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Shabir Ahmed, J

1955, when the Establishment of West Pakistan Act came into force. No doubt the undertaking given by Mr. Akhlaque Husain was to the effect that he shall not practise as an Advocate before any High Court to which he may be transferred from the High Court of Judicature at Lahore but as the undertaking cannot create a disability which was not possible at the time of the giving of the undertaking, I have no hesitation in holding that the undertaking could be invoked against Mr. Akhlaque Husain only if he wanted to practise as an Advocate before the High Court of Judicature at Lahore or before a High Court to which he could be, and actually was, transferred under the law in force at the time he gave the undertaking in 1954 and I find no difficulty in holding that Mr. Akhlaque Husain's becoming a Judge of the High Court of West Pakistan did not amount to his transfer to another High Court for the purposes of the undertaking given by him.

8. In view of what I have said above, I would hold that Mr. Akhlaque Husain can appear as an Advocate before the High Court of West Pakistan. It is clear that if a formal order to the effect that Mr. Akhlaque Husain may appear as an Advocate before this Court were necessary, it would not have been refused because the fact that the Supreme Court had allowed him to appear as an Advocate in that Court would have made the refusal by this Court to pass the formal order almost impossible.

Manzur Qadir, C J

MANZUR QADIR, C. J.—I agree.

A. H. *Order accordingly.*

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Before Muhammad Yaqub Ali Khan and Anwarul Haq, JJ

MRS. KEAYS BYRNE—Petitioner

versus

THE SETTLEMENT COMMISSIONER, RAWALPINDI AND OTHERS—Respondents

Keays Byrne v. Settlement Commr.

Letters Patent Appeal No. 276 of 1961, decided on 3rd January 1963.

Muhammad Yaqub Ali and Anwarul Haq, JJ

(a) Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 2 (3)—"Displaced person" — Definition—"Place of residence" — Means permanent or quasi-permanent residence—Property of person resident in territory outside India must have been in existence at time of coming into force of Act—Writ—Finding of fact (arrived at by Settlement Officers) when may be disturbed in exercise of writ jurisdiction.

The words "place of residence" occurring in the definition of "displaced person" as given in section 2 (3), Displaced Persons (Compensation and Rehabilitation) Act, 1958, mean permanent or *quasi*-permanent residence. [p. 92]*A*

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The other part of the definition, *viz.* that relating, to a person resident in territory outside India contemplates that the property in question should be in existence in India at the time the Act was enacted and does not refer to property which may have existed in the past. [p. 92]*B*

The High Court will not interfere with a finding of fact arrived at by the Settlement Authorities, unless it be shown that it is the result of misreading of evidence or is based on no evidence whatsoever. [p. 93]*BB*

A person owning hotels in Murree (Pakistan) and Gulmerg (Occupied Kashmir), and Srinagar (Occupied Kashmir), having her permanent residence in Rawalpindi, and going to Kashmir to manage her hotels in Gulmerg and Srinagar but returning to Rawalpindi for the winter, was not a "Displaced person" since she 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. [p. 9-]*C*

(*b*) *Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 2 (3)—"Displaced person"—Nationality of such person not "directly relevant" in so far as first part of definition is concerned.* [p. 93]*D*

(*c*) *Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 2 (3)—"Displaced person"—Person resident in territory outside India unable to manage, supervise or control "property" belonging to him in India—"Property" includes movable property—Such property must have been in existence on date on which definition of "Displaced person" was enlarged to include such person.* [p. 94]*E*

(*d*) *Nationality—British subject—Non-registration of a person with United Kingdom High Commission in Pakistan "by itself" does not mean that such person is not a British subject.* [p. 95]*F*

(*e*) *"Judicial notice"—Taken of the fact that British nationals were not prevented from moving at time of Partition of India from one Dominion to the other—Evidence Act (I of 1872), S. 57.* [p. 95]*G*

Rafiq Ahmad Khan Bangash for Appellant.

Ishaq Muhammad Khan Settlement Commissioner (Legal) for Respondents 1.

Fateh Muhammad Anwari for other Respondents.

JUDGMENT

Anwarul Haq J

ANWARUL HAQ, J.—This appeal, under Letters Patent, is directed against a judgment of our learned brother S. A. Mahmood, J., dated the 3rd of October 1961, by which he dismissed the appellant's writ petition praying for the quashing of certain orders passed by the Settlement Authorities.

