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Mohd. Arif State Abdul Aziz Khan, J

the Pakistan Penal Code. We accordingly alter by the Pakistan Penal Code under section 326 of the Pakistan Code but maintain the original sentence of the Pakistan Ada, Vean Ada the Pakistan Penal from section 307 to one under section 326 of the Policy Penal Code but maintain the original sentence of the Policy rigorous imprisonment imposed on him by the learned three vital Addition and sentence under

13. The conviction and sometimes under P. P. C. with regard to the attack on Mst. Maqbul Section Maqbul Section Jan P. M.

14. In the result, except for the alteration of the conviction 307 to one under section 326, P. P. O. Chulam Muhammad P. W. 46, P. P. O. 14. In the result, except 10.

15. In the result, except 10.

16. In the result, except 10.

17. In the result, except 10.

18. In the result, except 10.

19. In the result, except 10. of the appellant from section 30, to Muhammad P. W., the appellant from section 326, P. P. C. appellant from section fr

Appeal dismissed,

P L D 1962 (W. P.) Lahore 502

Before Bashir Ahmed, J

IMDAD ALI MALIK—Petitioner

versus

THE SETTLEMENT COMMISSIONER (POLICY), LAHORE

Writ Petition No. 107/R of 1961, decided on 22nd February 1962.

(a) Displaced Persons (Compensation and Rehabilitation) Ag (XXVIII of 1958), S. 2 and Sch., Cl. 2-"Displaced person" Connotation—Government servant belonging to territories now forming part of Pakistan residing in course of his employment at time of Partition in area now forming part of India—Not "displaced person"—Memo. No. 260-Comp-Reh./1959 dated 22-8-59—Manual of Settlement Law and Procedure, p. 91. [p. 505]A et seq

S. M. Zaki v. State of Bihar A I R 1953 Pat. 112 and Ram Labhaya v. Dhani Ram A I R 1947 Lah. 296 ref.

(b) Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 2-Word "residence"-Meaning to be ascertained in context on view of purpose of statute—History of allied law culminating in enactment of Act, traced and purpose stated—Pakistan Citizenship Act (II of 1951), S. 3. [p. 506]et seq

Neef v. Muttar 31 L J C P 359 and In re Bowie Exparle Breull 50 L J Ch. 386 ref.

Kh. Abdul Rahim Assisted by M. B. Mir for Petitioner.

Major Ishaq Muhammad Khan S. C. (Legal) and Ch. Karam Elahi Chauhan for Respondents.

Dates of hearing: 12th, 15th, 17th, 23rd, 24th and 25th lary 1962. January 1962.

This petition is directed against the order dated the 23rd January 1961, passed by Mr. Bashir Ahmad, Settlement amissioner (Policy) by which the contract transfer order **JUDGMENT** Commissioner (Policy) by which the provisional transfer order

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Bashir Ahmed, J

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the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to house No. 157/C, Model to the petitioner with respect to the petitioner wit Lahore, was an facts are these: The petitioner was an The relevant facts are these: The petitioner was an 2, se of the Government of India and was posted at Colombia and the co The relevant lacts and these. The petitioner was an The Government of India and was posted at Calcutta ployee of the Government there till the 3rd of August 1945 and remained there till the 3rd of August 1945 and posted for Pakistan viction ployee of the Government of the Government of August 1947, the year partition he opted for the Government of the Governm ployear 1945 and remained there in the 3rd of August 1947, the year little on he opted for Pakistan. The house in dispute on partition he opted by the Government and was requisitioned by the Government and was a Government servent. partition no option of the Government and was made been requisitioned by the Government and was made been him as a Government servant on the 20th of Octable to him as a were evacuee property. been requisitioned been requisitioned been requisitioned been subsequently reliable to him as a Government servant on the 20th of October will be premises were evacuee property and were subsequently reliable to him as such on the 27th of March 1952. The premises such on the 27th of March 1952. On the political fully 1959 the petitioner put in a NCH-Form for the present of July 1959 the petitioner put in a NCH-Form for the present of July 1959 the petitioner put in a NCH-Form for the present of July 1959 the petitioner put in a NCH-Form for the present of July 1959 the petitioner put in a NCH-Form for the present of the pres photof July 1959 the petitioner put in a NCH-Form for the house the prayer was granted on the 2nd of his 1049 when a provisional transfer order bis occupation.

