

Mohd. Arif
v.
State
—
Abdul Aziz
Khan, J

the Pakistan Penal Code. We accordingly alter his conviction from section 307 to one under section 326 of the Pakistan Penal Code but maintain the original sentence of three years rigorous imprisonment imposed on him by the learned Sessions Judge.

13. The conviction and sentence under section 307, P. P. C. with regard to the attack on Mst. Maqbul Jan P. W., are hereby maintained.

14. In the result, except for the alteration of the conviction of the appellant from section 307 to one under section 326, P. P. C., in respect of the attack on Ghulam Muhammad P. W., the appeal is otherwise dismissed.

K. B. A./A. H.

Appeal dismissed.

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

Before Bashir Ahmed, J

IMDAD ALI MALIK—Petitioner

versus

THE SETTLEMENT COMMISSIONER (POLICY), LAHORE
AND ANOTHER—Respondents

Imdad Ali
v.
Settlement
Commr.

Bashir
Ahmed, J

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

(a) Displaced Persons (Compensation and Rehabilitation) Act (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 Ex parte 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 January 1962.

JUDGMENT

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

Imdad Ali
v.
Settlement
Commr.

Bashir
Ahmed, J

granted to the petitioner with respect to house No. 157/C, Model Town, Lahore, was cancelled.

2. The relevant facts are these: The petitioner was an employee of the Government of India and was posted at Calcutta in the year 1945 and remained there till the 3rd of August 1947, when on Partition he opted for Pakistan. The house in dispute had been requisitioned by the Government and was made available to him as a Government servant on the 20th of October 1947. The premises were evacuee property and were subsequently allotted to him as such on the 27th of March 1952. On the 27th of July 1959 the petitioner put in a NCH-Form for the house in his occupation. The prayer was granted on the 2nd of December 1959, when a provisional transfer order was issued to him on payment of market price which came to a sum of Rs. 30,000. The Director of Enforcement suspected the claim of the petitioner to be a displaced person and on investigation addressed a letter on the 3rd of November 1960, to the Chief Settlement Commissioner for the case to be re-opened. The case was on revival assigned to the Settlement Commissioner, (Policy) who issued a notice to the petitioner under subsection (3) of section 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 transfer order issued 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 Husaln, Advocate, appeared on his behalf, with the result already indicated.

3. Learned counsel for the petitioner has assailed the order 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 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 petitioner, even though a local, to claim the evacuee house in his possession if at the time of Partition he was employed as a Government servant in India. The subsequent withdrawal of these instructions by another order dated the 27th of September 1959, it is claimed, is *ultra vires* his powers under the Act. I will notice the points taken by learned counsel for the petitioner in the order mentioned above.

4. On the question of notification, the main argument of the learned counsel for the petitioner is that Mr. Bashir Ahmad, Settlement Commissioner (Policy) was merely exercising the

Imdad Ali
v.
Settlement
Commr.

—
Bashir
Ahmed, J

authority of the Chief Settlement Commissioner delegated to him and was not otherwise seized of the case. In order to appreciate the argument it may be necessary to refer to section 19 of the Act which confers the right of appeal and also names the officers before whom the appeals are to be preferred. Section 20 deals with revisions. The relevant provision being subsection (3) of section 20 which will bear reproduction :—

“A Settlement Commissioner specially empowered in this behalf by the Chief Settlement Commissioner may, at any time, call for the record of any case or proceeding under this Act in which an Additional Settlement Commissioner or a Deputy 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.

1962

6. The real controversy in this case proceeds on what title the petitioner could have claimed the house. It is not disputed that the petitioner belongs to the district of Gujranwala, his home place being Anup, a village in that district. As one in the employ of the Government of India, it was an incidence of his service to be posted anywhere. At the relevant time he was posted at Calcutta and, on Partition, opted for Pakistan. These facts, the learned counsel contends, confer upon the petitioner the status of a "displaced person" within the meaning of the Act, who could claim the house in dispute. The relevant law on which the petitioner bases his claim is contained in clause 2 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 legislative provision was made by Ordinance XV of 1949, Administration of Evacuee Property Ordinance, to make provision 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 Ordinance to achieve the same end. The matter did not rest there alone. Pakistan Refugees Rehabilitation Finance Corporation Act was similarly adopted with a view to incorporate and regulate a corporation for the purposes of rendering financial assistance in the rehabilitation of refugees. The Provincial Legislatures had passed measures for the registration of claims of refugees by various Ordinances. This was followed

Imdad Ali
v.
Settlement
Commr.