2. The relevant facts may briefly be stated. In 1929, the appellant, Mrs. Keays Byrne, obtained on lease from Sardar Bahadur Sardar Mohan Singh three bungalows bearing Nos. 169, 170 and 171 situated on Gwyn Thomas Road, Rawalpindi

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Cantonment, at a monthly rental of Rs. 170 and Rs. 89, respectively. She converted the three bungalows into a private hotel, and over the years built a few hutments as well in the compound of these bungalows. The hotel has continued functioning since then. On the 15th of December 1949, she filed an application under section 18 of the Evacuee Property Ordinance (XV of 1949) praying for a declaration regarding her old tenancy, but before this application could be decided, the Deputy Rehabilitation Commissioner, Rawalpindi, passed an order on the 15th of March 1950, directing her ejectment from the premises. She appealed to the Commissioner, Rawalpindi Division, in his capacity as Rehabilitation Commissioner. The appeal was accepted on the 14th of May 1951, and the order of ejectment was set aside, with the result that the appellant has remained in possession of the premises up to date, although no regular order of allotment was ever passed in her favour in respect of the three bungalows.

3. On the 5th of February 1959, Bungalow No. 169 was allotted to Major-General M. N. Mahmood, on the 7th of July 1958, Bungalow No. 170 was allotted to Dr. Mir Saleem Mahmood, and at about the same time Bungalow No. 171 was allotted to Captain Zahid Ali Akbar. These three allottees were cited as respondents Nos. 2, 3 and 4 in the writ petition.

Describing herself as a non-claimant displaced person from the State of Jammu and Kashmir, Mrs. Keays Byrne put in an application on form KNCS on the 26th of April 1960, for the transfer of these three bungalows as a shop. She alleged that she was running a hotel in Srinagar and also one at Gulmerg, the buildings of which she had taken on lease, but she had furnished and equipped them at her own expense.

5. This application of the appellant was rejected by the Deputy Settlement and Rehabilitation Commissioner on the 6th of May 1960, (*vide* Annexure A to the petition) holding that Mrs. Keays Byrne was an English lady, that she had to be treated as a local being an old tenant of the property, and that the three bungalows had been separately assessed and numbered in the Excise and Taxation record of 1946 and had already been transferred to other claimants who were in possession of allotment orders from the Deputy Rehabilitation Commissioner, Rawalpindi Cantonment. He also observed that this was the first application in form KNCS submitted by Mrs. Keays Byrne. The lady went up in appeal which was, however, dismissed by the Additional Settlement and Rehabilitation Commissioner, Mr. Z. K. Mahmood, on the 15th of August 1960. The learned Additional Settlement Commissioner also held that at the most Mrs. Keays Byrne could be treated as a local as her headquarters were at Rawalpindi although she was running hotels at Murree and Srinagar. He further observed that the form KNCS submitted by the appellant was time-barred as the last date for such applications was the 15th of November 1959, and he had no authority to extend that date. A final point made by him was that the form KNCS was not appropriate as the property in question consisted of three residential bungalows with three different survey numbers in the Cantonment area, although the appellant was not in possession of any of them as such. As regards the

movable property like furniture etc. which Mrs. Keays Byrne had abandoned in Kashmir, Mr. Z. K. Mahmood observed that there was an agreement between Pakistan and India with regard to the exchange of movable properties and it was not known what action Mrs. Keays Byrne had taken to retrieve her property. These conclusions were affirmed in revision by the Settlement Commissioner, Sardar Muhammad Zaman Khan, with the result that the claim of the appellant for the transfer of these bungalows stood finally rejected by the Settlement Authorities.

6. While deciding the writ petition, the learned Judge in Chambers came to the conclusion that the appellant was a British national residing permanently at Rawalpindi, and for that reason she could not be said to have been displaced from the territory of Occupied Kashmir on account of civil disturbances or fear of such distrubances, nor could it be held that she had any difficulty in managing, supervising or controlling her hotels in Gulmerg and Srinagar. He, therefore, expressed the view that she was not a displaced person. Further, he upheld the conclusion of the Additional Settlement Commissioner that the KNCS form submitted by the appellant on the 26th of April 1960, was belated and there was no proof that she had submitted a similar form earlier in August 1959, as alleged. As regards the nature of the property, he expressed the view that although the three buildings, when taken on lease, were private dwelling houses, yet at the time of Partition they were being used as a business premises and would as such appear to be covered by the definition of a "shop" under the Displaced Persons (Compensation and Rehabilitation) Act, 1958. He was, however, doubtful as to whether all the three bungalows could be treated as one shop. On his findings that Mrs. Keays Byrne was not a displaced person and that she had not put in the KNCS form within time, he held that she was not entitled to the transfer of the property in dispute and accordingly dismissed her petition.