permber 1959, when a provisional transfer order was issued to permber payment of market price which came to permber 1937, which of market price which came to a sum of bin an one. The Director of Enforcement suspected on payment of Enforcement suspected the claim 18: 30,000. Research to be a displaced person and on investigation of the petitioner to the 3rd of November 1960 of the petitioner to the 3rd of November 1960, to the Chief didressed a Commissioner for the case to be re-opened. The Settlement on revival assigned to the Settlement Commissioner, (3) who issued a notice to the petitioner under subsection (rolley) and 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (hereinafter to be referred to as the Act) to show cause against the cancellation of the provisional Act) to since as to him. The petitioner did not himself appear in answer to the notice as he was ill, but his son Captain Muhammad Amin Malik and Dr. Muhammad Husain, Advocate, appeared on his behalf, with the result already indicated.

of Mr. Bashir Ahmad, Settlement Commissioner (Policy) as without jurisdiction for the reason that the Chief Settlement Commissioner could delegate his powers to him by a notification and in the present case no notification had been published. On the 29th of October 1960, merely an order was passed by the Chief Settlement Commissioner assigning the case to the Settlement Commissioner (Policy) for disposal. There is nothing in the order suggesting that the powers of the Chief Settlement Commissioner were delegated to him. In the alternative, it is contended that the Settlement Commissioner (Policy) could only have dealt with cases of fraud brought to light on information supplied and that the present case was not one which belonged to that to that category. It was claimed that the property was legally transferred to the petitioner under paragraph 2 of the Schedule to the Act. The instructions issued by the Chief Settlement Commissioner on the 22nd of August 1959, recognised the claim of the patter on the 22nd of August 1959, recognised the evacuee of the petitioner, even though a local, to claim the evacuee house in his arms, even though a local, to claim the evacuee house in his possession if at the time of Partition he was employed as a Government withdrawal as a Government servant in India. The subsequent withdrawal of these instructions by another order dated the 27th of September 1959, it is claimed by another order dated the Act. I will 1959, it is claimed, is ultra vires his powers under the Act. I will notice the point.

3. Learned counsel for the petitioner has assailed the order

notice the points taken by learned counsel for the petitioner in the order mentioner by learned counsel for the petitioner in the order mentioned above. 4. On the question of notification, the main argument of learned courses of notification, the main argument of Rashir Ahmad, the learned counsel for the petitioner is that Mr. Bashir Ahmad, Settlement Counsel for the petitioner is that Mr. Bashir Ahmad, Commissioner (Policy) was merely exercising the

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Imdad All v. Settlement Commr. —— Bashir Ahmed, J authority of the Chief Settlement Commissioner delegated to and was not otherwise seized of the case. In order to and was not otherwise seized of the case. In order to appeal and was not otherwise seized of the case. In order to appeal and the argument it may be necessary to refer to section appreciate Act which confers the right of appeal and also names the of the before whom the appeals are to be preferred. Section 20 filter with revisions. The relevant provision being subsection 20 deals section 20 which will bear reproduction:—

"A Settlement Commissioner specially empowered in the behalf by the Chief Settlement Commissioner may, at any case or proceeding under the time, call for the record of any case or proceeding under the Act in which an Additional Settlement Commissioner of an Assistant Settlement Commissioner or an Assistant Settlement Commissioner under his jurisdiction has passed an order, for the purpose of satisfying himself as to the correctness, legality or propriety of such order and may pass such order, in relation thereto, as he thinks fit."

