

*Sultana
Khokhar
v.
University of
the Punjab
—
Hamoodur
Rahman, J*

same degree for different students or groups of students in accordance with the Statutes, Ordinances and Regulations prevailing on the dates of their respective admissions, even though the same may have long since been validly altered in accordance with the provisions of the Act. This could never have been the intention of the framers of the Punjab University Act. We have no hesitation, therefore, in coming to the conclusion that, no such vested right exists in the examinees which can be enforced by a writ of *mandamus*.

For these reasons we dismiss the writ petition but make no order as to costs. The petition for special leave must also for the same reasons be dismissed, as, in our opinion, the High Court rightly refused to interfere in its writ jurisdiction.

A. H.

Petition dismissed.

P L D 1962 Supreme Court 42

*Present : A. R. Cornelius, C. J., S. A. Rahman
Fazle-Akbar and Hamoodur Rahman, JJ*

Civil Appeal No. 93 of 1960

Syed ABDUR RASHID—Appellant

versus

- (1) PAKISTAN, THROUGH THE SECRETARY, MINISTRY OF REFUGEES AND REHABILITATION, KARACHI,
- (2) CLAIMS COMMISSIONER, PAKISTAN,
- (3) *Mst. AMTUL HAFEEZ*, WIDOW OF *Syed ABDUL MAJID*,
- (4) *AZIZ ALI CHISHTI*, MINOR SON OF *MANSOOR ALI CHISHTI* THROUGH *MANSOOR ALI CHISHTI Mukhtar* OF *Mst. AMTUL HAFEEZ* AND GUARDIAN OF *AZIZ ALI CHISHTI*, AND
- (5) *Khawaja GHULAM HUSSAIN RATHORE*, DEPUTY CLAIMS COMMISSIONER—Respondents

AND

Civil Appeal No. 5 of 1961

AYUB KHAN—Appellant

versus

- (1) THE REHABILITATION COMMISSIONER, LAHORE DIVISION, LAHORE,
- (2) MUHAMMAD AFZAL,
- (3) *Mst. HAJRAN*, AND
- (4) *Mst. RABIA BIBI*—Respondents

Civil Appeal No. 93 of 1960 and Civil Appeal No. 5 of 1961, decided on 18th December 1961 (at Karachi).

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 6th October 1959, in Writ Petitions Nos. 466 and 695 of 1957).

*Abdur
Rashid
v.
Pakistan*

*Cornelius,
C J, S. A.
Rahman,
Fazle-Akbar
and
Hamoodur
Rahman, JJ*

(a) Registration of Claims (Displaced Persons) Act (III of 1956), S. 5 read with S. 2 (3)—Nature of "claim" filed under Act—Merely "assertion" of a right to property "in India"—Displaced person preferring "claim" not entitled "as of right" to get properties in Pakistan equivalent to properties left in India—"Claim" not in nature of "right or interest in property" which could devolve "according to personal law of deceased"—Central Government claimant from among category of displaced persons—Children of person dying in life-time of his or her father—"Rightful claimants" No. II-C (2)/J/57/7359, dated 11th May 1957—Not delegated legislation—Whether affected by Art. 25, Constitution of Pakistan (1956)—Memo. does not touch any "vested right"—No question of retrospective application of Memo.—West Punjab Muslim Personal Law (Shariat) Application Act (IX of 1948).

Abdur
Rashid
v.
Pakistan
—
Cornelius,
C J, S. A.
Rahman.
Fazle-Akbar
and
Hamoodur
Rahman, JJ

Under the Registration of Claims (Displaced Persons) Act, 1956, a claim is merely the assertion of a right to the ownership of, or to any interest in, property which has been treated as evacuee property in India or of which a displaced person has otherwise been deprived under any law in force in India. To constitute a claim, therefore, within the meaning of this Act it is sufficient that a displaced person should merely assert that he has a right to the ownership of, or some interest in, a property in India which has been treated as evacuee property or of which he has been deprived by some law in India, and it is this claim which he submits for registration Under this Act there is no question of the claimant being allotted any property at all in respect of his claim. [p. 51]A

It is fallacious to conceive of a claim under the Act of 1956 as being in the nature of a right or interest in property which could devolve like property according to the personal law of the deceased. The deceased displaced person had not up to that stage become vested of any property in Pakistan which could devolve upon his heirs according to the law of succession prevailing in Pakistan. The properties, if any, left by him being situated in India would devolve according to the law prevailing in India and succession thereto could not be regulated by a law made in Pakistan. [p. 51]B

As it was a question of purely granting a benefit or a privilege, there can be no manner of doubt that it was certainly open to the Legislature to determine as to who were to be the persons to whom it would give such benefit What the Government did was to instruct by an executive direction (Claims Commissioner's Memo. No. II-C (2)/J/57/7359, dated 11-5-1957 declaring children of a person dying in life-time of his or her father to be treated as rightful claimants to the share of their father) as to the manner of verification of the claim. The Government could do so, since under the Scheme of the Act of 1956 the Claims Officers were to act under the general superintendence and control of the Central Government. This was not a case in which the Government can be said to have either legislated as to the category of persons entitled to claim or interfered with the decision of the Claims Officers in any particular case, but it was a case where merely a

or her father—Not entitled to inherit—Scheme does not prescribe any special rule of succession in case of confirmed allottees—Punjab Land Revenue Act (XVII of 1887), S. 34—Mirza Anwar Beg and others v. Mirza Ulfat Beg and others P L D 1960 Lah. 265 approved and Umar Draz Ali v. Khurshid Ali and others P L D 1960 Lah. 834 ref].