7. The first question that arises in this case is whether the appellants is a displaced person as defined in the Displaced Persons (Compensation and Rehabilitation) Act, 1958, hereinafter referred to as the Act.

8. The term "displaced person" is defined in clause (3) of section 2 of the Act as meaning "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."

9. It will be observed that the definition given above is capable of being split up in to two parts ; the first one dealing with a person who was residing in any area now forming part of India or occupied by India, and the second one dealing with

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a person who was not residing in any such area but has property in that area. The ingredients of the first part of the definition appear to be the following :—

(*a*) That prior to the first day of March 1947, the person concerned should have had his place of residence in any area now forming part of or occupied by India ;

(*b*) that he should have left that place, or been displaced therefrom, on or after the 1st day of March 1947, on account of the setting up of the two Dominions of Pakistan and India or on account of civil disturbances or the fear of such disturbances in that area ; and

(*c*) that after leaving his place of residence in the aforesaid area he should have subsequently either become a citizen of Pakistan or taken up residence therein.

10. The true meaning to be attached to the words "place of residence" appearing in the first part of the definition came in for detailed examination by our learned brother Bashir Ahmad J. in *Imdad Ali Malik* v. *The Settlement Commissioner* (*Policy*), *Lahore* (1). After an exhaustive review of the history of allied legislation and the meaning attached to the word "residence" in some English cases, the learned Judge came to the following conclusion (paragraph 10 of the judgment) :—

"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 former 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."

We are in respectful agreement with this conclusion and the reasons leading to it. We consider, therefore, 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. A

11. The second part of the definition contemplates the case of a person who is a resident of any territory outside India but is unable to manage, supervise or control any properry belonging to him in India or in any area occupied by India for the reasons mentioned in the earlier part of the definition, namely, the setting up of the two Dominions or on account of civil disturbances or the fear of such disturbances in that area. It was pointed out by Major Ishaq Muhammad Khan, the learned counsel for the Chief Settlement Commissioner, that this part of the definition, as it stands in the Act of 1958, clearly contemplates that the property in question should be in existence in India at the time the Act was enacted and does not refer to property which may have existed B

(1) P L D 1962 Lah. 502

in the past. It seems to us that there is substance in this contention. The difference between the two parts of the definition is manifest from the use of the words "has left or been displaced from" in the first part, and "is . . . . unable to manage. . . . ." in the second part. In other words, the intention of the Legislature with regard to the second category of persons included in the definition of the term "displaced person" seems to be that at the time of the enactment of the Act of 1958 such persons should be unable to manage, supervise and control any property belonging to them in India or in any area occupied by India. This inability to manage, supervise etc. would be there only if the property is in existence and not otherwise. In other words, we think that the second part of the definition does not refer to a person whose property had ceased to exist in India or in any area occupied by India when the Act of 1958 was enacted.

12. We now proceed to determine whether the appellant falls within any of the parts of the definition of "displaced person". Taking the first part, first, we find that there is a finding of fact that the appellant was a resident of "Rawalpindi, B although she was running hotels in Murree, Gulmerg and B Srinagar. In the exercise of our writ jurisdiction, we cannot interfere with this finding of fact arrived at by the Settlement Authorities, unless it be shown that it is the result of misreading of evidence or is based on no evidence whatsoever. This is not the case here, as in fact 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 managing her holtes in Gulmerg and Srinagar. She does not, therefore, satisfy the basic ingredient of the first part of the definition. It further appears to us that she did not even leave Srinagar because of the Partition of the sub-continent or on account of civil disturbances or the fear of such disturbances in Srinagar, as it is not shown that in October 1947 any disturbances had taken place in Srinagar, and secondly she admitted before us that in any case she would have returned to Rawalpindi in the month of October 1947. The appellant, therefore, does not even satisfy the second essential ingredient of the first part of the definition of the term "displaced person". We might remark here in passing that the question of her nationality is not directly relevant in so far as the first part of the definition is concerned, because if she were a permanent or *quasi*-permanent resident of Srinagar and if she had left or been displaced from there for the reasons specified in the D definition and had subsequently taken up residence in Pakistan, she would be entitled to be treated as a displaced person, irrespective of the fact whether she adopted citizenship of Pakistan or not. On this point the definition contains an alternative clause, namely, the person concerned should either have subsequently become a citizen of Pakistan or started

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residing therein. 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.

