in force at that time the Bank might not have brought the suit in the form that they have brought and in these circumstances the parties must bear their own costs throughout.

In the result this appeal succeeds and is allowed and the suit as against the appellant is dismissed. The parties will bear their own costs throughout.

Kapur, J.

Passey, J.

PASSEY, J.—I agree.

CIVIL WRIT

Before Bhandari, C.J. and Bishan Narain, J.

SURAJ PARKASH KAPUR,—*Petitioner*

v.

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 385 of 1955.

1956

Nov. 9th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Sections 15 and 26—Executive instructions of Punjab Government in letters, dated the 9th February, 1952 and 18th May, 1953—Validity of—Rights of quasi-permanent allottees under the East Punjab Evacuee (Administration of Property) Act, 1947, notification No. 4892/5, dated the 8th June, 1949—Whether property—Interference with such rights by Consolidation authorities without payment of compensation—Whether justified—Word "Encumbrancer" in section 26 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, L of 1948, meaning of—Transfer of Property Act (IV of 1882)—Section 6 and Constitution of India, Article 31.

Held, (1) that "property" in relation to land is a bundle of rights exercisable with respect to it. The right to transfer is no doubt one of these rights and if there is any restriction on transfer then to that extent the owner's

right to the property is limited, but it does not mean that a person in possession of land with restricted rights of transfer has no property in that land and should not be considered to be the owner thereof. A quasi-permanent allottee has interest and rights in the land allotted to him and that right is property. Such rights must be considered to be those of an encumbrancer within the meaning of section 26 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act.

(2) that under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act the quasi-permanent allottee's rights cannot be diminished without payment of compensation for the loss.

(3) that the executive instructions, dated the 9th February, 1952 and 18th May, 1953, have no legal force and must be ignored by the Consolidation authorities.

(4) that the word "encumberance" has no strictly technical meaning. It only means an estate burdened with obligations and responsibilities or with a claim which is attached to the property.

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, direction or order may be issued quashing the scheme regarding consolidation in Kankara Shahabad Estate.

(Case referred by the Division Bench consisting of Hon'ble Chief Justice and Hon'ble Mr. Justice Bishan Narain, on the 9th November, 1956, to a Single Bench for decision of the case.)

K. L. KAPUR, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondents.

JUDGMENT.

Bishan Narain, J.

BISHAN NARAIN, J. These seven petitions (Civil Writs Nos. 341, 382, 385, 403, 417 and 418 of 1955 and 18 of 1956), have been referred to this Bench for decision of a question which is common

to all of them. It is unnecessary to discuss the facts of each case separately and it is sufficient to give the facts of one case only to bring out the circumstances in which the question involved in all these cases has arisen. These facts are taken from Civil Writ No. 385 of 1955.

Suraj Parkash as *karta* of a joint Hindu family consisting of himself and others was allotted 11 standard acres and 9 units of Grade 'A' land on the 3rd of March, 1950, in lieu of the lands left by the family in the district of Gujranwala. The allotted land is situated in Pati Kankra, Shahabad Estate in Tehsil Thanesar. These units were valued as equal to 123 standard *kanals* and 18 standard *marlas* of 'A' Grade land at the spot and possession of this area was given to the petitioning family. The family has been in possession of this area since then and it is alleged that some improvements have been made therein. By notification, dated the 28th of July, 1954, this estate was notified for consolidation of holdings under section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, L of 1948. The Consolidation Officer got a draft scheme published on the 30th of April, 1955, under section 19(1) of the Act. Under this draft scheme the family was given 84 standard *kanals* consisting of 50 standard *kanals* 7 standard *marlas* of 'A' Grade land and 34 standard *kanals* and 1 standard *marla* of 'B' or 2nd Grade land. These areas were split up into two blocks. The petitioner filed objections to this draft scheme, but these objections were rejected by the Consolidation Officer and the Settlement Commissioner confirmed the scheme under section 20(3) of the Consolidation Act by his order, dated the 6th of August, 1955. In the meanwhile the Central Legislature enacted the Displaced Persons