• Under the Rehabilitation Re-settlement Scheme (Punjab) lands may be allotted to temporary allottees as well as non-allottees in accordance with the instructions contained therein after drawing up a programme, preparing a proposal, notifying the same, hearing objections, if any, made to the said proposals, and provisionally finalising the proposals. After the allotment has been made the allottee, if not already in possession, is put into possession and then only after the Rehabilitation fees and other Government dues have been paid is the allotment confirmed in favour of the allottee. Until such an allotment, in accordance with the Scheme, has been made in favour of a person, he is referred to in the Scheme as a 'right-holder'. [p. 57]

From an examination of provisions of the Scheme (among them paras. 2, 14 of Part I, paras. 46, 46-A, 67 of Part II) it would appear that an allotment, although essentially a grant from the Government, does, when it has once been confirmed, create certain rights or interest in the land allotted which the allottee may in accordance with clause 14 of Chapter II, Part I of the Scheme transfer by sale, exchange, gift, will, mortgage or other private contract but even so the land continues to remain evacuee property throughout and has to be utilised only for purposes approved by the Rehabilitation authorities, and may be resumed if the conditions of allotment are not fulfilled by the allottee. These conditions of allotment are in the nature of restrictive covenants, running with the land but subject to these covenants and the right of resumption or re-entry reserved under the Scheme the allottee becomes clothed with all the other usual incidents of at least an occupancy tenant in the lands so allotted. Thus he may, subject to those conditions or covenants, deal with the same as any other such tenant would have been entitled and may even dispose of them or alienate them either by an instrument *inter vivos* or by will. It is difficult, in the circumstance, to imagine how it can be said that the interest acquired by the allottee in the property is merely a personal interest which cannot be inherited. Having regard to the rights expressly conferred upon him by the Scheme itself an allottee, in whose favour an allotment has been confirmed, acquires a right which is in every sense of the term a 'real property' in its true juristic concept—an interest in land. [p. 58]

Nevertheless, since the allotment is expressly stated to be a 'grant' and such grants can be made by the grantor upon such terms and conditions as may be specified by a person duly authorised in that behalf, namely, the Rehabilitation Commissioner, it would have been open to the Rehabilitation Commissioner to lay down, if he so thought fit, as a condition of the grant that if the property is not transferred by sale, exchange, gift or will, it should devolve in a particular manner which may well be inconsistent with the personal law of the allottee or even the Muslim Law of succession, but if the Scheme itself has not laid down any such

Abdur
Rasheed
v.
Pakistan

—
Cornelius,
C.J., S. A.
Rahman.
Fazle-Akbar
and
Hamoodur
Rahman, JJ

Abdur
Rashid
v.
Pakistan

Cornelius,
C J, S. A.
Rahman,
Fazle-Akbar
and
Hamoodur
Rahman, JJ

special rule of succession, when a confirmed allottee under the Scheme dies he dies vested with 'real property' which is capable of being inherited and will be inherited by persons who would, according to the general law of the land governing inheritance from such a person, be entitled to inherit from him. [p. 58]K

Having regard to the context in which paragraphs 46, 46-A occur in the Scheme, the cases therein dealt with are of inheritance from deceased 'right-holders' and not from deceased confirmed allottees. This view appears also to be confirmed by paragraph 67 of Chapter II, Part II as also by the subsequent instructions and clarifications from time to time issued by the Rehabilitation authorities. Thus in the Memorandum No. 4953-54-3917-R (L), issued on the 14th of April 1954, by the Deputy Rehabilitation Commissioner (Lands) under the instructions of the Rehabilitation Commissioner it is stated :—

"The Rehabilitation Commissioner (Lands), however, wishes it to be made clear that the said instructions should be applied only to the cases of inheritance of such refugee right-holders as had died either in India or Pakistan before they could file their claims for allotment of land under the Rehabilitation Re-settlement Scheme. When once a claimant had filed his claim and died thereafter before securing any actual allotment, the normal rule of succession laid down by the Shariat Law should be applied in its entirety without any deviation. The same should be done in subsequent mutations of inheritance of allottees as already laid down in clause 67 of Chapter I, Part II of the Re-settlement Scheme. It should therefore be understood that the term 'deceased right-holder' in clause 67 referred to above means a right-holder who had died before putting in his claim."

This Memorandum, which is an instruction, abundantly clarified the position. [p. 59]L

This was not a new instruction, but was a mere clarification of the position prevailing under the Scheme itself. [p. 59]M

The Scheme did not prescribe any special rule of succession to confirmed allottees. [p. 59]N

The amendment made in subsection (1) of section 34 of the Punjab Land Revenue Act of 1887 by the Punjab Land Revenue (Amendment) Act, 1954 (IV of 1955) appears also to indicate that the allotment of evacuee land under the Scheme created an interest in land which had to be recorded in the record-of-rights by the Revenue authorities in the same manner as the acquisition of rights in non-evacuee lands by inheritance, purchase, mortgage, gift, etc. [p. 59]O

Where an allottee died seized of certain rights and interests in the land allotted to him and confirmed in his favour which were heritable :

Held, that as the Scheme laid down no specific rule of succession to such persons, succession to him was to be governed by the Muslim Personal Law (Shariat) Application Act, 1948, and the inclusion of the son and daughter of his pre-deceased daughter among his heirs under the said law. [p. 60]P

Mirza Anwar Beg and others v. Mirza Ulfat Beg and others
P L D 1960 Lah. 265 approved.

Umar Draz Ali v. Khurshid Ali and others P L D 1960 Lah.
834 ref.

Abdur
Rashid
v.
Pakistan

Cornelius,
C J, S. A.
Rahman,
Fazle-Akbar
and
Hamoodur
Rahman, JJ

Civil Appeal No. 93 of 1960.

Nasim Hasan Shah Advocate Supreme Court instructed by
Khalilur Rehman Attorney for Appellant.

Ghias Muhammad Senior Advocate Supreme Court
(*Karam Elahee Chauhan* Advocate Supreme Court with him)
instructed by *Iftikharuddin Ahmad* Attorney for Respondent No. 1.

