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Chinna Gowda v. State of Mysore

Mudholkar J.

We, therefore, allow each of the two appeals, set aside the conviction and sentences passed against the the appellants and direct that they be set at liberty.

Appeals allowed.

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April 27.

THE REGIONAL SETTLEMENT COMMISSIONER

v.

SUNDERDAS BHASIN

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Rehabilitation of Displaced persons—Compensation for rural buildings—Not payable for rural building valued at less than Rs. 10,000—More than one rural building each valued as less than Rs. 10,000—Whether value can be added up to reach total of Rs 10,000—Displaced Persons (Compenssation and Rehabilitation), Rules, r. 65.

The respondent, a displaced person, had agricultural land as well as houses in the rural area in what is now West Pakistan. Each house was valued at less than Rs. 10,000/- but the total value of all the houses was more than Rs. 10,000/-. He was allowed 2-1/2 acres of land in lieu of the agricultural land left by him. He applied for compensation for the rural houses. This claim was rejected on the ground that it was barred by r. 65 Displaced Persons (Compensation and Rehabilitation) Rules. Rule 65(2) provided that any person to whom less than 4 acres of agricultural land had been allotted shall not be entitled to receive compensation separately in respect of any rural building the assessed value of which was less than Rs. 10,000/-. The respondent contended that in order to determine the limit of Rs. 10,000 in r. 65(2) the value of all the rural buildings should be added up.

Held, that r. 65(2) applied to the case and the respondent was not entitled to compensation for the rural houses left by him in Pakistan. When r. 65(2) speaks of any building the assessed value of which is Rs. 10,000/- it refers to each building being of less than that value; does not

contemplate the adding up of the value of more than one building. The complaint that no compensation had been provided for buildings valued at less than Rs. 10,000 was not correct. For such cases r. 57 provided for the allotment of a house or a site with building grant in addition to the agricultural land. Under the Inter-Dominion Agreement it was decided to treat buildings of a certain value as substantial and buildings of lower value as mere appendages to agricultural land, the Rules give effect to that agreement.

Chanapdas Mukhi v. *Union of India*, I.L.R. (1960) 1 Punj. 153, approved.

Totaram Teckchand v. *H. K. Choudhary*, A.I.R. (1960) Bom. 528, not approved.

Makhanlal Malhotra v. *Union of India* (1961) 2 S.C.R. 120, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 294 of 1960.

Appeals by special leave from the judgment and order dated October 3, 1958, of Rajasthan High Court in D.B. Civil Writ Case No. 39 of 1957.

H. N. Sanyal, Additional Solicitor General of India, M. S. Bindra and *P. D. Menon*, for the appellants.

Naunit Lal, for the respondent.

N. N. Keswani, for the intervener.

1962. April 27. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—The short question raised in this appeal by special leave is whether it is possible to add up the value of more than one rural building, each of which is less than Rs.10,000/- or Rs.20,000/- in order to reach the total of Rs. 10,000/- or Rs. 20,000/- for the purpose of taking the case for compensation for rural buildings out of the ambit of r. 65 of the Rules framed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954

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(44 of 1954) (hereinafter referred to as the Act). The brief facts necessary for this purpose are these. The respondent is a displaced person who migrated from what is now part of West Pakistan to India. It appears that he had agricultural land as well as houses in the rural area in the place from where he migrated. He was allowed 2-1/2 acres of land in the Punjab in lieu of the agricultural land left by him in what is now Pakistan. In addition he also left behind a house and a shop. He claimed Rs. 12,000/- for the house and Rs. 8,000/- for the shop as compensation. The Additional Settlement Commissioner allowed his claim to the extent of Rs. 6,674/- for the house and Rs. 6,120/- for the shop, the total thus coming to Rs. 12,796/- . This was adjudged in March 1955. Thereafter, the respondent made an application to the Settlement Officer Jaipur in March 1956 for compensation under the Act. This claim of his was however rejected by the Assistant Settlement Officer Jaipur on the ground that it could not be entertained in view of r. 65 of the Rules, as he was allotted agricultural land to the extent of 2-1/2 acres. The respondent then appealed to the Regional Settlement Commissioner who upheld the order of the Assistant Settlement Officer. Thereafter the respondent filed a writ petition before the High Court of Rajasthan and the main contention raised by him there was that in order to determine the limit of Rs. 10,000/- provided in r. 65(2) the value of all the rural buildings left by him in Pakistan should be added up and if the total is more than Rs. 10,000/- he is entitled to compensation. This contention has been accepted by the High Court which directed that the respondent should be paid compensation to which he was entitled under the Rules for the rural buildings left by him the value of which collectively was more than Rs. 10,000/- . It is this order of the High Court which is challenged before us in the present appeal.