13. As regards the second part of the definition, we have already observed that, in our view, it should first be shown that the person concerned had property in India at the time of the enactment of the Act of 1958, which he or she is unable to manage, supervise or control. We agree with Mr. Bangash, the learned counsel for the appellant, that the term "property", as used in this part of the definition, should not be restricted to immovable property alone, for even movable property may, in suitable cases, require management, supervision of control. In the present case, although the buildings in which the appellant was running her hotels at Gulmerg and Srinagar did not belong to her, yet she had set up hotel business in those buildings and had furnished and equipped those hotels at her own expense. It is, however, on record that the hotel at Srinagar was requisitioned by the Indian Army in 1948 and they had started paying the rent of the building direct to the owner of that building, who is an Indian national, and had assessed the rent of the fittings and furniture at Rs. 130 p. m. payable to the appellant. Therefore, as far as the hotel at Srinagar is concerned, there was nothing left to manage, supervise or control. The hotel at Gulmerg was being run in huts owned by the State and it is the case of the appellant that her fittings and furniture in that hotel were destroyed in 1947 or 1948. This being so, there was nothing left to be managed or supervised when the definition of the term "displaced person" was enlarged to include the second part. It appears to us, therefore, that Mrs. Keays Byrne does not qualify even under the second part of the definition.

14. There is another aspect of the matter, namely, that even if we assume that the second part should also be related to the year 1947, the circumstances of the appellant are such that it cannot be held that she was unable to manage, supervise or control her property in Srinagar and Gulmerg. In this connection the question of her nationality becomes relevant for the purpose of determining whether she was able or not to manage her property. The appellant's passport issued in the year 1947 was produced before us by the appellant herself and it describes her as a British subject by birth and her domicile is shown as United Kingdom, although her place of birth is stated to be Calcutta. She travelled to United Kingdom on this passport in 1950 after the death of her husband. Mr. Bangash laid great stress on the point that the appellant was not registered as a United Kingdom national with the British High Commission and for that reason she had been refused assistance in retrieving her property. This, however, does not appear to be correct as the reply of the British High Commission, which was shown to the learned Single Judge, and also to us during the hearing of this appeal, was to the effect that the United Kingdom High Commission could not help the appellant in this matter as her claim against Mr. Kaul, the Indian

owner of the hotel building in Srinagar, was of a private nature. It is correct that it was mentioned that she was not registered as a United Kingdom national but assistance was not refused for that reason. Further, mere non-registration with the Brisish High Commission is not necessarily conclusive of the fact that the person concerned is not a United Kingdom national. Moreover, the huts in Srinagar were leased out in the name of the appellant's husband Col. Keays Byrne, who was a retired officer of the British Indian Army. We take judicial notice of the fact that in spite of the Partition of the sub-continent, British nationals were not prevented from moving from one Dominion to another. If, therefore, the appellant or her husband had made any attempt to return to Srinagar for the purpose of managing their hotels, we think that they would have been able to do so, in all probability. A statement was made at the Bar by Mr. Bangash, and the same fact was admitted before us by the appellant herself, that she did not make any attempt to return to Srinagar after October 1947. These facts show that this is not a case where the appellant was unable to manage or supervise her property abandoned in Srinagar. It was stated that she could not send her Muslim Kashmiri staff to Srinagar as a result of Partition, nor could she travel to Srinagar *via* Murree which was her usual route for that purpose in the preceding years. These facts do not, in our view, lead to the conclusion that the appellant was unable to manage or supervise her hotels. There was no vested right in the appellant to travel by the same route to Srinagar or to employ the same servants year after year to run her hotels. These were variable factors and cannot be used to show that the appellant was unable to manage her property in Srinagar. Similarly, the fact that the property was requisitioned by the Indian Army is not an argument for saying that the appellant could not manage that property. The requisitioning only shows that the property ceased to exist for the purposes of the appellant's management.