Mansoor Ali Chishti Mukhtar of Respondent No. 3 and
Guardian of Respondent No. 4 for Respondents Nos. 3 & 4.

Respondents Nos. 2 & 5 : *Ex parte*.

Civil Appeal No. 5 of 1961.

Abdur Rahim Advocate Supreme Court instructed by
Kamal Mustafa Bokhary Attorney for Appellant.

Manzur Hussain Advocate Supreme Court instructed by
Faiz Muhammad Bhatti Attorney for Respondents Nos. 2 & 3.

Respondents Nos. 1 & 4 : *Ex parte*.

Dates of hearing : 13th and 14th November 1961.

JUDGMENT

HAMOODUR RAHMAN, J.—These two appeals, by special leave, have been heard together, as one of the questions of law arising in both of them is common, namely, as to whether the Rehabilitation authorities can register claims of, or make allotments of evacuee lands to, persons who are not under the Muslim Law the legal heirs of a displaced person, after the coming into force of the West Punjab Muslim Personal Law (Shariat) Application Act (IX of 1948). But since the facts giving rise to these two appeals are different, we think it will be more convenient to deal with them separately.

Hamoodur
Rahman, J

In Civil Appeal No. 93 of 1960 the facts are briefly as follows:—

One Syed Abdul Majid, who was originally a resident of Kapurthala State, migrated to Pakistan and settled in Lahore leaving behind considerable immovable properties in Kapurthala, East Punjab and the United Provinces. He died in the year 1953 at Lahore. He had no male issue but only one daughter *Mst. Amatul Aziz* who was married to one *Mansoor Ali Chishti*. The said *Mst. Amatul Aziz* died in Lahore in the year 1949 in the life-time of her father leaving her surviving her husband *Mansoor Ali Chishti* and a minor son *Aziz Ali Chishti*. Up to the time of his death *Syed Abdul Majid* had filed no claim in respect of the properties left by him in India but on the 30th of December 1955, *Mansoor Ali Chishti* acting as the *Mukhtar-e-Am* of *Mst. Amatul Hafeez*, the widow of *Syed Abdul Majid*, and guardian of his minor son *Aziz Ali Chishti* filed a claim in respect of the said properties basing his claim upon two wills said to have been executed by the late *Syed Abdul Majid* on the 1st of November

Abdur
Rashid
v.
Pakistan

Hamoodur
Rahman, J

1952, and the 2nd of February 1953, respectively, purporting to bequeath all his properties to his widow *Mst. Amatul Hafeez*, son-in-law *Mansoor Ali Chishti* and his grandson *Aziz Ali Chishti*. Therefore, on the 22nd of April 1957, another claim was lodged with the Claim Commissioner by *Syed Abdur Rashid*, the appellant before us, claiming to be entitled to a $\frac{1}{4}$ th share in the properties left by the said *Syed Abdur Majid*, his brother. He also challenged the validity of the wills set up by *Mansoor Ali Chisti* and the right of either the said *Mansoor Ali Chishti* or *Aziz Ali Chishti* to lodge any claim, as they were not according to the Muslim Law the heirs of the deceased. These claims were consolidated but during the pendency of these claims the Claims Commissioner, Pakistan on the 11th of May 1957, issued a Circular addressed to the Additional Claims Commissioner, all Deputy Claims Commissioners and all Claims Officers in the North Zone, to the following effect :—

"No. II. C (2)/J/57/7359

Government of Pakistan

Office of the Claims Commissioner Pakistan

No. 1, Warris Road, Lahore

Dated the 11th May 1957.

From

M. Khurshid Zaman, Esquire,
Barrister-at-Law,

Claims Commissioner Pakistan,
Lahore.

To

The Additional Claims Commissioners,
All Deputy Claims Commissioners, and
All Claims Officers in the North Zone.

Memorandum.—The Government of Pakistan have decided that, for the purpose of claims the children of a person who died in the life-time of his/her father are to be treated as rightful claimants to the share which their father would have inherited.

(Sd.)

Deputy Claims Commissioner (Admn.)
for Claims Commissioner, Pakistan."

Acting in accordance with the instructions contained in this Circular the Deputy Claims Commissioner, before whom the claims were pending, rejected the claim on the basis of the wills but registered the claims of *Mst. Amatul Hafeez*, *Syed Abdur Rashid* and *Aziz Ali Chishti* and determined their respective shares as follows :—

"(i) Widow $\frac{1}{4}$ th

(ii) *Aziz Ali Chishti* $\frac{1}{4}$, and

(iii) *Abdur Rashid* the residue as a brother of the deceased."

As against this the appellant moved the High Court of West Pakistan on the 24th of June 1957, for the issuance of an appropriate writ directing (i) the Government of Pakistan to withdraw

the said instructions and (ii) the Deputy Claims Commissioner to issue a Claim Certificate in his favour in accordance with his share under the Muslim Shariat Law.

Two grounds were mainly urged in support of the said application for writ in the High Court, namely, (i) that the instructions contained in the Memorandum of the 11th of May 1957, were illegal and *ultra vires*, as they were in contravention of the West Punjab Muslim Personal Law (Shariat) Application Act, 1948, and (ii) that they were repugnant to the provisions of Article 25 of the late Constitution.

In the High Court the learned Judges constituting the Division Bench differed on the question as to whether the Government of Pakistan could have legally issued such a direction but they agreed that the writ should not issue and, therefore, dismissed the petition. One of the learned Judges was of the view that claims registered under the Registration of Claims (Displaced Persons) Act, 1956, did not amount to property, although they were to be registered because some property was left in India by the displaced person concerned. The claims were, according to this learned Judge, invited and registered *ex gratia* for the purpose of rehabilitation of refugees who had migrated from India and did not represent, in any way, the right to any property, although for the purpose of determining the quantum of the relief to be given to a particular evacuee the properties left behind in India had been taken into account as merely a basis of calculation. This learned Judge was further of the view that by section 12 of the Registration of Claims (Displaced Persons) Act, 1956, the jurisdiction of the High Court had been validly taken away.

