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West Pak. Muhammad

Gul, J

Vol. XVIII blue to shatter its prospects. Is not denied licence was granted to each petitioners Nos. 1 to 12 putel bat not denied use and such ground cannot last putel bat massionate grounds, and such ground cannot last putel bat and the principle are to the state of the stat blue to snatte to each petter ground cannot la putel that licence was granted to each petter and such ground cannot last for the compassionate grounds, and such ground cannot last for the compassionate ground cannot be and the compassionate ground cannot be and the compassionate ground cannot be an explicit to the licence was grounds, and such as the principle as the principle of the principle are p compassionale grant of any concernence of the licence are the nor can the Railways on any concernence to each of which we under a perpetual disability to revoke the licence to each of which we under a perpetual disability and cannot be held petition and perpetuation and cannot be held petition. nor can the repetual disability under a perpetual disability ab initio gratuitous. Grant of licence to each of pick wa ab initio gratuitous. Grant of licence to each of petition ab initio gratuitous and property and cannot be held petition to 12 was not property or Hindu Law, so assimilation under a port ab initio gratuitous. Orant ab initio gratuitous, or property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property and cannot be held activity Nos. j to 12 was not property activity N ab initio by as not property and the subscription of the subscript Nos. 1 to viscour of the suggestion would be to widow's estate under Custom and suggestion would be to widow's estate or marriage. Any such suggestion would be till her death or marriage. Any such suggestion would be till her death or marriage. Any such suggestion would be the suggestion would be the suggestion would be the suggestion the factor of the suggestion would be the sug ath or marriage. The force also in the found by netitioners' learned counsel. untenaule. als contention raised by petitioners' learned counsel,

n raised by pour the case leads us to conclude the case leads us to conclude the case has no merit, whatever. That the the conclude the conclude the case has no merit, whatever the conclude the conclude the case has no merit, whatever the conclude the case has no merit, whatever the conclude the case has no merit, whatever the case has no merit. 13. The above discussion of merit, whatever, That conclude that the petitioners' case has no merit, whatever, That apart that the petition to enforce any supposed right under the line apart. that the petitioners case has supposed right under the license this writ petition to enforce any supposed right under the license this writ petitioners is altogether misconceived. As reasonable this will pointed in the petitioners is altogether misconceived. granted to the petition of the Supreme Court in M. As recent held by their Lordships of the Supreme Court in M. A. Nauge $p \in R$. (1), a catering contract granted have As recently held by their Lordships (1), a catering contract granted by v. Chairman, P. E. R. (1), a catering contract granted by more licence under clause (a) or (b) of section to v. Chairman, P. E. A. (1), Railways is a mere licence under clause (a) or (b) of section (a) Railways is a mere licence and is revocable at any time of the section of t Railways is a mere notice at and is revocable at any time of the Easements Act, 1882 and is revocable at any time and of the Easements infunction can issue to prevent its revocation at the second se of the Easements from can issue to prevent its revocation therefore no injunction can issue to prevent its supreme of the supr therefore no injunction of their Lordships of the Supreme Cour our opinion this dictum of the petitioners' claim, even that he court our opinion this offerna to the petitioners' claim, even that be for a complete answer to the petitioners' rights under the licence is a complete answer. Petitioners' rights under the licences granted mere declaration. Petitioners' rights under the licences granted mere declaration. the nature of property and if there is any violation of any term of the grant, then the petitioners' remedy is a suit for damages, and not the enforcement of the grant by writ. Memon Motor Co. v. R. T. A., Dacca (2) is also in point.

14. For the aforesaid reasons, we dismiss the writ petition leaving the parties to bear their own costs.

Petition dismissed.

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(1) P L D 1965 S C 83 (2) PLD 1962 SC 108

P L D 1966 (W. P.) Lahore 204

Before Muhammad Fazle Ghani, J

MUHAMMAD HUSSAIN-Petitioner

versus

(1) CHIEF SETTLEMENT AND REHABILITATION COMMISSIONER, AND

(2) MUHAMMAD IBRAHIM-Respondents

Writ Petition No. 1493/R of 1962, decided on 29th November 1965.