It may be mentioned that this question has been raised in three High Courts. The Punjab High Court, by a Full Bench decision in *Chanandas Mukhi* v. *the Union of India* (1) held that in order that a person may be entitled to compensation for rural buildings left in Pakistan and thus take the case out of the ambit or r. 65 it is necessary that the rural buildings left by him should each be of the value of Rs. 10,000/- or Rs. 20,000/- or more, as the case may be, and that a displaced person is not entitled to compensation if he has left more than one rural building, the value of each being less than Rs. 10,000/- or Rs. 20,000/-, though the total value of such buildings left by him may be more than Rs. 10,000/- or Rs. 20,000/-, as the case may be. The Bombay High Court on the other hand where a similar question was raised has taken the same view as the Rajasthan High Court in *Totaram Teckchand* v. *H.K. Choudhari* (2). What we have to determine therefore is which of these two views is correct.

Rule 65 is in these terms :—

"65. *Separate compensation for rural building not to be paid in certain cases.*

(1) Any person to whom four acres or more of agricultural land have been allotted shall not be entitled to receive compensation separately in respect of his verified claim for any rural building the assessed value of which is less than Rs. 20,000/-

(2) Any person to whom less than four acres of agricultural land have been allotted, shall not be entitled to receive compensation separately in respect of his verified claim for any rural building the assessed value of which is less than Rs. 10,000/-

(1) I.L.R. [1960] 1 Punj. 153. (2) A.I.R. [19[illegible]] Bom. 528.

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Though the point in dispute in the present appeal arises on r. 65 (2), it is clear that what we say about r. 65 (2) will equally apply to r. 65 (1), the only difference between the two sub-rules being that in one case the value of the rural building is Rs.20,000/- while in the other it is Rs. 10,000/- and in one case the allotment of agricultural land is four or more acres and in the other case of less than four acres. It is urged on behalf of the appellant that r. 65 was framed primarily in pursuance of an inter-Dominion agreement by which it was agreed that no compensation should be payable for a rural building where its value is less than Rs.20,000/-. It is further urged that the reason for this rule was that a rural building worth less than Rs.20,000/- was treated as an adjunct to the agricultural land left by a displaced person in Pakistan and it was decided to give compensation for any rural building which was less than Rs.20,000/- in value by other ways and not as compensation. This other way is provided in r. 57 of the Rules. Rule 57 provides that a displaced person having a verified claim in respect of agricultural land who has settled in a rural area and to whom agricultural land has been allotted, may be allotted a house in addition to such land. The rule further provides that where no house is available for allotment in the village in which the land is allotted, the allottee may be granted, if he has been allotted agricultural land not exceeding ten standard acres, a site measuring 400 square yards and a building grant of Rs.400/-, and if he has been allotted agricultural land exceeding ten standard acres but not exceeding 50 standard acres, a site measuring 400 square yards and a building grant of Rs. 600/- and if he has been allotted agricultural land exceeding ten standard acres but not exceeding 50 standard acres, a site measuring 600 square yards and a building grant of Rs. 600/-. It is said that r. 57 thus provides

for compensation where a building left by a displaced person in Pakistan is less than Rs.20,000/- or Rs. 10,000/- in value as the case may be. Further, it is pointed out that there is another provision in the Rules, namely r. 97, which deals with certain contingencies where the allottee has refused the allotment of agricultural land or where such allotment has been cancelled. It is therefore urged that when r. 65 provides that no compensation would be given for any rural building which was worth less than Rs. 20,000/- or Rs.10,000/- it referred to the value of each building and the case could not be taken out of the ambit of r. 65 if a displaced person had left more than one rural building and the value of all such buildings was more than Rs.10,000/- or Rs.20,000/- taken together. The reason for this, according to the appellant, is the provision in r. 57.

On the other hand, it is urged on behalf of the respondent that if r. 65 is not unambiguous on this point and can have two meanings, it should be so interpreted as to favour the displaced person so that he may get some compensation for the rural buildings left by him in Pakistan. It is urged further that the words "any rural building" in r. 65 though in singular, can be read in plural also in view of s. 13 of the General Clauses Act, and that they should be so read in order to help the displaced person in getting compensation.