Under Notification No. 1226-PI-Reh.-60, dated the 18th of January 1958, the Chief Settlement Commissioner, Pakistan, acting under subsection (3) of section 20 of the Act, conferred powers of revision on all Settlement Commissioners within their respective jurisdiction. In assigning the case, therefore, to Mr. Bashir Ahmad. Settlement Commissioner (Policy), the latter was charged with the duty to exercise the power of a Settlement Commissioner which had already been conferred upon him under the notification mentioned above.

5. The argument resting on the absence of power is relatable to subsection (2) of section 20 read with section 31 of the Act. In order to dispose of this part of the case, it will be necessary to reproduce subsection (2) of section 31 of the Act:—

"Subject to the provisions of this Act and the rules made thereunder, the Chief Settlement Commissioner may, by notification in the Official Gazette, delegate all or any of his powers under this Act to any Settlement Commissioner or an Additional, Deputy or Assistant Settlement Commissioner subject to such conditions, if any, as may be specified in the notification."

This provision empowers the Chief Settlement Commissioner by a notification in the Official Gazette to delegate all or any of his powers under the Act to the officers named therein. The petitioner claims that the delegation of powers in order to be effective has to be by a notification, and since no notification was published in the present case, the exercise of the powers of the Chief Settlement Commissioner by Mr. Bashir Ahmad, Settlement Commissioner (Policy), was without jurisdiction. The argument is based on the mistaken assumption that Mr. Bashir Ahmad dealt with the case as Chief Settlement Commissioner and not Settlement Commissioner which he undoubtedly was. The order revised by him had been passed by the Deputy Settlement Commissioner, and It is conceded that Mr. Bashir Ahmad was competent as Settlement Commissioner to revise that order. There is, thus, no substance in this objection and I have no hesitation in repelling it.

Imdad Ali Settlement Commr. Ahmed, J

The real controversy in this case proceeds on what title 1962 6. The real of the house. It is not disputed the petitioner belongs to the district of Guiranwell-uted the petitioner a village in that district of Guiranwell-uted petitioner counts to the district of Gujranwala, his home place being Anup, a village in that district. As one in the home place being Anywhere. At the male incidence of the posted anywhere. the place being Antop, the former of India, it was an incidence of his both to be posted anywhere. At the relevant time he hashir to be posted and on Partition, opted for the health and pomploy of the posted anywhere. At the relevant time he gryice at Calcutta and, on Partition, opted for Pakistan was envice to De position on Partition, opted for Pakistan. These posited at Calcutta and, on Partition, opted for Pakistan. These position the learned counsel contends, confer upon the position of the position of the partition of the position of the positio posted at Calcutta counsel contends, confer upon the petitioner the status of a "displaced person" within the meaning of the who could claim the house in dispute. The relevant the status of a claim the house in dispute. The relevant law Act, who could still have a contained in clause 2 have schedule to the Act which reads as under : of the Schedule to the Act which reads as under :-

"A house in possession of a non-claimant displaced person and which the non-claimant desires to retain, shall be transferred to him on payment of the prevailing market value."

"Displaced person" is defined in section 2 of the Act, and the portion of the definition relevant for the present petition reads—

"'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 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,"

It is claimed that he left his place of residence in Calcutta at the relevant time on account of the setting up of two Dominions of Pakistan and India. It is also claimed that after he left Calcutta he was residing in Pakistan. The true answer to the point raised depends on the meaning to be ascribed to the word "left" and also the place of residence occurring in the provisions.

7. It will be of help, in this connection, to trace the history of the allied law which culminated in the Displaced Persons (Compensation and Rehabilitation) Act, 1958, being placed on the statute book. By Ordinance XIX of 1948, the Pakistan Rehabilitation Ordinance, the Central Legislature made statutory provisions for the rehabilitation of refugees. As the preamble reads, an emergency was recognized which rendered it necessary to make provision for the restoration and maintenance of the social and economic life of Pakistan and the orderly settlement of persons who have taken refuge therein. In order to secure that end lead to have taken refuge therein. that end legislative provision was made by Ordinance XV of 1949, Administrative provision was made by Ordinance XV of 1949, Administration of Evacuee Property Ordinance, to make provision for the administration and Evacuee Property Ordinance, to make provision and for the administration of the evacuee property in Pakistan and for certain matters incidental thereto. Earlier than these two measures the Provincial Legislatures had placed on their statute books similar Provincial Legislatures and placed on The matter did books similar Ordinance to achieve the same end. The matter did not rest the not rest there alone. Pakistan Refugees Rehabilitation Finance Corporation Corporation Act was similarly adopted with a view to incorporate regular regul and regulate a corporation for the purposes of rendering financial accorporation for the purposes. The financial assistance in the rehabilitation of refugees. Provincial assistance in the rehabilitation of refugees.