Mohd. Hussain Chief

K. B. A.

Settlement & Rehab. Commr.

Fazle Ghani,

(a) Displaced Persons (Compensation and Rehabilitation) Ad (XXVIII of 1958), Schedule, para. 1-(Transfer of house)-Number of house as originally transferred different from number of subsequently entered in P Transferred different from number of subsequently entered in P. T. O.—Difference immaterial so long a dispute hetween vival dispute between rival parties relates to "same" house.

The house in dispute was originally transferred as property No. S. W. 101-R-41 but subsequently it was amended and the P. T. O. was issued for property No. S. W. 101-R-35-A. It was p. T. O. the Deputy Settlement Commissioner acted its p. T. O. was the Deputy Settlement Commissioner acted illegally in alleged that number of the property: allegen in the number of the property:

changing that the difference of property number was of no Held, that the decision of the case. Both the parties had consequence for the transfer of incomplete hungelow states had consequence is for the transfer of incomplete bungalow situate in been contesting of 2 kanals 3 marlas 117 sq. feet in specific least been contesting *kanals* 3 marlas 117 sq. feet in specific locality and area of 2 kanals or the other was important. an area of a second number or the other was immaterial.

The claim of one party was that the said property stood trans-[The chains of a part and parcel of the area of 12 kanals ferred in his favour as a part and parcel of the area of 12 kanals ferred in mis sq. feet of urban agricultural land under paragraph 42 11 marlas 17 sq. feet of urban agricultural land under paragraph 42 11 marias 1, Star Pakistan Rehabilitation Settlement Scheme, 1957, of the same had been transferred to the other action of the same had been transferred to the other action of the same had been transferred to the other action of the same had been transferred to the other action of the same had been transferred to the other action of the same had been transferred to the other action of the same had been transferred to the same of the same had been transferred to the other party on evalua-while the same Displaced Persons (Component) while the bander Displaced Persons (Compensation and Rehabilita-tion basis under Displaced Persons (Compensation and Rehabilitation) Act of 1958]. [p. 206] A

(b) Displaced Persons (Land Settlement) Act (XLVII of 1958), (0) — "Land" — Entered as "sakni" in revenue records of 5. 2 (3) — "Land", 1951-52 but described as "barani" and "chahi" in 1944-45, 1947, 1951-52 but described as "barani" and "chahi" in 1944-7, Allottee not producing original allotment order, nor khasra 1900-01- from 1947 up to date—"Sakni" land not allotable as girdawari from 2047 up to date—"Sakni" land not allotable as "agricultural land" under Displaced Persons (Land Settlement) Act, 1958—Inference drawn (in circumstances of case) that allottee was able to get classification of land changed in Jamabandi of 1960-61 with fraudulent object", viz. to get land allotted permanently under Displaced Persons (Land Settlement) Act, 1958. [pp. 207, 208]B & C

(c) West Pakistan Rehabilitation Settlement Scheme, 1957, para. 42—Urban land entered in revenue records as "sakni" (residential) from before 1947, and got entered "fraudulently" as "barani" and "chahi" in 1960-61; land having a building on it; and assessed to Property and House taxes-Cannot be allotted as agricultural land under paragraph 42 aforesaid, but as "house" under Displaced Persons (Compensation and Rehabilitation) Act (XXVIII of 1958), S. 2 (4) read with Schedule, para. 1-[Displaced Persons (Land Settlement) Act (XLVII of 1958), S. 2 (3)—Definition of "land"—Supplementary Scheme No. 2, paras. 3, 5]. [p. 209]D et seq (d) Displaced Persons (Compensation and Rehabilitation) Act.