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(Compensation and Rehabilitation), Act 44 of 1954. This Act came into force in October, 1954, i.e., after the estate had been notified for consolidation of holdings. Under section 12 of the 1954 Act the Central Government acquired all evacuee properties by notification, dated the 24th of March, 1955, and then the Central Government conferred proprietary rights in the lands which had been allotted to the petitioner in 1950 under the Administration of Evacuee Property Act. These rights were conferred on the 23rd of February, 1956. The result of all these proceedings is that while the petitioner was allotted 123 *kanals* 18 *marlas* of 'A' Grade land on quasi-permanent basis by the Custodian and the Central Government has made him the owner of this area, the consolidation proceedings have given him only about 50 *kanals* of 'A' Grade land and about 30 *kanals* of 'B' Grade land. No compensation of any kind has been paid to the petitioner under the Consolidation Act. This extraordinary result is justified by the Consolidation authorities on the ground that their scheme is in accordance with the instructions issued by the Punjab Government from time to time. Some of these instructions have been produced in these writ petitions. It appears that on the 9th of February, 1952, the Deputy Secretary to the Punjab Government (Development Department), wrote to all Deputy Commissioners laying down "a scheme of valuation by the Rehabilitation Department for the purposes of classification of valuation during consolidation of the standard acre in repartition". The document purports to convey the decision of the Punjab Government. Copies of this document were sent to the Commissioner, to the Director of Consolidation of Holdings, and to the Financial Commissioner, Relief and Rehabilitation, Punjab. On the 18th of May, 1953, another communication was sent to these

persons whereby the scheme was further explained. I may state that this scheme has now been withdrawn with effect from the 31st of January, 1956, and a direction has been given by order, dated the 27th of December, 1955, that the old method of valuation will operate on all consolidation proceedings in which the scheme has been published under section 20(4) of the Consolidation Act. In February, however, the withdrawal was made applicable only to those schemes which had been published under section 19 of the Act. There is no doubt that the scheme of valuation laid down in the instructions has been correctly adopted by the Consolidation Officers concerned. The common question involved in all these cases, however, is whether these directions or instructions or orders issued by the Government are valid and whether the Consolidation authorities acted within their jurisdiction in following these directions.

Admittedly when a scheme is prepared by the Consolidation Officer then he shall provide for the payment of compensation to any owner who is allotted a holding of less market value than of his original holding (*vide* section 15 of the Consolidation Act). Similarly, the rights of a mortgagee, tenant or other encumbrancer are not to be adversely affected without a provision for payment of compensation (*vide* section 26 of the Act). It is also admitted that the schemes framed in accordance with the Government's instructions allot holdings of less market value to some at least of the displaced persons who are allottees under the Evacuee Act and no provision has been made for payment of compensation to them whether they are considered to be owners of the allotted lands or encumbrancer thereof. This being so, the Consolidation Officers contravened the provisions of the East Punjab Consolidation of Holdings Act and acted beyond their jurisdiction and powers in

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adopting a scheme which contravened sections 15 and 26 of the Act. The learned Advocate-General has, however, endeavoured to justify the actions of the Consolidation Officers on various grounds. But these contentions are based on the argument that the *quasi*-permanent allottees have no interest or rights in the lands in their occupation and possession and that in any case such a right is not recognised by the Consolidation Act as owners or as encumbrancers. It is, therefore, necessary to determine the rights of *quasi*-permanent allottees in the lands under their occupation before discussing the contentions of the learned Advocate-General.

It must be remembered that at the time of the partition of the country there was mass migration and exchange of population. Minorities in Pakistan had suddenly to leave their lands and had to migrate to India while Muslim minorities migrated to Pakistan. The lands held by the migrating populations were lying unattended. A machinery had to be devised immediately by the Indian Executive authorities to rehabilitate the displaced persons and to ensure production of food. At that time no data was available for settling the problem. The Government decided to allot evacuee lands temporarily for 1947-48. This was done. Later on it was decided to settle the problem on permanent basis. A scheme was formulated for the purpose under the various Evacuee Acts and the underlying idea was that the lands are to be allotted to displaced persons on permanent basis. This could, however, be done only within the four corners of the provisions of the Evacuee Act under which the property vested in the Custodian for the purposes of administering the properties of evacuees who still remained the ultimate owners of the lands left by them. Accordingly a notification was issued under the provisions of the Punjab Administration of Evacuee Property Act of 1947, defining the