The other learned Judge, however, took the view that in the case of evacuees who died after migration to Pakistan, since claims had to be registered in accordance with the property which the applicant held in India, neither the Government nor the Claims Commissioner was competent to alter by a direction of the nature issued in this case the rule of succession prescribed by the law of the land. In any event, the instruction was, in no way, binding on the Claims Commissioner who under the provisions of the Act of 1956 was bound to come to his independent conclusion with regard to the validity of a particular claim filed before him and was not merely to act on the dictation of any other authority or person. In his opinion, furthermore, section 12 of the Registration of Claims (Displaced Persons) Act, 1956, read in the light of Article 2 of the Laws (Constitution in Force) Order, 1958, could not operate so as to take away the writ jurisdiction of the High Court. Nevertheless, he agreed in the order proposed to be made, because in his opinion "the real object of the registration of claims is to provide a criterion for determining the compensation which is to be paid to displaced persons."

The learned counsel appearing for the appellant has repeated before us the arguments advanced in the High Court and has maintained that the instructions contained in the Memorandum of the 11th of May 1957, were without jurisdiction. In order to test the validity of this argument it is necessary first of all to determine as to what is the exact nature of a claim under the Registration of Claims (Displaced Persons) Act, 1956. If it is in

Abdur
Rashid
v.
Pakistan
—
Hamoodur
Rahman, J

17475

Abdur
Rashid
v.
Pakistan
—
Hamoodur
Rahman, J

the nature of a heritable estate or property, then it may well be that devolution to that property or estate will be governed by the personal law of inheritance applicable to the deceased. On the other hand, if it is not in the nature of any kind of property, which can be inherited, or even a heritable interest in property, no question of devolution can, in our opinion, possibly arise.

Under the Act of 1956 a "Displaced Person" has been defined as "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, and before the 30th day of June 1953, left, or been displaced from his place of residence in such area and who has subsequently become a citizen of Pakistan, or is residing therein". A "claim" is defined as "the assertion of a right to the ownership of, or to any interest in, property which has been treated as evacuee property or of which a displaced person has otherwise been deprived under any law for the time being in force in India or any area occupied by India, except Assam, West Bengal, Tripura and Manipur."

Then by section 5 it is provided as follows :—

"5. *Registration of claims.*—(1) A displaced person may within such time and in such form and manner, as may be prescribed, submit his claim to a Registering or an Additional Registering Officer.

(2) On receipt of a claim under subsection (1), the Registering Officer shall register and may publish the claim in the prescribed manner and forward the relevant papers to such authority as the Central Government may prescribe in this behalf."

Section 6 prescribes the jurisdiction of Claims Officers and provides that a Claims Officer or a Deputy Claims Commissioner, as the case may be, shall hold an inquiry into such cases and, after taking such evidence and examining as he thinks fit in relation to the verification of the claim and the valuation thereof. Section 7 gives a right of appeal to a person aggrieved by an order made under the said Act and also empowers a Claims Commissioner to *suo motu* revise the orders of Claims Officers, Deputy Claims Commissioners or Additional Claims Commissioners under his jurisdiction and to review his own orders. Subject to such appeal, revision or review the orders of the Claims Authorities become final and cannot be called in question in any Court. Section 8 confers on Claims Authorities more or less the same powers as are vested in Courts under the Code of Civil Procedure when trying a suit. Section 12 expressly bars the jurisdiction of Civil Courts in respect of any matter which a Claims Authority under the Act is empowered to determine.

It is also necessary to mention here that under section 3 of the Act, Claims Commissioners, Additional Claims Commissioners, Deputy Claims Commissioners and Claims Officers are appointed by the Central Government which can also by general or special order provide for the distribution or allocation of the work to

be performed by them. Furthermore, under subsection (2) of the said section the Claims Commissioners are required to discharge their duties under the general superintendence and control of the Central Government. Similarly under subsection (3) thereof all officers subordinate to the Claims Commissioners are to discharge their functions and duties under the general superintendence and control of the Claims Commissioner concerned, but subject to the general or special orders of the Central Government itself.

Abdur
Rashid
v.
Pakistan
—
Hamoodur
Rahman, J

It will thus be seen that under this Act a claim is merely the assertion of a right to the ownership of, or to any interest in, property which has been treated as evacuee property in India or of which a displaced person has otherwise been deprived under any law in force in India. To constitute a claim, therefore, within the meaning of this Act it is sufficient that a displaced person should merely assert that he has a right to the ownership of, or some interest in, a property in India which has been treated as evacuee property or of which he has been deprived by some law in India, and it is this claim which he submits for registration. The Claims Officer or the Deputy Claims Commissioner, as the case may be, then inquires into the same and makes such order as he thinks fit in relation to the verification thereof and its valuation. Under this Act of 1956, therefore, there is no question of the claimant being allotted any property at all in respect of his claim. Indeed, as stated in the Statement of Objects and Reasons prefacing the said Act, this is a first step towards the framing of a scheme similar to the one adopted unilaterally in India for allotment of urban immovable evacuee property left by Muslim evacuees to refugees in that country on a *quasi*-permanent basis. This scheme was actually framed two years later under the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (Act XVIII of 1958). The preamble to the latter Act, however, clearly states that the purpose of the said Act is 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 and 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 will be noticed that the purpose of even the latter Act is neither to grant properties in lieu of the properties expropriated in India nor to limit the benefits of the scheme to such expropriated displaced persons but its purpose extended to the rehabilitation of others also who did not fall in the above category. This was, therefore, not a case in which a displaced person was entitled as of right to get properties in Pakistan equivalent to properties left by him in India, but it was a measure designed purely to alleviate the hardship and misery of as large a number as possible of displaced persons, who had been compelled as a result of the disturbances consequent upon the setting up of the two Dominions of India and Pakistan to migrate from India, by compensating them or rehabilitating them. This was not a scheme of compensation on any *quid pro quo* basis but merely the grant of a privilege or a benefit. If this was the scheme for participation in which claims were registered as a first step, then it is fallacious to conceive of a claim under the Act of 1956 as being in the nature of a right or interest in property.