In order to decide between the two rival contentions we have to see the background in which r. 65 came to be framed, for it is that background which will help in determining one way or the other its propor interpretation. Rule 65 came up for consideration in this Court once before, when it was challenged as *ultra vires* on the ground that it made a discrimination between rural building for which compensation was payable only if they were

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above certain value and urban buildings for which compensation was payable, if they were of any value. The constitutionality of r. 65 was upheld by this Court in *Makhanlal Malhotra* v. *The Union of India* (1). In that case this Court went into the background which was responsible for the apparent discrimination between rural buildings and urban buildings. At an inter-Dominion Conference between the Governments of India and Pakistan held at Karachi between January 10 and 13, 1949, a permanent inter-Dominion Commission was set up to consider the question of administration, sale and transfer of evacuee property in both the Dominions. In persuance of this decision the question in respect of shops and houses in rural areas was considered by the Commission at New Delhi on March 11 and 13, 1949. It was recommended at this meeting that buildings in rural areas of value of Rs. 20,000/- or more should be considered to be substantial buildings and the buildings which were of lesser value than that were to be treated as appendages of agriculture land and as such were to be treated as "agricultural properties". This shows that the basis for purposes of value was the building and the ownership of the building had nothing to do with this limit. It is this agreement which in substance is the basis of r. 65 though the rigour of this agreement has been softened by making provisions of two kinds one for those to whom four acres or more were allotted and the other for those to whom less than four acres were allotted and the limit was kept at Rs. 20,000/- in the case of the former while it was reduced to Rs. 10,000/-in the case of the latter. But it is clear from the agreement of March 1949 that compensation was to be provided for an individual buildings worth Rs. 20,000/-or more and other buildings of less value were to be treated as appendages to the agricultural land owned by a displaced person in Pakistan

(1) (1961) 2 S.C.R 120.

The intention behind the agreement obviously was to treat only buildings which were individually more than Rs. 20,000/- as substantial buildings for which compensation would be granted while other buildings each of which was less than that value would not be considered substantial buildings but would be treated as merely appendages to agricultural properties. This value of Rs. 20,000/- has been reduced to Rs. 10,000/- in r. 65 for those to whom less than four acres was allotted, but this change is subject to the same limitation *i. e.*, where an individual building worth either Rs. 10,000 in one case or Rs. 20,000/- in the other was left in Pakistan compensation would be payable for that building as such: but where an individual building left in Pakistan was less than Rs. 20,000/- or Rs. 10,000/- as the case may be, no compensation would be payable for it separately even though more than one such building may have been left behind by the same displaced person. That seems to be the scheme which was evolved under the Act for giving compensation to displaced person. The general rules for payment of compensation are to be found in Chapters IV, V and VI of the Rules. Further, r. 44 in Chapter VII provides for allotment of acquired evacuee houses in rural areas in lieu of compensation Rule 47 then provides for payment of compensation under Chap. VII subject to the provisions of r. 65. It is clear therefore that the scheme of compensation provided under the Rules is that where a person has left both agricultural land and rural buildings in Pakistan he was to be allotted agricultural land and for any rural building which he might have left and each of which might be less than Rs. 10,000/-or Rs. 20,000/- in value he was to get what is provided by r. 57. But where any one rural building left by him was worth more than Rs. 20,000/- or Rs. 10,000/- as the case may be, he would get compensation separately. The argument therefore on behalf of the respondent which seems

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to have impressed the High Court that no compensation was given to displaced persons for buildings less than Rs.20,000 or Rs. 10,000/-, as the case may be, is not borne out by the Rules. We have already referred to r. 57 in this connection and reading that with r. 65 it seems clear that in view of the inter-Dominion agreement, the scheme was that where an individual building was worth more than Rs.20,000/ or Rs.10,000/- as the case may be, compensation would be payable separately under Chapters IV, V and VI of the Rules. Further, under Chap. VII acquired evacuee houses in rural areas may be allotted in lieu of compensation. But if each individual building left by a displaced person was less than Rs.20,000/- or Rs.10,000/- as the case may be, though he may have left more than one he would be compensated by allotment of a house or site with building grant in addition to agricultural land as contemplated in r. 57. The complaint therefore that no compensation has been provided for a displaced person where each building left by him was less than Rs.20,000/-or Rs, 10,000/- as the case may be, is not correct, though it may be that in the case of each building worth less than Rs.20,000/- or Rs. 10,000/- the compensation may not be as in the case of each building worth more than Rs. 20,000/- or Rs. 10,000/- as the case may be.