Bashir
Ahmed, J

Imdad Ali
v.
Settlement
Commr.
—
Bashir
Ahmed, J

by Rehabilitation and Resettlement Schemes for providing lands to such refugees who left their properties in the territory now comprising India. In 1956, Central Ordinance, Registration of Claims (Displaced Persons) Ordinance II of 1956 was also enacted to ascertain with some certainty the claims of the displaced persons which had to be satisfied out of the evacuee property. The last piece of legislation was the Displaced Persons (Compensation and Rehabilitation) Act, 1958. In adopting this measure, the intention of the legislature, as would appear from the preamble, was 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 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 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 discover 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 commencement 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 August 1947, has not been permanently resident in any country outside Pakistan. It would seem that a person residing in India but with no intention to reside there permanently can claim the benefit of this provision, and in case he was a permanent resident of India, he would be disentitled to claim any such status.

9. In the cognate Indian Law, the word "evacuee" is defined in section 2 (d) of the Administration of Evacuee Property Act, 1950 (India) as including a person who after the named date 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

1962
forming part of India and (ii), who is resident in any place now forming part of Pakistan. The word 'resident' has been interpreted as one who dwells or resides permanently at a place. It means a fixed and permanent abode, dwelling house for the time-being, as contradistinguished from a mere temporary locality of existence. In a case reported as *S. M. Zaki v. State of Bihar* (1) even the word 'leaves' or 'has left' in its context has been interpreted to imply some amount of permanent stay or residence outside India but not to the extent of completely abandoning the Indian domicile.

Imdad Ali
v.
Settlement
Commr.
—
Bashir
Ahmed, J

10. 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. 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.

11. 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, 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 generally or uniformly acquiesced in, was not to be disregarded by Courts except for most satisfactory, cogent and impelling reasons. In the view of the learned Judge, the administrative construction should be long in vogue before the Courts could be persuaded to reverse it. The contemporary construction placed by the department in this case was a notification by the Chief Settlement Commissioner in his Memo. No. 260-Comp.-Reh./1959, dated the 22nd of August 1959, laying down the following rule:—

"A number of persons particularly Government servants belonging to the territories now forming Pakistan were before Independence residing temporarily in areas now forming part of India. The Chief Settlement Commissioner has decided

(1) A I R 1953 Pat. 112

(2) A I R 1947 Lah. 296

that such persons if residing in Pakistan at present may be treated as displaced persons within the meaning of sub-section (3) of section 2 of the Displaced Persons (Compensation and Rehabilitation) Act, 1958."

The construction being recent in point of time, it is claimed, should not have been so readily departed from, as has been done in the present case. The argument has little to commend itself for all that the Chief Settlement Commissioner laid down itself that such a person may be treated, not that he shall be treated. If he was interpreting the statute, there was no discretion in him but to treat a person who was within the definition to be a displaced person. In terms, therefore, the construction is more in the nature of the concession than the recognition of a legal right. The matter does not rest here alone. Soon after, on the 27th of December 1959, the Chief Settlement Commissioner, by an instruction, which appears at page 91 of the Manual of Settlement, Law and Procedure, on further consideration decided that only such persons who would have stayed on indefinitely in areas now forming part of India in the normal course of their service or business had there been no disturbance after the 1st of March 1947, were to be treated as displaced persons. In particular, Government servants belonging to the areas at present included in Pakistan who were liable to transfer back to these areas or all over the Indo-Pakistan Sub-Continent in the course of their duties should not be treated as displaced persons. The 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. In the cited 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 or incomplete and the respondent conveyed no 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 against him, the matter, in essence, is purely one of academic interest. The petitioner insists on a decision on the plea that if the respondent is not entitled to claim it, the house would be sold in open market and he will

This, however, is a matter for the department to consider and confers no right on the petitioner. It seems to me, however, that even here the petitioner does not appear to be taking any firm ground though I will not be taking a final decision on this part of the case. The Chief Settlement Commissioner promulgated an Order under section 10 of the Act, which was published in the Gazette of Pakistan, Extraordinary, on the 2nd of September 1961, vide Notification No. S. R. O. 824(K)61, which defined "Informant" in rule 1 (b) as meaning a person who informs the authority specified in this Order of the existence of any hidden property or any irregular transfer. Rule 9 provides that "if the Settlement Authority, within whose jurisdiction the evacuee property to which the information relates is situated, is satisfied that in a case decided by a Custodian or a Court or a Settlement Authority, the informant had furnished substantial information leading to the decision, he may, on payment, transfer the whole or any part of the said property to the informant: Provided that no one else is in law entitled to the transfer of the same property: Provided further, that, under a specific provision of the Displaced Persons (Compensation and Rehabilitation) Act, 1958, or any Scheme made thereunder, the informant would have been entitled to the transfer of the said property had he been in its possession." The information supplied in the form submitted by the petitioner, even 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 negated, 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 will have his costs.

K. B. A.

Petition dismissed.

P L D 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

versus

THE GOVERNMENT OF WEST PAKISTAN—
Respondent

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

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

Imdad Ali
v.
Settlement
Commr.
—
Bashir
Ahmed, J

K. M. Sana
v.
Govt. of
West Pak.
—
Muhammad
Yaqub Ali
and Anwarul
Haq, JJ