(XXVIII of 1958), S. 16(1) read with Settlement Scheme No. I, para. 21-Building incomplete but inhabited by a number of families since 1947-Not covered by para. 21. [p. 211]E

Major Ishaq Muhammad Khan, S. C. (L) for Respondent No. 1. Dates of hearing: 8th, 22nd and 23rd November 1965.

The petitioner claims that he is a temporary allottee of urban cultured 17 sq. feet. agricultural land measuring 12 kanals 11 marlas and 17 sq. feet, comprised in Khorne New 4228/1520 4340/1539-1540. 4341/1539comprised in Khasras Nos. 4338/1539, 4340/1539-1540, 4341/1539-1540, 4344/1540 1540, 4348/1556, 1540, 4344/1540-1541, 4346/1541, 4352/1543-1544-1554, 4368/1556, 4395/1549, 4398/1549 and 1553, 4405/1549 to 1552, 4645/1531, 4646/1531, 4607/1530, 4369/1554 to 1556, 4394/1549, 4371/1553 to 1557 situate in Pausana Estate of Raigarh. Sanda Road, Lahore, to 1557 situate in Revenue Estate of Rajgarh, Sanda Road, Lahore,

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and the temporary allotment was confirmed in February 1960, when parchi tagseem khatoni was issued in his name by Additional Rehabilitation Commissioner (Land), Lahore, on 29th February 1960. The said confirmation order includes Khasras Nos. 4405/1549. 1552 measuring 2 kanals 3 marlas and 117 sq. feet "chahi" 1s49. 1552 measuring to the petitioner, stands transferred to also. The above Khasra numbers contained residential accommo. dation, which, according to the petitioner, stands transferred to him as urban agricultural land, and have wrongly been transferred as a house under the Displaced Persons (Compensation and Rehabilitation) Act, 1958, in favour of respondent No. 2, on valuation basis under Settlement Scheme No. 1.

2. The facts giving rise to the transfer of the property in favour of respondent Muhammad Ibrahim are that: on 28th October 1960, a report was made to Deputy Settlement Commissioner, Lahore, by one of his Inspectors to the effect that the property in dispute is an incomplete building and various families were in its occupation, but except Muhammad Ibrahim respondent No. 2 no person had filed CH form for its transfer. He was reported to be a refugee from Nabha and was allotted this property since 1948 and claimed the transfer of the said bungalow against the adjustment of his verified claim. The Deputy Settlement Commissioner by his order dated the 29th of October 1960, agreed with the proposal of the Inspector and ordered its transfer in favour of said Muhammad Ibrahim.

3. For the first time, after a lapse of more than 13 years. petitioner Muhammad Hussain came in the forefront and filed an appeal against the order of the Deputy Rehabilitation Commissioner, Lahore. The learned Additional Settlement Commissioner. by his order dated 17th January 1961, set aside the order of the Deputy Rehabilitation Commissioner on the ground that the building standing on the land is to go to the allottee concerned under para. 42 of the West Pakistan Rehabilitation and Settlement Scheme. It will be pertinent to mention here that right from the very beginning, there was some dispute about the number of the property in question. In the grounds of appeal before the Additional Settlement Commissioner, the petitioner had urged that the house in dispute was originally transferred as property No. S. W. 101-R-41 but consequently it was amended and the P. T. O. was issued for property No. S. W. 101-R-35-A. It was alleged by the petitioner-appellant that the Deputy Settlement Commissioner acted illegally in changing the number of the property. The difference of property number is of no consequence for the decision of this case. Both the parties have been contest ing for the transfer of incomplete bungalow situate in an area of 2 kanals 3 marlas 117 2 kanals 3 marlas 117 sq. feet in Rajgarh, Lahore, and whether it bears one number or the other is immaterial. The petitioner's claim is that the prior the other is immaterial. claim is that the said property stands transferred in his favour as a part and parcel of the area of 12 kanals 11 marlas 17 sq. feet of urban agricultural land under Paragraph 42 of the West Pakistan Rehabilitation Settlement and the paragraph 42 of the West Pakistan transferred to respondent Muhammad Ibrahim on evaluation basis under Displaced Percent Muhammad Ibrahim on evaluation Act under Displaced Persons (Compensation and Rehabilitation) Act of 1958. of 1958.