15. It will be seen, therefore, that the case of the appellant does not fall even within the purview of the second part of the definition of the term "displaced person" for the reasons that, in the first place, she or her husband being United Kingdom nationals could, in all probability, continue to manage, supervise or control their property in the occupied Kashmir only if they had made an attempt to do so, and secondly because, in any case, the hotel in Srinagar having been requisitioned and the fittings and furniture at Gulmerg having been looted, according to the appellant herself, there was nothing left to manage, supervise or control, when the Act of 1958 was enacted.

16. Once we have reached the conclusion that the appellant is not a displaced person, it hardly seems necessary to examine the other contentions raised before us, because not being a displaced person, the appellant is not entitled to claim the transfer of the property in dispute under the Act. However, we have no hesitation in endorsing the conclusion reached by the Settlement Authorities, and upheld by the learned Judge in Chambers that, in any case, the KNCS Form submitted by the appellant was belated and was liable to be rejected on that ground alone. The case of the appellant is that she had submitted

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an application in August 1959 and as that had been misplaced she submitted another on the 26th of April 1960. As regards the submission of the first application, two affidavits were placed on the record, one by Fateh Muhammad, her servant and clerk, stating that the first application was submitted in March 1959, and the second by the appellant herself to the effect that the first application was sent in August 1959. We think that the date "March 1959" in the affidavit of the appellant's clerk is a mistake, for the scheme regarding the settlement of Jummu and Kashmir refugees was first notified on the 7th of July 1959 and, therefore, the application could not have been submitted by the appellant in March 1959. However, even if the month of March 1959 mentioned in the affidavit of the appellant's clerk is read as "August 1959", there is the significant fact that no receipt was produced by the appellant regarding the submission of the first application. The application is not forthcoming on the records of the Settlement Authorities and they have given it as a finding of fact that the only application received from the appellant is the one dated the 26th of April 1960. We find that in the writ petition itself, there is no averment about the first application and the affidavits to which we have referred were perused by us on the Settlement files.

17. In the Press Note of the 7th of July 1959, the last date fixed for receipt of applications from Jammu and Kashmir refugees on Form KNCS *etc.*, was 31st July 1959. This date was extended to 31st of August 1959 by a Press-note dated the 20th of August 1959, appearing on page 43 of the Manual of Settlement Law & Procedure. Then, by an order issued on the 18th of February 1960 (page 118 of the Settlement Manual), the Chief Settlement Commissioner decided to give further chance to the claimants in possession of houses who applied in CH or KCH Forms. The same order directed that no application will be accepted in Forms CS, NCH, NCS, KNCH, KNCS and IH. We were not shown any order or Press-note extending the date for KNCS Forms up to February 1960, but this order of the 18th of February 1960, however, makes it clear that on that date at least a definite direction was given that no application on Form KNCS etc., shall be accepted henceforth. Again, on the 15th of April 1960, a provision was made for the continued acceptance of various kinds of forms for the transfer of houses, but no such concession was allowed in the case of forms for transfer of shops (page 133 of the Manual). Finally, our attention was drawn to a Press-note issued on the 12th of July 1960 (page 157 of the Manual) by which the Chief Settlement Commissioner directed that the entertainment of belated applications for the transfer of houses and shops should be totally stopped after the 15th of July 1960. It was contended by Mr. Bangash that this Press-note clearly carried the implication that up to the 15th of July 1960 the Form KNCS submitted by the appellant could have been accepted by the Additional Settlement Commissioner concerned. The implication is perhaps there in this Press-note, but it does not amount to saying that the date for the receipt of KNCS and other forms had been specifically extended up to the 15th of July 1960, on the other hand, we have seen that the date was extended specifically only up to the 31st of August 1959,

although the learned Additional Settlement Commissioner has stated the last date to be the 15th of November 1959. If any forms were being accepted after that date, it is clear that that was not because the claimants had a right to such acceptance, but it was merely at the discretion of the authorities concerned. The Press-note of the 12th of July 1960 seems to have put an end even to that discretion. The position, therefore, emerges that on the 26th of April 1960 the appellant had no right to have her KNCS Form entertained by the Settlement Authorities. It was clearly time-barred. It may be that the Additional Settlement Commissioner concerned had a discretion to condone the delay, but if he chose not to do so, it is not for this Court to interfere. We, therefore, find that the KNCS Form submitted by the appellant was time-barred and could have been rejected for that reason.