terms on which lands are to be given and allotted to various displaced persons on *quasi*-permanent basis. The allotment was to remain in force for the period that the property vested in the Custodian. The allottee was allowed to exchange the whole or part of the land allotted to him and was also allowed to lease it out for a period not exceeding three years. He was, however, not allowed otherwise to alienate the lands allotted to him. If the allottee made any improvement with the consent of the Evacuee Department then he became entitled to compensation according to the provisions of the Punjab Tenancy Act, 1887. Obviously the intention of the authorities at that time was to make the allottees permanent owners of the property and the term "*quasi*-permanent" was used to keep the allotment within the provisions of the Evacuee Act. The Punjab Act of 1947 was repealed in 1950, but all acts done under that Act remained in force under section 58 of the Central Evacuee Act of 1950. The Central Government framed rules under the 1950 Act and by subsequent amendment of rule 14, it was laid down that from the 22nd of July, 1952, no allotment shall be cancelled or varied subject to certain conditions which are not relevant for the present discussion. Then the Rehabilitation Act of 1954, was enacted by the Central Legislature and by a notification under section 12 the Central Government acquired the entire evacuee property and then proceeded to confer full proprietary rights on the *quasi*-permanent allottees. From the narration of these facts it appears to me clear that the rights of temporary allottees were analogous to lessees' rights and the rights of *quasi*-permanent allottees are analogous to full proprietary rights. In my view, the *quasi*-permanent allottee got substantial bulk of rights constituting him owner of the property and the Custodian parted with substantial part of his

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rights in the lands when he allotted them on *quasi*-permanent basis. These rights in these lands became indefeasible with effect from the 22nd of July, 1952. It is clear that after the 24th of March, 1955, the Custodian ceased to have any rights in the lands which were acquired by the Central Government under section 12 of the Rehabilitation Act of 1954.

It was, however, argued that these rights are not property as the allottees had no right to transfer the same and that they were bare licensees. This argument appears to be wholly without any force. As indicated above, the allottees' rights were not liable to termination as long as the property vested in the Custodian and further that the allottees could sublet the same for three years. These are not barely personal rights enjoyed by a licensee but obviously are rights and interests in land. "Property" has not been defined in these Acts now under consideration nor in the Transfer of Property Act. "Property" in relation to land is a bundle of rights exercisable with respect to it. The right to transfer is no doubt one of these rights and if there is any restriction on transfer then to that extent the owner's right to the property is limited. This, however, does not mean that a person in possession of land with restricted rights of transfer has no property in that land and that for this reason, he should not be considered to be the owner thereof. Section 6 of the Transfer of Property Act specifically provides that certain rights are properties which are not transferable. That being so, I am of the opinion that the *quasi*-permanent allottee has interest and rights in the land allotted to him and that that right is property.

It was then urged that whatever the nature of the rights, these rights are not recognised by the

Consolidation Act and, therefore, the Consolidation authorities had no jurisdiction to deal with the owners of these rights as long as the ultimate ownership vested in the Custodian. It was conceded that under section 19 the permanent allottees were entitled to be heard inasmuch as their interests were to be affected by the draft scheme. It is, however, clear from the proceedings that the Consolidation authorities dealt only with the *quasi*-permanent allottees and not with the Custodian. There is no suggestion that the Custodian was ever treated as an owner and was given notice of the proceedings by the Consolidation Officer.

In any case the rights of a *quasi*-permanent allottee must be considered to be those of an encumbrancer within section 26 of the Consolidation Act. Section 26 of that Act reads:—

"26(1) If the holding of a land-owner or the tenancy of a tenant brought under the scheme of consolidation is burdened with any lease, mortgage or other encumbrance, such lease, mortgage or other encumbrance shall be transferred and attached to the holding or tenancy allotted under the scheme or to such part of it as the Consolidation Officer subject to any rules that may be made under section 46, may have determined in preparing the scheme; and thereupon the lessee, mortgagee or other encumbrancer, as the case may be, shall cease to have any right in or against the land from which the lease, mortgage or other encumbrance has been transferred.

(2) If the holding or tenancy to which a lease, mortgage, or other encumbrance is transferred under subsection (1) is of

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less market value than the original holding from which it is transferred, the lessee, mortgagee or other encumbrancer, as the case may be, shall subject to the provisions of section 34 be entitled to the payment of such compensation by the owner of the holding or, as the case may be, the tenant as the Consolidation Officer may determine."

Now, the word "encumbrance" has no strictly technical meaning. It only means an estate burdened with obligations or responsibilities or with a claim which is attached to the property. From the time that rule 14(6) was amended, i.e., from the 22nd of July, 1952, even the Custodian could not affect the rights of the *quasi*-permanent allottees in occupation of their lands by transfer to third parties, as otherwise the consequence of transfer would be to cancel or vary the terms of allotment which is forbidden by rule 14(6). Therefore, these rights must be considered to run with the land and be held as an encumbrance under the Consolidation Act. I am, therefore, of the opinion that under the Consolidation Act, the *quasi*-permanent allottees' rights could not be diminished without payment of compensation for the loss and the contention of the learned Advocate-General to the contrary is without any force.