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This was followed of claims of refugees by various Ordinances. This was followed 506 LAHORE

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XIV by Rehabilitation and Resettlement Schemes for providing land refugees who left their properties in the territory has refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties in the territory has the refugees who left their properties and the refugees who left their properties in the territory has the refugees and the refugees by Rehabilitation and Resettlement by Rehabilitation and Rehabilitation an by Rehadilitation by Rehadilitation by Rehadilitation and the such refugees who left them to to such relugions. 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In adopting adopting and Rehabilitation as World adopting The last piece of legislation) Act, 1958. In adopting this pensation and Rehabilitation) Act, 1958. In adopting this pensation of the legislature, as would appear this pensation and Renaultation of the legislature, as would appear this measure, the intention of the payment of compensation measure, the intention of the payment of compensation the preamble, was to provide for the payment of compensation the preamble, was to provide for the losses suffered by them the preamble, was to provide the losses suffered by them on to certain displaced persons for the Government of India of them on to certain displaced persons the Government of India of them on account of expropriation by the Government of India of their account of expropriation of in any area occupied by India and rights in property in India or in any area occupied by India and rights in property of others and for matters incidental there are rights in property in India and for matters incidental thereto or the rehabilitation of others and for matters incidental thereto or the rehabilitation of others and for matters incidental thereto or the rehabilitation of others and the rehabilitation of connected therewith. It is in this context that the definition of connected therewith. It is in this context that the definition of "displaced person" in the Act has to be ascertained.

8. Erle, C. J., in Neef v. Muttar (1) has stated with clarity 8. Erie, C. J., in clarity of meanings according that "the word 'residence' has a variety of meanings according that "the word 'residence' has a variety of meanings according to the statute (or document) in which it is used." What the Courts are called upon to do in a situation such as this is to dis. cover that meaning. Cotton, L. J., In re Bowie Ex-parte Breull (2) has recognized that the word "residence" is an ambiguous word and may receive a different meaning according to the position in which it is found. It is a word susceptible of several meanings including both temporary residence or permanent domicile, and the meaning in each case has to be determined in the context on a view of the purpose of the statute. It can mean a dwelling place as distinguished from a mere locality of existence. The word is to receive a larger or more restricted 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. It cannot be disputed that in some cases it may only refer to the locality of existence as distinguished from a permanent abode. The emergence of an independent State led to the Pakistan Citizenship Act (Act II of 1951) being adopted by the Legislature It is no doubt true that residence and citizenship are not synonymous expressions but since this Act also takes into account "residence" as one of the ingredients for the acquisition of rights of citizenship, it may be useful to refer to section 3 of this Act, which provides that at the commence ment of the Act every person shall be deemed to be a citizen of Pakistan who was, or any of whose parents or grandparents were, born in territory now included in Pakistan and who after the 14th day of American the resident the 14th day of August 1947, has not been permanently resident in any country. in any country outside Pakistan. It would seem that a person residing in India but the Pakistan. It would seem that a person residing in India but the Pakistan. residing in India but with no intention to reside there permanently can claim the handle can claim the benefit of this provision, and in case he was a permanent resident of this provision, and in case he was a permanent resident of India, he would be disentitled to claim any such status. such status.