18. The above discussion has proceeded on the basis that the property in dispute is a "shop" as defined in clause (12) of section 2 of the Act. It was contended by Mr. Bangash that even if the appellant is found not to be entitled to the transfer of the property as a displaced person, she was entitled to the same under paragraph 12 of the Schedule to the Act which contemplates that shops which have not been transferred to claimants or non-claimant displaced persons may be disposed of in such manner and subject to such terms and conditions as may be prescribed. It was submitted by the learned counsel that this "manner" was prescribed by the Chief Settlement Commissioner in a Press-note issued on the 3rd of May 1960 (pages 139—249 of the Settlement Manual). According to item 3 (*iii*) of this Press-note, a house, a shop, or a small industrial concern, converted into a hotel or a restaurant may be transferred to the person in possession of such hotel or restaurant on payment of the prevailing market value plus an additional amount up to 50% of such value. We find that this statement of Mr. Bangash is misconceived, for the Press-note of the 3rd of May 1960, referred to by him, is not relatable to paragraph 12 of the Schedule to the Act, but refers to parapraph 20 of the Settlement Scheme No. 1 which deals with conversions made in evacuee property. This paragraph stipulates that if a building, which was a house or a shop on the 14th of August 1947, has been converted to some other use, the Chief Settlement Commissioner shall determine whether it is a house or a shop or any other type of property. It is with reference to this paragraph that the Chief Settlement Commissioner has laid down certain principles in his Press-note dated the 3rd of May 1960. The present is not a case of conversion after the 14th of August 1947, and, therefore, it is not covered by the Press-note in question.

19. Finally, we were asked to record our opinion on the entitlement of respondents Nos. 2, 3 and 4 to claim the transfer of the three bungalows which constitute the property in dispute. It was contended by Mr. Bangash that the property being a shop, and none of the three respondents having been in possession of the same or any part thereof on the prescribed date, namely, the 20th of December 1958, they were not entitled to its transfer under the Act, on the other hand, it was submitted by Major Ishaq Muhammad Khan, the representative of the Settlement

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Anwarul Haq J

Department, that, in the first place, the property was not a shop as it consisted of three separate bungalows; and, in the second place, the question of its transfer to the three respondents had not yet been finally decided having been referred by the Deputy Settlement Commissioner to the Chief Settlement Commissioner for orders. This position seems to be correct, for there is a statement to this effect in the order of the Deputy Settlement Commissioner dated the 6th of May 1960, and the same position is stated in paragraph 10 of the written statement filed on behalf of respondent No. 1, the Settlement Commissioner. In other words, the question of the respondents' entitlement to the transfer of the three bungalows, which form the subject-matter of the present appeal, is still pending adjudication with the Chief Settlement Commissioner.

20. We think that it is not necessary for us to examine the question of the nature of the property or of the entitlement of the three respondents thereto for the reason that the appellant's claim to its transfer having been found untenable in law, the matter ends as far as the present appeal is concerned. Further, we are also of the view that by adjudicating, at this stage, on the twin questions of the nature of the property and the entitlement of respondents Nos. 2, 3 and 4 thereto, we shall be usurping the jurisdiction of the Chief Settlement Commissioner which he has still to exercise in this behalf, as stated by the Departmental Representative.

21. For the reasons given above, the present appeal fails and is hereby dismissed but in the circumstances of the case we refrain from burdening the appellant with costs.

A. H.

Appeal dismissed.

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Before Masud Ahmad, J

Ch. INAYAT ULLAH AND OTHERS—Petitioners

versus

WEST PAKISTAN GOVERNMENT AND OTHERS—Respondents

Inayat Ullah v. West Pak. Govt.

Masud Ahmed, J

Writ Petition No. 502/R of 1960, decided on 7th December, 1962.

(*a*) *Rehabilitation Re-settlement Scheme (Punjab), Part I, para. 23 and Part II—Rehabilitation Commissioner passing order under para. 23, Part I which is consistent with, and is passed with a view to securing proper implementation of, Scheme—Validity cannot be questioned even if such order comes into conflict with any provision of Part II.* [pp. 102, 103]*A & B*

Abdul Aziz v. *Rehabilitation Commissioner, West Pakistan, Lahore and others* Civil Appeal No. 3/1 of 1959 *ref.*