Muhammad Ibrahim respondent went in revision and the

4. Muhammas a settlement and Rehabilitation Commis-natter came up before the Settlement and Rehabilitation Commis-natter, Rawalpindi camp at Lahore, on 25th of September 1995. patter came up bolics and at Lahore, on 25th of September 1961. patter, Rawalpindi camp at Lahore, on 25th of September 1961. sioner, while accepting the revision matter Rawalpiner commissioner, on 25th of September 1961. sioner, red Settlement Commissioner, while accepting the revision the learned as follows:abserved as follows:---

"It has been shown to me by the learned counsel for the "It has building was assessed to tax by the F

"It has been shoulding was assessed to tax by the Excise and petitioner that this building was assessed to tax by the Excise and petitioner Department as also by the Corporation of the City of Taxation This distinctly proves that this is to be tracted Labore. In sector as distinct from forming part of the urban residential land." agricultural land."

When this petition came up for hearing on 8th of Novem-5. When the Muhammad Ibrahim was not present in spite 1965, respondent Muhammad Ibrahim was not present in spite bet 1965, response the questions raised in the petition were likely of service and since the said respondent, I considered it of service and share of the said respondent, I considered it expedient to affect the right of the said respondent, I considered it expedient to affect the notice to him for an actual date but he to affect the right notice to him for an actual date but he has not to issue another notice. I, therefore, proceeded to b to issue another of service. I, therefore, proceeded to hear the wined up in spite against him. petition ex parte against him.

6. Note, explaining the facts of the case, and parawise 6. Note, have been filed on behalf of respondent No. 1 under the comments of Mr. Muhammad Nawaz Cheema comments in Mr. Muhammad Nawaz Cheema, Additional Deputy signature of the missioner, Lahore, and Major Ishaq Muhammad Rehabilitation Commissioner, Cahore, and Major Ishaq Muhammad Rehadilitation of behalf of respondent No. 1 informs that this khan, appearing the powers of the Settlement Commission that this Khan, appointing the powers of the Settlement Commissioner (Land), officer enjoys the powers of facts has not been containing the settlement of facts has not been contained by the settlement of facts has not be other enjoys and the facts has not been controverted on behalf and this statement of facts this Note ot me perturbed in the very 1947. The same classification in the Revenue Record of the year 1947. The same classification n the Nevenue in the *jamabandi* of the years 1944-45 and 1951-52. existed in the by the Additional Deputy Commissioner, that the pointed out of these Khasra numbers was wrongly recorded as barani and chahi in the jamabandi for the year 1960-61. 2 kanals of this Khasra number were wrongly shown as under cultivation in the Khasra Girdawari for the year 1960-61 and kharif 1962. I called upon the learned counsel for the petitioner to show if there was any khasra girdawari in his possession to prove that the land allotted to his client, from the year 1947 has ever been used for agricultural purposes but the learned counsel has nothing to rely upon except parchi taqseem khatoni which was issued to his client on 29th of February 1960, by Additional Rehabilitation Commissioner (Land), Lahore. He has not been able to show the original temporary allotment order by which the land under dispute was allotted in favour of his client as culturable land. Muhammad Khan has argued that the entire land allotted to the petitioner is situated in a densely populated urban area of Rajgarh and, in fact, this land could not have been allotted as agricultural and under the Displaced Persons (Land Settlement) Act, 1958 as B it was a "sakni land" according to the Revenue Records and does not fall under the definition of land within the meaning of the said Act said Act. The non-production of original allotment order and the khasra girdawari from 1947 up to this time on the part of the petitioner and the genuineness of petitioner creates a reasonable doubt about the genuineness of entries in parchi taqseem khatoni (Annexure "A") and keeping in

