A. L. Walton* (4) to be an elastic word of which an exhaustive definition cannot be given. It has been the subject of judicial consideration on diverse occasions and in relation to a variety of circumstances, the word 'residence' occurs, for instance, in the Civil Procedure Code, Divorce Act, Lunacy Act, Income-tax Act and Guardians and Wards Act and many other Acts. A reference to the word *residence* occurring in these Acts cannot resolve the difficulty with which one is faced in this Act. The difficulty is whether "residence" occurring in the term "displaced person" means permanent, quasi-permanent or temporary residence or excludes temporary residence.

14. The question is as to how to resolve this difficulty. The difficulty can be resolved by construing the word in accordance with the object and intent of the Act. It was observed in the case of *Ex Parte Bruell In re : Bowie* by James, L. J. with whom Cotton, L. J. agreed while considering the scope of the word 'residence and business' observed as under:—

"The words *residence* and *business* have no actual definite technical meaning but that we must construe them in accordance with the object and intent of the Act in which they occur."

Lord Coleridge, C. J. in (1888) 20 Q B D observed as under :

"I agree with the observations of James, C. J. in *Ex Parte Bruel In re Bowie* that *residence* and *business* are elastic words of which an exhaustive definition cannot be given but they must be construed in every case in accordance with the object and intent of every act in which they occur".

(1) 16 Ch. D 484

(3) 20 Q B D 780

(2) 5 C P D 59

(4) 18 C W N 1050

In *Muhammad Shuffi v. Laldin Abdulla* (1) Sergeant, J. while interpreting the word "residing" in section 380 of the old Civil Procedure Code observed as under :

"These cases show that the word "residence" may receive a larger or more restrictive meaning according to what the Court believes the intention of the Legislature to have been in framing the particular provision in which the word is used."

15. The question is, considering the above observations as to how to find out the object and intent of the Act so as to resolve the difficulty. The Preamble of a statute has been said to be a good means to find out its intent. In this connection a reference may usefully be made to *Maxwell's Interpretation of Statutes*, 11th Edition. The relevant passages run as under :—

"The Preamble of a statute, even after repeal, has been said to be a good means of finding out its meaning, and, as it were, a key to the understanding of it; and, as it usually states, or professes to state, the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt.

Therefore, since an Act which authorised aliens who "shall have been resident" in the country for two years to hold land, might either be limited to persons who had so resided before the passing of the Act, or extend to those who should at any time reside for the required time, the Preamble was resorted to in order to determine which of the two meanings was the more agreeable to the policy and object of the Act; and, as it recited that aliens were prevented by law from holding lands in the state and it was the interest of the state that such prohibitions should be done away with, it showed that the former construction was less adapted to give effect to the intention of the Legislature than the latter."

17. The Preamble of the Act runs as under :—

"Whereas it is expedient to provide for the payment of compensation to certain displaced persons for the losses suffered by them on account of expropriation by the Government of India of their rights in property in India or in any area occupied by India, and the rehabilitation of others, and for matters incidental thereto or connected therewith."

It would appear from the preamble of the Act that the intention of the Legislature was not to provide for payment of compensation to displaced persons and to rehabilitate them; in other words, to compensate and rehabilitate the uprooted persons from that part of British India which now forms part of India. It is clear that the person contemplated must have left or been displaced from his place of abode so as to need compensation or rehabilitation. The necessity to compensate and rehabilitate will arise only in the case of those who have left a permanent

(1) I L R 3 Bom. 227

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residence or semi-permanent abode. The question of compensation or rehabilitation would not arise in the case of a person who was on a casual or temporary visit to that part of British India which now forms India. The object under the Act being to provide payment of compensation to displaced persons for the losses suffered by them on account of expropriation by the Government of India of their rights and property in India, the persons who were on a temporary visit can hardly be said to need compensation or rehabilitation. The intention and the object of the Legislature would not be compatible with the construction of the word residence so as to include temporary residence in that part of British India which now forms India.

17. I now propose to consider the situation in which the difficulty arises while interpreting the term displaced person. There would be no difficulty in the case of a person who has all along resided in that part of British India which now forms part of India and has left or been displaced from his place of residence in such area. The difficulty arises only in the case of a person who had his residence in that part of British India which now forms part of Pakistan since before 1947, and was also residing or doing some work in that part of India which now forms part of India. The question is whether such a person can be covered by the term displaced person. Before answering the question it would be helpful to consider whether a person can be said to have two residences at two different places.