In the cognate Indian Law, the word "evacuee" is property defined in section 2 (d) of the Administration of Evacuee Property Act, 1950 (India) as included the Administration of Evacuee property Act, 1950 (India) as including a person who after the named date left any place in a State named now left any place in a State or any place outside the territories now

(1) 31 L J C P 359

(2) 50 L J Ch. 386

forming part of India and (ii), who is resident in any place now forming part of Pakistan. The word 'resident' has been some who dwells or resides permanently at a place. The property of the fixed and permanent abode, dwelling house for the means a some contradistinguished from a of the last of the interpreta fixed and polymanon, about, dwelling house for the contradistinguished from a mere temporary phe-being existence. In a case reported as S. M. Zaki v. State of the being existence of the word 'leaves' or 'has left' in its context house of the word to imply some amount of incomposition of existence. In a case reported as S. M. Zaki v. State of locality of even the word 'leaves' or 'has left' in its context has locality even the word imply some amount of permanent state interpreted to India but not to the state of permanent state. locally) even the word to imply some amount of permanent stay or interpreted to India but not to the extent of completely been interpreted in india domicile. respuctioning the Indian domicile.

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Bashir Ahmed, J

10. A survey of the relevant law, therefore, leaves no room 10. A survey person contemplated by the definition of the fordoubt that the person contemplated by the definition of the lored person in the Act can refer only to a person when the definition of the lored person in the Act can refer only to a person when the definition of the lored person in the Act can refer only to a person when the definition of the lored person in the Act can refer only to a person when the definition of the lored person in the Act can refer only to a person when the definition of the lored person in the Act can refer only to a person when the definition of the lored person in the Act can refer only to a person when the definition of the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person in the Act can refer only to a person when the lored person when the lored person in the Act can refer only to a person when the lored per for doubt that the Act can refer only to a person who has displaced person in the Act can refer only to a person who has been displaced from a place of residence of her local transfer on the local transfer of the local t displaced person who has displaced from a place of residence or has left it, either case the place of residence will be in the state of either been uispract the place of residence will be in the nature of a but in either case the place of residence will be in the nature of a purification of quasi permanent abode. The element of a but in clinic or quasi permanent abode. The element of dispermanent in some form or other will cling to the cost of dispermanent in some form or other will cling to the act of leaving placement in some difference that I could see being that he leaves well, the only difference that I could see being that he leaves by volition for the reasons speceified in the definition and is by volution and is displaced by coercion or by combination of circumstances which displaced of that character. This has been brought out clearly by the history of the allied legislation which aims at settling persons who had sought refuge and the securing of the evacuee property to compensate for their property in India which the Government of India had expropriated. The petitioner before me has no residence in Calcutta. It was merely a locality of existence for the period he was to serve in that place. The incidence of his service detained him there though all the time liable to be transferred to any place in India. I have, therefore, no hesitation in holding that the petitioner is not a displaced person within the meaning of the Act.

As an ancillary argument the learned counsel for the petitioner referred to the departmental practice as a useful guide in such cases and referred to a Single Bench judgment of Cornelius, J. as he then was reported as Ram Labhaya v. Dhani Ram (2) where the learned Judge has stated, what really is a general practice, that the executive and administrative officers, who are charged under the statute to take decisions, have to interpret the statutes before the Courts are called upon to interpret them. Such interpretation if acted for a long period of time, and senerally controlly acted by generally or uniformly acquiesced in, was not to be disregarded by Courts avont for the courts are the courts a Courts except for most satisfactory, cogent and impelling reasons. In the view of the most satisfactory, code the structure construction In the view of the learned Judge, the administrative construction should be learned. should be long in vogue before the Courts could be persuaded to reverse it. to reverse it. The contemporary construction placed by the department in this case was a notification by the Chief Settlement Commissioner in this case was a notification by the Chief Settlement Commissioner in this case was a notification by the Commissioner in his Memo. No. 260-Comp.-Reh./1959, dated the 22nd of Avenue 10.00 the following rule: the 22nd of August 1959, laying down the following rule:

"A number of persons particularly Government servants clonging to the territories of persons particularly pakistan were before belonging to the territories now forming Pakistan were before Independence residue. Independence residing temporarily in areas now forming part of India. The Characteristics of Commissioner has decided The Chief Settlement Commissioner has decided (2) A I R 1947 Lah. 296

(1) A I R 1953 Pat. 112

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and Rehabilitation) recent in point of time, it is claimed the construction being recent in point of time, it is claimed the construction being readily departed from, as has been decided to complete the argument has little to complete the The construction being readily departed from, as has been so readily departed from, as has been done should not have been so readily departed from, as has been done should not have been so readily departed from the state of th should not have been so readily expension that have been so readily expension that have been so readily expension that have been so readily expension has little to commend done in the present case. The argument has little to commend done in the present case. The argument has little to commend done in the present case. should not be traced. The argument Commissioner laid done in the present case. Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid down was for all that the Chief Settlement Commissioner laid that the Chief Settle in the present the Chief Settlement, not that he shall down was that such a person may be treated, not that he shall be treated that such a person may be statute, there was no discretion in the definition in th for all that person may be treated, there was no discretion in the definition in him the definition to him that such a person who was within the definition in him but to treat a person who was within the definition to be a but to treat a person. In terms, therefore, the construction is be a but to treat a person who therefore, the construction to be a displaced person. In terms, therefore, the construction is more displaced person. In terms, in the recognition of a more in the nature of the concession than the recognition of a legal in the nature of the concession than the recognition of a legal in the nature of the concess not rest here alone. Soon after, on right. The matter does not rest here alone. Soon after, on right. right. The matter does the Chief Settlement Commissioner, on the 27th of December 1959, the Chief Settlement Commissioner, the 27th of December 1959, the Chief Settlement Commissioner, the 27th of December 1959, the Chief Settlement Commissioner, on the Manual Commissioner, the Chief Settlement Commissioner, the Chief Settlement Commissioner, on the Chief Settlement Commi the 27th of December 1909, and procedure, on further consideration december 1909, and Procedure, on further consideration december 1909, and 1909 by an instruction, which is a supplied to the consideration of the consideration decided on index the consideration of the consideration of the consideration decided on the consideration decided decided on the consideration decided Settlement, Law and Troops who would have stayed on indefinitely that only such persons who would have stayed on indefinitely that only such persons part of India in the normal course of in areas now forming part of India in the normal course of in areas now lorings had there been no disturbance after of their service or business had there been no disturbance after the their service of business had be treated as displaced persons. In 1st of March 1947, who were liable to transfer hack present particular, Government at present included in Pakistan who were liable to transfer back to these included in Pakistan who Pakistan Sub-Continent in the Indo-Pakistan Sub-Continent Indo-Pakistan Sub-Continent Indo-Pakistan Sub-Continent Indo-Pakistan Sub-Continent Indo-Pakistan Sub-Continent Indo-Pakistan Sub-Continent Indo-Pakist included in Pakistan Indo-Pakistan Sub-Continent in the course areas or all over the Indo-Pakistan Sub-Continent in the course of their duties should not be treated as displaced persons. The of their duties should not be departmental construction favourable to the petitioner was so short lived as to be of no assistance in the construction of the provision of the statute.

12. The learned counsel also referred to subsection (5) of section 30 of the Act which enjoins the Chief Settlement Commissioner to prepare a scheme for temporary rehabilitation of persons displaced from such part of Jammu and Kashmir as is under the occupation of India and are residing in Pakistan for the proposition that even a temporary residence will be residence within the meaning of the statute. As already observed by me, the word is susceptible of such a meaning, but the true meaning is to be discovered in the context in which it is employed. provision, persons residing in Pakistan within the meaning of subsection (5) of section 30 are persons for whom a scheme for temporary rehabilitation is to be formulated. There can, therefore, be no difficulty in interpreting the word 'residence' in the provision as impressed with a temporary character.