Abdur
Rashid
v.
Pakistan
Hamoodur
Rahman, J

which could devolve like property according to the personal law of the deceased. The deceased displaced person had not upto that stage become vested of any property in Pakistan which could devolve upon his heirs according to the law of succession prevailing in Pakistan. The properties, if any, left by him being situated in India would devolve according to the law prevailing in India and succession thereto could not be regulated by a law made in Pakistan.

Having come to the conclusion that the claim under the Act of 1956 was not in the nature of a claim to any property or any interest in property in Pakistan the next question that arises is whether the Government could validly indicate as to who are the persons so included in the category sought to be benefited under the scheme of compensation and rehabilitation prescribed by an authority duly empowered in that behalf by the Legislature and whether it could validly do so by means of instructions of the nature issued in the present case. If it was a question, as we have indicated earlier, of purely granting a benefit or a privilege then there can be no manner of doubt that it was certainly open to the Legislature to determine as to who were to be the persons to whom it would give such benefit. The Legislature in this case determined the class of persons to be so benefited and described them as "displaced persons" and included within it by a definition clause any person who on account of the setting up of the two new Dominions or on account of civil disturbances or the fear of such disturbances migrated from India to Pakistan during a specified period. This definition was in the widest possible terms and was not in any way qualified by the possession of any property left in India. It was, furthermore, to such a displaced person that the Legislature gave the right to submit a claim. After a claim is filed by a person coming within this class, the Claims Officers and Deputy Claims Commissioner acquire the jurisdiction under the Act to enquire into it and after such enquiry pass such orders as they think fit in relation to its verification and valuation. Now what the Government did in the present case was to instruct them by an executive direction as to the manner of that verification. In our opinion, the Government could do so, since under the Scheme of the said Act the Claims Officers were to act under the general superintendence and control of the Central Government. This was not a case in which the Government can be said to have either legislated as to the category of persons entitled to claim or interfered with the decision of the Claims Officers in any particular case, but it was a case where merely a general direction had been issued laying down the principles upon which Claims Officers were to verify claims and register the same. This, in our opinion, the Government could legitimately do under the Act in so far as the claims were invited with a view to the rehabilitation of as large a number of displaced persons as possible in implementation of the policy of the Legislature.

In this view of the matter no question of any repugnancy with any of the provisions of the late Constitution arises, for, if the claim was not property, no question of any deprivation of any right of property arose. So far as repugnancy with Article 25

of the late Constitution is concerned, all that we need say about it is that at present the provisions thereof cannot be enforced in any Court.

There are two other subsidiary arguments which need now to be noticed. The first is to the effect that the instructions issued by the Central Government were in the exercise of delegated powers and were thus in the nature of a delegated legislation. Therefore, since the Act of 1956 itself does not lay down any guiding principle with regard to the issuance of such instructions, it must be held that such unfettered powers could not have been validly delegated by the Act of 1956 to the Central Government, particularly, as at that time the late Constitution was still in force. We find no substance in this argument, for, as we have already indicated, this is not a case of delegated legislation at all; for, the Legislature itself having determined that claims were to be filed in respect of the properties left in India by displaced persons, the instructions merely provided as to who from amongst that class should be treated as entitled to lodge such a claim in the process of verification in the event of a displaced person dying before filing his claim.

The second point raised is that even assuming that such an instruction could be issued it could not be issued so as to have retrospective effect. The rights of the parties should have been decided, in the present case, on the basis of the position prevailing at the date the claim was filed and not on the date that it was disposed of. There is no substance in this argument either, for, if, as we have held, the filing of a claim did not create any right at all, there was nothing to prevent a person from filing a claim after the instructions were issued. The objection to the retrospective application of an order or other like instrument is founded on the ground that it affects vested rights but where no rights have accrued or vested, this objection has no substance. In the present case, furthermore, it is not contended that any order of any officer or authority under the said Act had acquired any finality under its provisions and could not, therefore, have been re-opened. The directions came when the inquiry into the claims filed was pending and, as such, they could have been decided in accordance with those instructions.

Lastly, we feel that we ought to indicate that the contention that section 12 of the Act of 1956 operated to take away the jurisdiction of the High Court to issue an appropriate writ to the Claims Authorities under the said Act, which found favour with one of the learned Judges in the High Court, is wholly untenable. In so far as the Act of 1956 was a sub-constitutional legislation, it could not purport to take away a jurisdiction given to the High Court by the Constitution. Even after the abrogation of the Constitution, the High Court continued to be vested with the writ jurisdiction preserved for it by clause (4) of Article 2 of the Laws (Continuance in Force) Order, 1958, and this jurisdiction in its turn could only be taken away or curtailed by an Order of the President or Regulation made by the Chief Administrator of Martial Law.

For these reasons we are of the view that this appeal must be dismissed with costs.