18. The word residence may be used in two senses, the one denoting the personal habitual habitation, the other the constructive, technical and legal habitation. When a person has a fixed abode where he dwells with his family, there can be no doubt as to the place where he resides; the places of his personal and legal residence are the same. When, on the other hand, a person has no permanent habitation or family, but dwells in different places as he happens to find employment, there can equally be no doubt as to the place where he resides; he must be considered as residing where he actually or personally resides. But some individuals have permanent habitations, where their families constantly dwell, yet they pass great portion of their time in other places; such persons have a legal residence with their families and a personal residence in the other places, and, the word "reside" may, with respect to such persons, be used in relation to either their personal or their legal residence. From this point of view, it is manifest that one may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion; what may be said to be the place of personal residence during one portion of the year thus becomes the place of legal residence during the remainder of the year and *vice versa*. Reference may in this connection be made to the judgment of Wood, V. C. in *Walcot v. Botfield* (1) where it was ruled that a person may be said to have more than one residence if he has houses in

(1) 101 R R 719

different places at each of which he keeps an establishment; each may be called his residence, though he may not go to one of these places for some years. That a person may have more than one residence was recognised by the Judicial Committee in *Sophia Orde and another v. Alexander Skinner* (1) where Sir James Colville observed that a man might have more than one dwelling place so as to become subject to the jurisdiction of each of the Courts within whose local jurisdiction his dwelling place was situated. To the same effect is the decision of the Judicial Committee in *Srinivasa v. Vankata* (2).

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19. I would in passing advert to a consideration of the distinction between the term domicile and residence. The difficulty perhaps in interpreting the word residence has arisen by equating it with the word domicile. There is a clear distinction between the two words; while a person may have two or three places of residence he will have only one place as his domicile.

20. I would now answer the question which I had raised namely whether a person who had his residence in that part of British India which now forms part of Pakistan since before Partition and was also residing or doing some work or business in that part of British India which now forms part of India can be said to be a displaced person. In the light of the object and the intention of the Legislature as expressed in the preamble of the Act if such a person did not have a temporary residence in that part of British India which now forms India he can be said to be a displaced person. In this connection I would state that it will always depend upon the facts and circumstances of each case whether a person had a temporary residence or permanent or quasi-permanent residence in that part of British India which now forms part of India. It is difficult to lay down any hard and fast rule under which a person having two residences, one in that area which now forms part of India and the other in that part which now forms part of Pakistan can be said to be a displaced person.

21. I would now conclude the discussion by making a reference to the definition of the term displaced person as given in the Act. The definition of the term itself excludes a person who had a temporary residence in that part of British India which now forms part of India from qualifying as a displaced person. Such a person cannot be said to have left or been displaced from his place of residence because of the setting up of the two Dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbance in any area now forming part of or occupied by India. His departure may have been accelerated because of the grounds mentioned in the definition of the term. He cannot be said to have left his residence because of the reasons mentioned therein. His residence being temporary he would have left the place irrespective of the reasons mentioned in the definition of the term. The very fact that he was on a temporary visit implies that he was to come back sooner or later to his permanent abode. It cannot therefore

(1) I L R 3 All. 91

(2) I L R 34 Mad. 257

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be said in his case that he left India because of the civil disturbances or the fear of such disturbances. Whether a person has left because of the reasons given in the definition of the term is again a question of fact which will depend upon the circumstances of each case.

22. The conclusion one arrives at from the above discussion in keeping with the dictionary meaning of the word residence and also the object and intent of the Legislature under the Act is that a person in order to qualify himself as a displaced person must have had a permanent residence or such continuous habitation in that part of British India which now forms India with no immediate intention of leaving the same but for the reasons given in the definition of the term displaced person. There is no difficulty in the case of those who had their residence only in that part of British India which now forms India but difficulty arises in the case of persons who have their permanent residences in that part of British India which now forms part of Pakistan. In their case it would be a question of fact to be decided in the circumstances and light of each case whether the residence of these persons in that part of British India which now forms part of India was of such a character and nature that they would not have abandoned the same but for the civil disturbances or the fear of such disturbances in that area.

*Manzur
Qadir, C J*

MANZUR QADIR, C. J.—I agree.

Yaqub Ali, J

MUHAMMAD YAQUB ALI, J.—I agree.

*Wahiduddin,
J*

WAHIDUDDIN AHMAD, J.—I agree.

*Muhammad
Daud Khan,
J*

MUHAMMAD DAUD KHAN, J.—I agree.

A. H.

Reference answered.

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Before Sardar Muhammad Iqbal, J

AMANULLAH KHAN AND OTHERS—Petitioners

versus

KHURSHID AHMAD—Respondent

Civil Revision No. 610 of 1962, decided on 2nd April 1963.

(a) Civil Procedure Code (V of 1908), S. 11—Res judicata—Decision not inter partes—Principle cannot be invoked. [p. 569]A

(b) Civil Procedure Code (V of 1908), S. 11—Not applicable to supplemental proceedings like temporary injunction—Civil Procedure Code (V of 1908), O. XXXIX, rr. 1 & 2. [p. 570]C

(c) Civil Procedure Code (V of 1908), S. 11, Explanation VII [as introduced by S. 5, Code of Civil Procedure (Amendment) Ordinance (XLIV of 1962)]—"Proceeding"—Meaning—Word does not include supplemental proceedings. [p. 570]C

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