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view the explanatory Note of facts and parawise comments submitted on behalf of respondent No. 1 it can safely be inferred submitted on behalf of the classification of land chanview the on behalf of respondent to classification of land changed submitted on behalf of respondent to get the classification of land changed that petitioner was able to get with an object to get the allotment submitted oner was able to get the object to get the allot changed that petitioner was able to get the allot ment of in the jamabandi of 1960-61 with an object to get the allot ment of in the jamabandi of a solution and urban agricultural land. in the *jamavanat* of 1966 of the urban agricultural land, this land in his favour as an urban agricultural land.

7. The petitioner invokes in his aid paragraph 42 of the West 7. The petitioner involves in the paragraph 42 Pakistan Rehabilitation Settlement Scheme of 1957. This para-Pakistan Rehabilitation Settlement Scheme of 1957. This para-graph was introduced in the "Rehabilitation Resettlement Scheme graph was introduced in the 1951, and if the building in Guessian graph was introduced in the 1951, and if the building in question Punjab" on the 25th of June 1951, and if the building in question Punjab" on the 25th of state petitioner's tenement it seems difficult formed part and parcel of the petitioner's tenement it seems difficult formed part and parcel of the penet take any effective steps to take to understand as to why did he not take any effective steps to take To my mind it is clear that the its possession from 1947 to 1960. its possession from the in obtaining the classification of land as petitioner was successful in obtaining entries in 1960 and it was set petitioner was succession in contract of land as barani chahi against the existing entries in 1960 and it was after this barani chani against the order of the transfer made change that he met an appendix Commissioner, Lahore. According to by the Deputy Rehabilitation Commissioner, Lahore. According to by the Deputy Renautilities by the Department, it is explained parawise comments such as the second and that Khasra No. 4405/1549-1552 contains an old bungalow and its two doors on Northern side open towards Sanda Road. There is one marla only between the doors on the Sanda Road and the is one maria only Major Ishaq Muhammad Khan has pointed out that according to parawise report, at present 17 families are putting up in this building and respondent No. 2 has also constructed about 7 or 8 rooms there. In para. 3 of the parawise comments it is pointed out that Khasra numbers in dispute were temporarily allotted to petitioner in 1947 when their classification was sakni and Major Ishaq Muhammad Khan has correctly observed that there were no provisions for the temporary allotment of "sakni land" in urban area and the temporary allotment made in favour of the petitioner was not legal. There is a compound wall of 7/8 feet height in the building in dispute, and, I have no, manner of doubt, that the classification given in parchi taqseem khatoni (Annexure "A") for this khasra number measuring 2 kanals 3 marlas and 117 sq. feet, as barani chahi, is not correct and has C been incorporated with fraudulent object to give the petitioner a right to claim the said building as an urban agricultural land. It was contended by the learned counsel for respondent No. 1 that no allotment, whether temporary, provisional or permanent was envisaged of the sakni land by the West Pakistan Rehabilitation Settlement Scheme, therefore, the temporary allotment made in favour of the petitioner in 1947, and, as well as the permanent allotment, made on 29th of February 1960, on the basis of parchi tagseem khatoni, in favour of the petitioner, was a nullity and Paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme is of no avail to the petitioner. The argument of the learned counsel for the respondent No. 1 has great force. According to the Rehabilitation Re-settlement Scheme (Punjab), prepared in 1951, the Central Government authorised the Rehabilitation Com-missioner (Land) Deventment authorised the Rehabilitation Commissioner (Land) Punjab, to pool and allot land as defined under section 4 (1) of the Duriab, to pool and allot land as defined under section 4 (1) of the Punjab Tenancy Act, XVI of 1887, which reads as follows:-

"Land means land which is not occupied as the site of building in a term been let any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculfor agricultural particle and other structures on such land."