Abdur
Rashid
v.
Pakistan
—
Hamoodur
Rahman, J

Abdur
Rashid
v.
Pakistan
Hamoodur
Rahman, J

So far as Civil Appeal No. 5 of 1961 is concerned, the facts giving rise to this appeal are different. In this case a certain displaced person from East Punjab, named Yaqub Khan, filed a claim and was allotted certain agricultural lands in village Dulu Khurd in the district of Lahore under the Rehabilitation Re-settlement Scheme (Punjab) and the same was confirmed in his favour in 1951. He died soon after such confirmation in the same year and the question arose as to who should be substituted in his place in the revenue records. The Naib Tehsildar exercising the powers of an Assistant Rehabilitation Commissioner (Lands) decided on the 4th of July 1955, to substitute the names of Ayub Khan, the son of the deceased, Rabia Bibi, the daughter of the deceased and *Mst. Hajran* and Muhammad Afzal, the children of a pre-deceased daughter. Ayub Khan, the son thereafter filed an application before the Deputy Rehabilitation Commissioner challenging the correctness of the mutation on the ground that the children of the pre-deceased daughter could not have been entered as heirs of the deceased under the Muslim Personal Law (Shariat) Application Act, which should have been held to have governed the succession to the deceased. The Deputy Rehabilitation Commissioner, however, dismissed the appeal. Rehabilitation Commissioner, who was moved in revision, also maintained the order of mutation. The appellant then moved the High Court in its writ jurisdiction against the said order of mutation. The High Court held that since the Rehabilitation Authorities had acted in terms of paragraphs 46 and 46-A of the Rehabilitation Re-settlement Scheme (Punjab) they had acted legally, because, the property allotted was not the property of the deceased and because it appeared to be the consistent policy of the Rehabilitation Department to grant to the children of a deceased son or daughter the same position as they would have had if the son or daughter had not pre-deceased the father. The appellant then applied to the High Court for a review of the above order on the ground that it had, in coming to the above conclusion, failed to take into account section 34 of the Punjab Land Revenue Act, as amended by Punjab Act IV of 1955, and the provisions of paragraphs 14 and 67 of the Rehabilitation Re-settlement Scheme, but this review petition was also summarily rejected. The appellant now contends that the High Court's decision is erroneous, since it has not taken into account the fact that under the scheme itself after an allotment is confirmed, the allottee acquires an interest or right in the property which is heritable. Paragraph 46 of the Scheme, it is further contended, does not apply after an allotment has been confirmed. In any event, sub-paragraph (2) of paragraph 46, it is argued, could not have been applied retrospectively in this case, since it was introduced only in 1954, that is to say, long after the estate of the deceased had vested in his legal heirs upon his death.

In support of this contention reliance is also placed on a decision of a learned single Judge of the High Court of West Pakistan in the case of *Mirza Anwar Beg and others v. Mirza Ulfat Beg and others* (1), where this view found favour and it was held that although an order of allotment *simpliciter* confers no right

(1) P L D 1960 Lah. 265

on the allottee except that of a licensee, which is a personal right, yet once a claim has been preferred the rule of succession is that as laid down in the Shariat Law, as by paragraph 14 of Chapter I of the Rehabilitation Re-settlement Scheme an allottee on a quasi-permanent basis acquires the right to transfer by sale, exchange, gift, will, mortgage or any private contract his rights or interests in the land so allotted to him.

Abdur
Rashid
v.
Pakistan
—
Hamoodur
Rahman, J

We have already indicated in the other appeal that a refugee under the Registration of Claims Act does not acquire any right or interest in the nature of property merely by reason of his entitlement to file a claim, and it is also now well settled that a 'temporary allotment' does not vest any right or interest in the allottee in respect of the property allotted. The question for consideration now, therefore, is as to whether, after an allotment has been made on a quasi-permanent basis under the Rehabilitation Resettlement Scheme and it has been confirmed in favour of the allottee, the allottee acquires any right or interest in the property which can be said to be heritable. Before answering this question we propose first to examine the provisions of the Scheme itself. Under sub-clause (i) of clause 1, Part I, Chapter I of the Scheme a "grant" means allotment of land under clauses 2 and 6 of the Scheme, and a "temporary allotment" was defined in clause (viii) thereof as an allotment under the provisions of Pakistan (Rehabilitation) Ordinance XIX of 1948, as amended by the Pakistan (Economic Rehabilitation) (Amendment) Ordinance XVI of 1949, other than a grant under clause 2 of the said Scheme. Under clause 2 all persons, who, in the prescribed area, owned land or held occupancy or other rights of a similar nature in land as may be specified by the Rehabilitation Commissioner (Lands) from time to time, may be allotted land subject to such terms and conditions as may be prescribed by him. Clause 3 enabled the Rehabilitation Commissioner (Lands) to prescribe scales of allotment. Then under clause 6 subject to the scale that may be prescribed under clause 3 land may be allotted to a claimant who was *adna malik* or held occupancy rights or rights of a similar nature in the prescribed territory on the scale prescribed for the various classes of such claimants by the Rehabilitation Commissioner (Lands). Then under sub-clause (1) of clause 14 the allottees concerned were given the right to transfer by sale, exchange, gift, will, mortgage or other private contract *their rights or interests in the land* allotted to them under the Rehabilitation Settlement Scheme after he had made full and final settlement of all Government dues including the rehabilitation fee. Nevertheless, under sub-clause (2) of the said clause such alienation could only be entered in the cultivation column of the revenue records the implication being that the land continued to be evacuee property even after such alienation. Under clause 15 the allottee was required to maintain the land in proper condition of cultivation and not to use it for any other purpose except with the express permission of the Rehabilitation Commissioner (Lands). Under clause 16 of the Scheme the Deputy Rehabilitation Commissioner (Lands) was authorised to resume the allotment if the allottee committed a breach of the conditions of allotment, and under clause 22, no allotment could be considered

Abdur
Rashid
v.

Pakistan

Hamoodur
Rahman, J

to be finally confirmed unless the rehabilitation fee has been paid in full.

Part II of the Scheme lays down elaborate instructions concerning the details of the procedure to be followed for the implementation of the Scheme. Chapter I of the said instructions deals with the preparation of a programme for settlement of refugees and in paragraphs 46 and 46-A of the said Chapter it is provided as follows :—

"46. (1) *Cases of inheritance should be decided according to Shariat Law.* The decision may, however, cause some difficulty and hardship in the case of a grand-son who cannot inherit the property of his father if he dies in the life-time of his grandfather. The Deputy Rehabilitation Commissioner (Lands) will, therefore, allow the grand-sons of a deceased refugee owner to inherit the property of their grandfather if their father died during the life-time of their grandfather to the extent of their father's share. (Reference Punjab Government Memo. No. 8595-R (L), dated the 6th November 1951). He will also allow the grand-daughters of a deceased refugee owner to inherit the property of their grandfather to the extent of their shares in their father's share. The widow of a deceased son who died during the life-time of his father will similarly be allowed to inherit her share. (Reference Punjab Government Memorandum No. 132-R(L), dated the 8th January 1953).