Now I come to the arguments of the learned Advocate-General. He has conceeded that if a *quasi*-permanent allottee is held to have interest in land within the Consolidation Act, then his rights could not be reduced without payment of compensation. He has, however, argued that in the present case the Consolidation Officer took the entire evacuee property which vested in the Custodian in the consolidation scheme and then re-

distributed it amongst the displaced persons in accordance with the Custodian's instructions contained in the executive instructions of 1952 and 1953. I have called the letters issued by the Punjab Government as executive instructions because the learned Advocate-General was unable to specify the provision of law under which those letters were issued. Now these instructions do not even purport to come from any authority mentioned in the 1950 Act. After the 1950 Act came into force the Custodian could not give any instructions which would have the effect of cancelling or varying the terms of *quasi*-permanent allotments, and after the 22nd of July, 1952, i.e., after the introduction of rule 14(6) he could not cancel or vary them. Obviously what the Custodian could not do directly, could not be done indirectly through the agency of the Consolidation Officer. The Custodian could not achieve by a back-door precisely what is refused to him by the direct entrance under rule 14(6). Therefore, a Consolidation Officer, assuming that he was acting as Custodian's agent, could not do anything which would have the effect of cancelling or varying the *quasi*-permanent allotment. I am, therefore, of the opinion that there is no substance in the argument that the Consolidation Officer acted as agent of the Custodian in varying the allotment that he did by following the instructions given by the Government by letters, dated the 9th of February, 1952 and 18th of May, 1953.

The learned Advocate-General was unable to justify these instructions issued by the Government under any other provision of law or on the assumption of any other legal position. It follows, therefore, that it must be held that the letters of the Government, dated the 9th of February, 1952, and the 18th of May, 1953, have no force in law and

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the Consolidation Officer acted without jurisdiction in carrying out those instructions. These instructions violate not only the provisions of the Consolidation Act but also those of rule 14(6) made under the 1950 Evacuee Act. These instructions also violate the provisions of Article 31 of the Constitution because by carrying out those instructions these petitioning displaced persons have been deprived of their property without payment of any compensation.

In this view of the matter it is not necessary to determine whether these instructions involve discrimination between displaced persons and local owners of the village or between displaced persons *inter se*. Nor is it necessary to decide the stage in consolidation proceedings at which the withdrawal of these instructions becomes effective. For all these reasons, I am of the opinion that the executive instructions, dated the 9th of February, 1952, and the 18th of May, 1953 have no legal force and must be ignored by Consolidation authorities. I cannot part with the case without expressing my surprise that the learned Advocate-General should be called upon to justify what was obviously indefensible.

The validity of these executive instructions having been determined, all these seven petitions should now be fixed before a Single Bench to decide them on merits.

Bhandari, C. J.

BHANDARI, C. J.—I agree.

ORDER.

Khosla, J.

KHOSLA, J. This matter has now been sent back by the Division Bench for decision on merits. The Division Bench has found that the executive

instructions contained in the letters of the Punjab Government, dated 9th February, 1952, 18th May, 1953, etc., have no force in law and the Consolidation Officer acts without jurisdiction in carrying them out. In view of this decision, the petition must be allowed and a direction issued to the Consolidation Officer to proceed with the matter and decide it in the light of the decision given by the Division Bench. There will be no order as to costs.

APPELLATE CIVIL

Before Dulat and Bishan Narain, JJ.

PRITAM SINGH-*Petitioner*

v.

UNION OF INDIA, AND OTHERS,—*Respondents*

S.C.A. 9-D of 1955.

1956

Nov. 9th

Code of Civil Procedure (V of 1908)—Sections 109(a) and 110—Claim in suit for a declaration that the petitioner was still in service—Such claim whether capable of money valuation under section 110, Civil Procedure Code.

Expression "involved directly or indirectly some claim to or respecting property" in section 110, meaning of.

Held that salary that is to be earned in future cannot be capable of valuation as the actual earning depends on various circumstances which may or may not materialize, e.g., continued good conduct in service and good health, etc., The right to continue in service is incapable of valuation and therefore loss suffered by plaintiff by his alleged wrongful dismissal is not and cannot be covered by the provisions of section 110, Civil Procedure Code.

Held further, that a claim can be considered to be directly or indirectly involved within paragraph 2 of section 110, Civil Procedure Code, if the claim is additional