From this definition it is clear that the land in dispute 8. From this domination it is clear that the land in dispute 8. shown as "sakni" from 1944 according to jamabandi could which is shown as "Lost Pakistan Pak

which is shown as the period of the petitioner under the said scheme. which is shown as the petitioner under the said scheme. the petition of the petitioner under the said scheme. while allotted to West Pakistan Rehabilitation Settlement Scheme. According to Mest Pakistan Rehabilitation Settlement Scheme Accuration of land is:-

Hand means evacuee property consisting of land held for "Land means or for purposes subservient to agriculture or for pasture

of Int Rehabilitation Commissioner, West Pakistan was authorised and the Renaultation on permanent basis' that land only which fell to pool and allot on the Scheme. Major Ishaq Muhammad under this definition of the entire allotment in favour of the where this urged that the entire allotment in favour of the petitioner Khan has the petitioner of 12 kanals 11 marlas and 17 sq. feet is a nullity for the total area of 12 kanals. In these proceedings, I are for the total and. In these proceedings, I am not concerned because it is allot of the rest of the area allotted in favour of the with the legality will deal with the allotment of the with the and will deal with the allotment of the residential petition in favour of respondent No. 2 only, therefore, I decline to give any finding on this contention.

9. Learned counsel for the petitioner has urged that his client was a temporary allottee of the land and it has been rightly conwas a temp to the favour under supplementary Scheme No. 2 of the west Pakistan Rehabilitation Settlement Scheme. In that context he has drawn my attention to paragraph 6 of the Supplementary scheme No. 2 wherein it is laid down that "unless specifically provided to the contrary in this' Scheme, the provisions of the West Pakistan Rehabilitation Settlement Scheme shall apply mutatis mutandis to all allotments made under the provisions of this Scheme", and with this provision he relies on paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme, claiming the transfer of the building and structure in favour of his client. But, as pointed out earlier, it has to be established that the allotment in favour of the petitioner was 'land' as defined under the Displaced Persons (Land Settlement) Act of 1958, and Schemes made thereunder, otherwise the petitioner cannot be considered to be eligible for the transfer of superstructure as an agricultural land. It will be of advantage to reproduce the various definitions given under the Supplementary Scheme No. 2. Paragraphs 3 and 5 are as follows :-

"(3) Rural agricultural land, hereinafter called, 'rural land' shall mean such land as is defined in clause (i), Part I, Chapter I of the West Pakistan Rehabilitation Settlement Scheme, situate outside the limits of a Corporation, Municipal Committee as these limits existed on the 14th August 1947."

"(5) Urban agricultural land means land other than rural agricultural land as defined in clause (iii) of this section."

For the purpose of allowing the petitioner to take the advantage of paragraph to settlement Paragraph 42 of the West Pakistan Rehabilitation Settlement Scheme of 1957, it should first be treated urban agricultural land as the been excluded land as defined above because urban land has been excluded from allocation above because urban land has been excluded from allotment under para. 4, Chapter II of Supplementary Scheme No. 2. In para. 5 (c) of the same Scheme it is laid down "land which constitutes potential building sites or