Note.—The word 'grand-daughters' shall include the daughters of both the sons as well as the daughters of the original refugee owners. (Reference Punjab Government Memorandum No. 7508-R(L), dated the 23rd September 1953).

(2) The grand-son of predeceased daughter will also be allowed to inherit the property of their grandfather to the extent of their mother's share, if their mother died during the life-time of their grandfather. (Reference Punjab Government Memorandum No. 1323-54/2468-R(L), dated the 4th March 1954)."

"46-A. In respect of agricultural property held by a Muslim female as a limited owner under the Customary Law succession shall be deemed to open out on the termination of her limited interest to all persons who would have been entitled to inherit the property at the time of the death of the last full owner had the Shariat Law been applicable at the time of such death and in the event of the death of any of such persons before the termination of the limited interest mentioned above succession shall devolve on his heirs and successors existing at the time of the termination of the limited interest of the female as if the aforesaid such person had died at the termination of the limited interest of the female and had been governed by the Shariat Law :

Provided that the share, which the female limited owner would have inherited had the Shariat Law been applicable at the time of the death of the last full owner, shall devolve on her if she loses her limited interest in the property on account

of her marriage or re-marriage and on her heirs if her limited interest terminates because of death."

After the programme has been chalked out it becomes necessary to prepare proposals for settlement. Instructions for preparation of these proposals are contained in Chapter II of the instructions, and under paragraph 68 of the latter Chapter it appears that after proposals have been drawn up and checked the proposed allotments are to be announced to claimants, who are to be given an unsigned *khatauni* and asked to prefer their objections, if any, within a prescribed period. Then after the expiry of this period and after hearing objections, if any, the Deputy Rehabilitation Commissioner (Lands) has to provisionally finalise the proposals subject to final confirmation in accordance with clauses 21 and 22 of Chapter IV, Part I of the Scheme after payment of rehabilitation fees at the prescribed rate. The allotment is lastly finalised and confirmed only after the fees and other Government dues have been paid and an entry made to that effect in the records.

It thus appears that under this Scheme itself lands may be allotted to temporary allottees as well as non-allottees in accordance with the instructions contained therein after drawing up a programme, preparing a proposal, notifying the same, hearing objections, if any, made to the said proposals, and provisionally finalising the proposals. After the allotment has been made the allottee, if not already in possession, is put into possession and then only after the Rehabilitation fees and other Government dues have been paid is the allotment confirmed in favour of the allottee. Until such an allotment, in accordance with the Scheme, has been made in favour of a person, he is referred to in the Scheme as a 'right-holder' with regard to succession to deceased right-holders it has been provided by paragraph 67 of Chapter II, Part II, as follows:—

"67. Cases relating to the succession to deceased right-holders from the prescribed territory will be decided expeditiously by the Revenue Officer who will pass orders on the mutation of succession in the form (Appendix VI) prescribed for the purpose and deliver the possession immediately thereafter to the persons concerned. In cases where the question of inheritance of evacuee land is involved and the inheritors of live in different districts, the necessary number of copies of *fard haqiat* will in future be prepared by the Central Record Room and supplied to the district offices concerned for distribution to all the claimants. In all such cases the mutation may be decided and entered in the district in which the claimants reside. Allotments made in pursuance of this decision will be purely provisional and subject to subsequent changes, if necessitated by factual evidence. Copies of decisions in these mutations should be exchanged amongst the different districts and if in any of these districts a discrepancy is found, the matter should be referred by the local officers to the Rehabilitation Commissioner (Lands) for a final decision, pending which the claimants should be allowed to retain the land allotted to them under different mutations. The Deputy Rehabilitation Commissioner (Lands) will not charge any

Abdur
Rashid

v.
Pakistan

—
Hamoodur
Rahman, J

Abdur
Rashid
v.
Pakistan
—
Hamoodur
Rahman, J

fee in the cases of inheritance for which the form has been prescribed above but subsequent mutations of inheritance will be entered in the regular mutation register as this would involve a charge in the entries of the revenue records. (Reference Punjab Government Memo. No. 3705-R(L), dated the 2nd June 1951 and Punjab Government Memo. No. 8282-R(L), dated the 25th October 1951)."

From an examination of these provisions of the Scheme it would appear that an allotment, although essentially a grant from the Government, does, when it has once been confirmed, create certain rights or interest in the land allotted which the allottee may in accordance with clause 14 of Chapter II, Part I of the Scheme transfer by sale, exchange, gift, will, mortgage or other private contract but even so the land continues to remain evacuee property throughout and has to be utilised only for purposes approved by the Rehabilitation Authorities, and may be resumed if the conditions of allotment are not fulfilled by the allottee. These conditions of allotment thus, in our opinion, are in the nature of restrictive covenants running with the land but subject to these covenants and the right of resumption or re-entry reserved under the Scheme the allottee, it appears to us, becomes clothed with all the other usual incidents of at least an occupancy tenant in the lands so allotted. Thus he may, subject to those conditions or covenants, deal with the same as any other such tenant would have been entitled and may even dispose of them or alienate them either by an instrument *inter vivos* or by will. It is difficult, in the circumstance, to imagine how it can be said that the interest acquired by the allottee in the property is merely a personal interest which cannot be inherited. In our view, having regard to the rights expressly conferred upon him by the Scheme itself an allottee, in whose favour an allotment has been confirmed, acquires a right which is in every sense of the term a 'real property' in its true juristic concept—an interest in land.