13. It was further contended by the learned counsel for the petitioner that the form submitted by the petitioner was, in no sense inaccurate and no sense, inaccurate or incomplete and the respondent conveyed no information to antill the information the information to antill the information t information to entitle him to claim the house. The petitioner can succeed only if he can make out a right to claim the house. Since I have found it is Since I have found it against him, the matter, in essence, is purely one of seed at a gainst him, the matter, in essence, is purely one of academic interest. The petitioner insists on a decision on the plan at the petitioner insists of the petitio decision on the plea that if the respondent is not entitled to claim it, the house mand the will claim it, the house would be sold in open market and he will

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Imdad Ali v. Settlement Commr. Bashir

Ahmed, J

This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This, however, is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to be a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to bid. This is a matter for the department to be a matter for the bid. 1nis, no right on the petitioner. It seems to bide to and confers no right on the petitioner. It seems to woodler, that even here the petitioner does not appear to however, ground though I will not be taking while to and conicis he right on the petitioner. It seems to would be that even here the petitioner does not appear to be however, that even hough I will not be taking a final decir. that even here to be taking a final decision of the case. The Chief Settlement Commission of the case and order under section 10 of the hower ground thought in the case. The Chief Settlement Commissioner of the case of Pakistan. Extraordinated the Gazette of Pakistan. Extraordinated the Gazette of Pakistan. of the case. Settlement Commissioner of the Act, which was a gazette of Pakistan, Extraordinary, on the case of the Act, which was the case of the Act, which was the case of mulgated an Order under School 10 of the Act, which was mulgated in the Gazette of Pakistan, Extraordinary, on the 2nd will be 1961, vide Notification No. S. R. O. 824(V) and centern of the Contemporary in rule 1 (A) was was labeled in the Uazar vide Notification No. S. R. O. 824(K)61, september "Informant" in rule 1 (b) as meaning a contractive specified in the Contraction of th september 1961, viae Producation No. S. R. O. 824(K)61, september 'informant' in rule 1 (b) as meaning a person informs the authority specified in this Order of the exists of the exist bibliothes the authority specified in this Order of the existence hidden property or any irregular transfer of the existence of the ovides that the evacuee property to which the information distinction is satisfied that in a case decident which the information which is situated, is satisfied that in a case decided by a make is a Court or a Settlement Authority the places is situation, or a Settlement Authority, the informent ostodian or a Court or a Settlement Authority, the informent of furnished substantial information leading to the decision, and on payment, transfer the whole or any part of the settlement and the settlement are on payment. furnished the decision, on payment, transfer the whole or any part of the said perty to the informant: Provided that no one else is in law property to the transfer of the same property: Provided further, under a specific provision of the Displaced Persons that property and Rehabilitation). Act 1959 Compensation and Rehabilitation) Act, 1958, or any Scheme made thereunder, the informant would have been entitled to the master of the said property had he been in its possession." The information supplied in the form submitted by the petitioner, eren though accurate, led to the order of an irregular transfer being passed in his favour. The respondent brought this irregular transfer to the notice of the proper authority and the absence of any fraud by the petitioner shall confer the status as an informant on the respondent. In terms of this order, therefore, since the right of the petitioner has been negatived. the respondent could have claimed the house if he were in possession and under the rule he shall be deemed to be in possession. *Prima facie*, therefore, there appears to me nothing irregular in the transfer of title to the respondent. There is no force in the petition, which is dismissed. The respondent dent will have his costs.

K. B. A.

Petition dismissed.

PLD 1962 (W. P.) Lahore 509

Before Muhammad Yaqub Ali and Anwarul Haq, JJ

Col. K. M. SANA, Assistant Director (Medical),
PROVINCIAL HEALTH DIRECTORATE, LAHORE
—Petitioner

-remmone

versus

THE GOVERNMENT OF WEST PAKISTAN—
Respondent

1962. Writ Petition No. 880 of 1960, decided on 21st February

proviso (a) Establishment of West Pakistan Act, 1955, S. 8 (3) 14-10-1955—Not entitled to benefit of proviso (a) to S. 8. [p. 522] A

K. M. Sana V. Govt. of West Pak. Muhammad

Muhammad Yaqub All and Anwarul Haq, JJ