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may be declared as building site under section 2 (3) of the Dis. Persons (Land Settlement) Act of 1958 or such other Dis. may be declared as building site theory section 2(3) of the placed Persons (Land Settlement) Act of 1958 or such other bis, placed Persons (Land Settlement) or treated as built up are back been reserved for expansion or treated as built up are back been reserved from allotment. In this up are may be used. placed Persons (Land Settlement) for or treated as built up land that has been reserved for expansion or treated as built up land that has been reserved for excluded from allotment. In this case and the specifically excluded from allotment. In this case area placed Persons that has been reserved for expansion of treated as built up tand shall be specifically excluded from allotment. In this case it is obvious that 2 kanals 3 marlas and 117 sq. feet of land is rate it is not only a wall in fact, has a building which we have a wall on the surrounded by a wall ing which we have a wall in the surrounded by a wall ing which we have a wall in the surrounded by a wall ing which we have a wall in the surrounded by a wall ing which we have a wall in the surrounded by a wall in the surrounded shall be spin of spin of the s a potential building site but, in fact, has a building whonly inhabited by 17 families and surrounded by a wall of 7/8 which is Even assuming that it is land as defined in Physical Section 2017 (which argument is provided in Physical Section 2017). a potential inhabited by 17 families and surrounded by a wall of 7/8 feet height. Even assuming that it is land as defined in Punjab which argument is not correction by the opportion of correction height. Even assuming that it is not correct in Punjab Tenancy Act, XVI of 1887 (which argument is not correct) at media the Displaced of the Schemis Tenancy Act, XVI of 1007 (where the operation of the Schemes) otherwise specifically excluded from the Displaced Persons (1) it is for the allotment of land under the Displaced Persons (1) otherwise specifically excluded from the Displaced Persons (Land made for the allotment of land under the Displaced Persons (Land There is nothing in the Supplementary Settlement) Act of 1956. The contention of the learned counter Schemes No. 2 to support the contention of the learned counter the counter Schemes No. 2 to support the barred to have been transferred the super that his client should be deemed to have been transferred the super the land by virtue of para. 6 of the Supplementers that his client should be accurate to the super-structures on the land by virtue of para, 6 of the Supplementary structures on the land by virtue of paragraph 42 of the West Pakistan Scheme No. 2 read with paragraph 42 of the West Pakistan

10. Learned counsel for the petitioner has drawn my atten. 10. Learned counsel for the West Pakistan Rehabilitation Settlement tion to para. 29 of the West Pakistan Rehabilitation Settlement tion to para. 29 of the check and that according to his parchi Scheme of 1957, and it is contended that according to his parchi Scheme of 1957, and it is contained that and was shown as barchi tagseem khatoni, the classification of the land was shown as barani tagseem khatom, the classification of the been changed without as barani chahi, therefore, it could not have been changed without the inder section 2 of the chahi, theretore, it could not have been under section 2 (3) (b) permission of the Settlement Commissioner under section 2 (3) (b) of the Displaced Persons (Land Settlement) Act of 1958. Para. graph 29 of the West Pakistan Rehabilitation Settlement Scheme is not applicable to the petitioner's case, because according to this. paragraph, classification of evacuee land has to be taken in account according to the entries in the special jamabandi prepared for exchange with India and subsequent variations of soil has to be ignored. No special *jamabandi* of 1946 has been placed on record to show that the land in dispute was shown as *barani* chahi on the 14th August 1947, and the question of changing its classification does not arise in this case. The departmental report and parawise comments show that the land was "sakni" right from 1944 and the change in its classification as "barani chahi" in 1960 without the permission of the Settlement Commissioner is a nullity, This argument is, therefore, of no avail and goes against the petitioner.

11. Under section 2 (4) of the Displaced Persons (Compensation and Rehabilitation) Act of 1958, 'house' has been defined "as an evacuee residential premises of any value in an urban area or of the value of Rs. 10,000 00 or more in a rural area The house in dispute has been transferred in favour of respondent No. 2 for a sum of Rs. 22,000 00 on evaluation basis and as such it is 'house' within the meaning of Displaced Persons (Compensation and Rehabilitation) Act of 1958, being a house in urban area of Rajgarh, Lahore. Even houses beyond the urban limit carrying a value of more than Rs. 10,000 00 are transferable under the Displaced Persons (Compensation and Rehabilitation) Act of 1958 and Scheme No. VII has been made for regulating such transfer. By no stretch of imagination the bungalow in question, which is assessed to tax both by Municipal Corporation and Excise and Taxation Department, can be termed or can be called "urban agricultural land".