Nevertheless, since the allotment is expressly stated to be a 'grant' and such grants can be made by the grantor upon such terms and conditions as may be specified by a person duly authorised in that behalf, namely, the Rehabilitation Commissioner, it would, in our view, have been open to the Rehabilitation Commissioner to lay down, if he so thought fit, as a condition of the grant that if the property is not transferred by sale, exchange, gift or will, it should devolve in a particular manner which may well be inconsistent with the personal law of the allottee or even the Muslim Law of succession, but if the Scheme itself has not laid down any such special rule of succession, we are equally of the opinion that when a confirmed allottee under the Scheme dies he dies vested with 'real property' which is capable of being inherited and will be inherited by persons who would, according to the general law of the land governing inheritance from such a person, be entitled to inherit from him.

The High Court, of course, has held that paragraph 46 and 46-A of Chapter I, Part II of the Scheme have laid down a special rule of succession. Paragraph 46-A quoted in the

Abdur
Rashid
v.
Pakistan
—
Hamoodur
Rahman, J

1962

judgment of the High Court is as it appears in the P L D publication entitled "Evacuee and Rehabilitation Law" but this, as pointed by the same High Court in the subsequent case of *Umar Draz Ali v. Khurshid Ali and others* (1) is a misquotation. The correct provisions of the said paragraph are as quoted earlier in this judgment. Be that as it may, it appears to us, that having regard to the context in which these paragraphs occur in the Scheme, the cases therein dealt with are of inheritance from deceased 'right holders' and not from deceased confirmed allottees. This view appears also to be confirmed by paragraph 67 of Chapter II, Part II as also by the subsequent instructions and clarifications from time to time issued by the Rehabilitation authorities. Thus in the Memorandum No. 4953-54/3917=R(L), issued on the 14th of April 1954, by the Deputy Rehabilitation Commissioner (Lands) under the instructions of the Rehabilitation Commissioner it is clearly stated :—

"The Rehabilitation Commissioner (Lands), however wishes it to be made clear that the said instructions should be applied only to the cases of inheritance of such refugee right-holders as had died either in India or Pakistan before they could file their claims for allotment of land under the Rehabilitation Settlement Scheme. When once a claimant had filed his claim and died thereafter before securing any actual allotment, the normal rule of succession laid down by the Shariat Law should be applied in its entirety without any deviation. The same should be done in subsequent mutations of inheritance of allottees as already laid down in clause 67 of Chapter I, Part II of the Resettlement Scheme. It should therefore be understood that the term 'deceased right-holder' in clause 67 referred to above means a right-holder who had died before putting in his claim."

This Memorandum, which is an instruction which the Rehabilitation Commissioner could have validly issued under clause 23 of Chapter IV, Part I of the Scheme, abundantly clarified the position. The High Court, however, took the view that it merely added to the confusion and, in any event, since this Memorandum was issued long after the death of the deceased allottee in this case, it could not possibly govern his succession. This was not, in our view, a new instruction, but was a mere clarification of the position prevailing under the Scheme itself. We are, therefore, unable to agree with the High Court that the Scheme prescribed any special rule of succession to confirmed allottees.

The amendment made in subsection (1) of section 34 of the Punjab Land Revenue Act of 1887 by the Punjab Land Revenue (Amendment) Act, 1955 (IV of 1955) appears also to indicate that the allotment of evacuee land under the Scheme created an interest in land which had to be recorded in the record of rights by the Revenue Authorities in the same manner as the acquisition of rights in non-evacuee lands by inheritance, purchase, mortgage, gift, etc.

(1) P L D 1960, Lah: 834

Abdur
Rashid
v.
Pakistan

Hamoodur
Rahman, J

In our view, therefore, the allottee Yakub Khan in the present case died seized of certain rights and interests in the land allotted to him and confirmed in his favour which were heritable, and as the Scheme laid down no specific rule of succession to such persons, succession to him was to be governed by the Muslim Personal Law (Shariat) Application Act, 1948, and the Rehabilitation Authorities were clearly wrong in upholding the inclusion of the son and daughter of his pre-deceased daughter among his heirs under the said law. This appeal is accordingly allowed, the mutation recorded on the 4th of July 1955, in favour of *Mst. Hajran* and *Muhammad Afzal* is hereby cancelled and the Revenue Authorities are directed to correct the mutation register in accordance with law. In the circumstances of this case, however, we make no order as to costs.

A. H.

Orders accordingly.

P L D 1962 Supreme Court 60

Present : A. R. Cornelius, C. J., S. A. Rahman, Fazle-Akbar,
B. Z. Kaikaus and Hamoodur Rahman, JJ

THE GLAXO LABORATORIES (PAKISTAN) LTD.—

Appellants
versus

(1) PAKISTAN,

(2) MR. MUHAMMAD BUX MEMON, INDUSTRIAL
TRIBUNAL, AND

(3) GLAXO LABORATORIES WORKERS' UNION AND
33 OTHERS—Respondents

Civil Appeal No. 136 of 1960, decided on 18th December
1961 (at Karachi).

Glaxo
Laboratories
(Pak.) Ltd.
v.
Pakistan

Cornelius,
C. J., S. A.
Rahman,
Fazle-Akbar,
Kaikaus and
Hamoodur
Rahman, JJ

(On appeal from the award of the Industrial Tribunal, Karachi, dated the 18th August 1959, published in the *Gazette of Pakistan*, Extraordinary, dated the 31st August 1959).

(a) *Special leave to appeal to Supreme Court*—Granted to consider two specific questions—Leave extended by subsequent order, to a third question—*Constitution of Pakistan (1956)*, Art. 160. [p. 62]A

(b) *Industrial dispute*—Award—Time for making award may be extended ex post facto—[*Pakistan Petroleum Workers' Federation v. Burmah Shell Oil Storage & Distributing Co. of*