The problem however raised by the migration from that is now West Pakistan to India was so vast that it required all the strength and ingenuity on behalf of the Government of Punjab and the Government of India to meet it and the various taken steps for that purpose are to be found in Chap. I of "Land Settlement Manual" by Tarlok Singh, which is a book of undoubted authenticity and value in this respect. It is in that background and with the inter-Dominion agreement of March 1949 in view that we have to approach the interpretation of r.65. It is clear in that background

that when r. 65 speaks of any rural building the assessed value of which is less than Rs. 20,000/- or Rs. 10,000/- it speaks of each building being of that value and does not contemplate to talling up of the value of a number of buildings which a displaced person might have left behind and the total value of which might be Rs. 20,000/- or Rs. 10,000/- as the case may be. As was pointed by the Full Bench of the Punjab High Court it is not correct to say that a person owning a building in a non-urban area worth less than the minimum mentioned in the rule receives no compensation, and the fact is that every displaced person owning houses or buildings in a rural area has been compensated under r. 57 and the only buildings left out of consideration were those each of which was worth Rs. 20,000/- or Rs. 10,000/-. Reference in this connection may be made to Chap, IX of the "land settlement Manual" by Tarlok Singh, where this matter has been explained in detail. Therefore r. 57 having provided for compensation for each building worth less than Rs. 20,000/- or Rs. 10,000/- as the case may be, r. 65 specifically prohibits separate compensation for such buildings. Therefore, when r. 65 speaks of any building the assessed value of which is Rs. 20,000/-or Rs. 10,000/- it refers to each building being less than that value, as the case may be.

So far as the respondent is concerned, he would also, if he so desired, have been allotted either a house or a site under r. 57 if he had decided to settle down in the village in which he had been allotted agricultural land. It seems however that he did not settle in that village and therefore could not get the advantage of r. 57. That was however his choice and he cannot complain that he is not made it impossible for an allotment under r. 57 being made to him by not setting down in the village in which agricultural land was allotted to him. We cannot however give a meaning

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to r. 65 inconsistent with the scheme which has been evolved for meeting this vast problem simply because the respondent (or those like him) did not chose to settle down in the village in which he had been allotted agricultural land. If he did not do so and in consequence he has suffered some loss, the loss is of his own choice; and that is no reason for interpreting r. 65 in such a way as to benefit persons (like the respondent) who by their own choice did not avail of the benefit which they would have got under r. 57. Reading r. 65 in the background in which it came to be prescribed there can be no doubt that when it speaks of any rural building the assessed value of which is Rs. 10,000/- or Rs. 20,000/- as the case may be, it speaks of each individual building worth that much; it does not provide for totalling up the value where a displaced person may have left more than one building in West Pakistan. In the circumstances s. 13 of the General Clauses Act would not apply. That section specifically lays down that the singular would include the plural unless there is anything repugnant in the subject or context. What we have said above would clearly show that considering the subject in this case and the context in which the word "building" has been used, it is the building that has to be taken into account in determining the limits in r. 65 and not the ownership of the building. Where the building itself is worth Rs. 20,000/- or Rs. 10,000/- or more, as the case may be, the case would be taken out of r. 65. But there is in our opinion no warrant in the context for building that the ownership has to be taken into account and if an owner has a number of buildings, each less than the prescribed limit, the value of such buildings can be totalled up and compensation claimed if the total is above the prescribed limit. We are therefore of opinion that the view taken by the High Court is incorrect and

this appeal must be allowed. We therefore allow the appeal and set aside the order of the High Court and dismiss the writ petition. The High Court allowed no costs to the respondent. We think in the circumstances that the parties should bear their own costs.

Appeal allowed.

SEWA SINGH

v.

STATE OF PUNJAB

(K. C. DAS GUPTA, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Murder—Nature of gunshot wound—Proximity of shot—Medical evidence—Consideration—Witnesses—Evidence—value of—Assessment— Doctor's evidence —Cross-examination —No challenge —Indian Penal Code, 1860 (46 of 1860), s. 302.

The appellant was tried and convicted for murder and sentenced to death. Two eye witnesses testified that he shot and killed the deceased from a shop while the later was passing on a motor cycle. The doctor who conducted the post-mortem gave evidence that the shot might have been fired from a distance of three or four feet. This evidence was not challenged in cross-examination. On appeal to the High Court the conviction and sentence were confirmed. The appeal came up before the Supreme Court by way or special leave.

The main contention on behalf of the appellant was that the characteristic of the wound which would have shown that the deceased was shot from a distance of few inches and not from the distance stated by the witnesses were not taken into consideration by the High Court. It was contended that if the High Court had considered these factors the credibility of the witnesses would have become doubtful.

Held, that the nature and features of the fatal wound should ordinarily be taken into consideration in assessing the