12: was an incomplete bungalow, therefore, it could that 12. The learned counser for the petitioner has urged that it was an incomplete bungalow, therefore, it could not be since it under Scheme No. I, made under this Displaced persons allotted under and Rehabilitation) Act of 1958, and has drawn and the scheme No. I which the scheme not be the scheme not LAHORE 211 since under this Displaced Persons allotted under this Displaced Persons (Compensation to para. 21 of Scheme No. I which reads as followin my (Compensation to para. 21 of Scheme No. I which reads as follows:

"If the building of a house or a shop was incomplete and "If the building of 14th August 1947, or was incomplete and un-inhabitable on 14th August 1947, or was rendered un-inhabit-un account of natural calamity, incendiarism or d-inhabitun-inhabitable on account of natural calamity, incendiarism or decay, sub-able on account of that date, it shall be transferred under this solution of the so able on account of account of the shall be transferred under this Scheme even sequent to that date, it shall be transferred under this Scheme even sequent it may have been completed or repaired subsequently it sequent to that date, been completed or repaired subsequently."

though the house in question although may be incomplete is not subsequently." But the house and, in fact, rights from independence 17 for an other subsequently. But the house in fact, rights from independence, 17 families un-inhabitation and, interefore, para. 21 of Scheme No. 1 is not appli-are living in it, therefore, case, even if this para appliare living in it, universe, part of scheme No. 1 is not appli-cable to the petitioner's case, even if this para applies, the cable to the no locus standi to challenge its transfactor is the cable to the period standi to challenge its transfer in favour of respondent Muhammad Ibrahim. In fact, the claim of the petitioner is based on paragraph 42 of the West Pakistan Rehabilitation is based on participation of 1957. He is neither allottee of the house Settlement Scheme of unit the respondent No. 2 for the house settlement potential, while the respondent No. 2 fulfils all these qualifications and the house has rightly been transferred in his favour. With these observations I dismiss the petition with no A. H.

Petition dismissed.

P L D 1966 (W. P.) Lahore 211 Before Muhammad Akram, J ASGHAR HAMID-Appellant versus

Mst. NASEEM AKHTAR-Respondent

Execution Second Appeal No. 217 of 1962, decided on 10th February 1964.

(a) West Pakistan Relief of Indebtedness Ordinance (XV of 1960), Ss. 2(c) & 7-No evidence to prove that judgment-debtor earned livelihood "mainly by agriculture"—Mere fact of being landowner in estate—Not sufficient to hold him to be a "debtor"— House belonging to such judgment-debtor not exempt from attachment and sale under S. 7—Civil Procedure Code (V of 1908), S. 60. [p. 213]A

(b) Civil Procedure Code (V of 1908), S. 60 (1), (b), (c) -"Agriculturist"-Term used in restricted sense and carries same meaning in both clauses (b) & (c)—Does not include person said to be agriculturist merely by reason of caste—Person to fall within meaning of term to be agriculturist by profession and solely dependent on agriculture for his livelihood. [p. 214]B

Sant Ram v. Buta Khan A I R 1938 Lah. 72; Balwant Singh V. Anjaman Imdad Bahami Qarza and another A I R 1939 Lah. 40; Nihal Sin Indad Bahami Qarza and another A I R 1939 Lah. 388 and Nihal Singh v. Siri Ram and others A I R 1939 Lah. 388 and Shriman v. Siri Ram and others A I R 1939 Lah. 388 and Shrimant Appasabeb Tuliaram Desai and others v. Bhalchandra Vithalrao Thube A I R 1961 S C 589 ref.

(c) Punjab Alienation of Land Act (XIII of 1900), Ss. 2(3) cultural purpose or purposes subservient to agriculture"—Protec-tion of culture or purposes subservient to agriculture" tion of S. 16 not available against sale of such land—Civil Procedure Code (V of 1000) Code (V of 1908), S. 60. [p. 216]C

Asghar Hamid Naseem Akhtar Muhammad

Akram, J

Mohd. Hussain Chief Settlement & Rehab. Commr

Fazle Ghani, EJ