

uncorrected. To hold that would be to give to section 537 the effect, not only of curing mere formal defects of procedure when discovered too late, but of practically subverting all procedure."

(5) Similarly in a Full Bench decision of this Court in *Krishan Kumar v. The State* (2), it was said—

"Lest there may be some confusion, I make it clear that nothing said in this judgment shall be constructed as authorising the Courts to commit irregularities which do not occasion a failure of justice. Section 537 of the Code provides that where an irregularity is committed, such an irregularity is, in the absence of failure of justice, not a ground which can be urged in an appeal or revision or in proceedings under section 374 of the Code for the reversal or alteration of the finding, sentence or order passed by a Court of competent jurisdiction. Plainly, S. 537 of the Code cannot be used by the Court of first instance to validate errors or irregularities committed in that Court."

(6) In view of what I have said above, I would accept this petition and set aside the order dated 16th August, 1967, passed by the trial Magistrate only with regard to the summoning of the Post Master, Fazilka, with certain documents which were in the custody of the Postal Department.

R.N.M.

CIVIL MISCELLANEOUS

*Before D. K. Mahajan and Prem Chand Jain, JJ.*

BRIJ LAI,—*Petitioner.*

*versus*

THE CENTRAL GOVERNMENT AND OTHERS,—*Respondents.*

Civil Writ No. 722 of 1963

July 18, 1968

*Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 25—Whether mandatory.*

(2) I.L.R. 1955 Punj. 226=A.I.R. 1955 Pb. 151.

Bij Lal *v.* The Central Government and others (Mahajan, J.)

*Held*, that basic distinction between Rules 25 and 26 of Displaced Persons (Compensation and Rehabilitation) Rules, 1955 is that rule 25 deals with claims, for the satisfaction of which the Displaced Persons (Compensation and Rehabilitation) Act has been enacted, whereas rule 26 and so also rule 70(3) have been enacted for the disposal of evacuee property which was not meant to satisfy the claims of the displaced persons holding verified claims or property which could be so utilized. Therefore, there could be no obligation on the department to transfer properties to the non-claimants who were in possession of the same, whereas an obligation did exist in the case of claimants in possession of such properties. Hence Rule 25 of the Rules is mandatory and the word "may" in it has to be read as "shall".

*Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 24th March, 1966 to a larger Bench for the decision of an important question of law involved in the case and it was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice P. C. Jain on 18th July, 1968.*

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the impugned orders of respondents Nos. 1, 2, 3 and 4 dated 12th March, 1963, 11th January, 1963, 12th October, 1962 and 28th July, 1962.*

H. S. WASU SENIOR ADVOCATE WITH B. S. BASU, ADVOCATE, for the Petitioner.

A. S. SARHADI SENIOR ADVOCATE WITH N. S. BHATIA, ADVOCATE, for the Respondents.

#### ORDER OF S. B. DATED 24TH MARCH, 1966.

DUA, J.—The petitioner claiming to be a displaced person from Pakistan came to this part of the country and was given on lease evacuee Industrial Establishment No. 144 at Ludhiana. The petitioner states that he has been paying its lease money first to the Department of the Custodian Evacuee Property and then to the District Rent and Managing Officer. He is still in possession. In due course, Shri Mangal Sain joined the petitioner as a partner in this concern. The petitioner is a claimant, which claim has not been satisfied upto now. Under Rule 25 of the Displaced Persons (C&R) Rules, 1955, it was incumbent upon the Department to offer the said Industrial Establishment to the petitioner on its assessed price because the establishment was allottable under Rule 22. Its assessed price has been described to be about Rs. 16,000 which is less than

Rs. 50,000. On revision having been fixed by Mangal Sain with the Chief Settlement Commissioner, Shri C. P. Sapra, had definitely directed on 7th, November, 1960, that the Industrial Establishment should be transferred to the petitioner as its claimant-allottee. The petitioner thereafter approached the District Rent and Managing Officer with a request for the transfer but it was not complied with. On 28th July, 1962, it was stated that the property had already been put to auction and sold to Smt. Nand Rani, respondent No. 5 in this Court. The petitioner went up in appeal before the Settlement Officer but the same was rejected. A further revision with the Deputy Chief Settlement Commissioner was also disallowed on 11th January, 1963, on the ground that the sale having once been made, it could only be set aside on the ground of fraud or irregularity. It is in these circumstances that the present writ petition has been presented and the petitioner claims that being a claimant-allottee of the property in question, he has a legal right to the permanent transfer thereof under Rule 25.

**THE**

(2) In the written statement by respondent No. 5, it has been pleaded that it is Mangal Sain who is in possession of the property and not the petitioner who has no concern with the property so far as the answering respondent's knowledge goes. It has been denied that there was any direction in the order dated 7th November, 1960, and indeed it is pleaded that no such direction could be given under the law. That order merely rejected Mangal Sain's revision. The property, it is expressly asserted, was auctioned as far back as 17th March, 1960, and purchased by the answering respondent in an open bid. The conveyance-deed has already been executed and the respondent has applied for possession of the property. It is really at the instance of Mangal Sain that the present petition has been presented in this Court.

(3) Before me, reliance has been placed on Rule 25, which is in the following terms:—

“25. Transfer of acquired evacuee property which is an allotable property to person in occupation thereof who hold, a verified claim.—(1) Where an applicant for payment of compensation is in sole occupation of an acquired evacuee property which is an allottable property, such property may be transferred to him in lieu of the compensation payable to him under the Act.

\* \* \* \* \*

*Brij Lal v. The Central Government and others (Mahajan, J.)*

(4) Mr. Wasu says that this "may" means "shall" and for this purpose he has referred me to a Bench decision of this Court in *Sodhi Harbakhsh Singh v. The Central Government and others* (1), and to two unreported decisions of this Court in *Ramjit Dass v. The Ministry of Rehabilitation* (2), decided by Shamsher Bahadur, J., and to *Karam Singh v. The Chief Settlement Commissioner* (3).

(5) On behalf of the respondents, it has been argued that in Rule 25 "may" merely means "may" and it has not the effect of a mandatory provision. It has also been very strongly argued that the petitioner never preferred any appeal against the order of the Managing Officer directing the sale of the property. This order was made on 17th March, 1960, and having not preferred any appeal from that order, this Court should not at his instance interfere on writ side. In this connection, it has been emphasised that the petition is really meant to benefit Mangal Sain who has actually failed up to the final administrative authority. Mr. Wasu, however, insists that it being his statutory right, he must get the property and his conduct in not appealing against the various orders should not stand in the way of this Court in granting the requisite relief.

(6) In my opinion, as to how far the provision in Rule 25 is mandatory so as to exclude consideration of the conduct of the petitioner and to justify this Court's interference on writ side is a question of some importance which deserves to be decided by a larger Bench. I would accordingly direct that papers be laid before my Lord the Chief Justice for making suitable orders under clause (xx) read with proviso (b), Rule 1, Chapter 3-B, High Court Rules and Orders, Volume V.

**JUDGMENT OF D. B., DATED 18TH JULY, 1968.**

MAHAJAN, J.—(7) This petition under Article 226 of the Constitution of India has been referred by Dua, J., (as he then was) to a Larger Bench for the consideration of the question whether the word "may" in rule 25 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, means "may" or "may" is to be read as "shall". In other words, whether the rule is mandatory.

(1) I.L.R. (1962) 2 Punj. 712—1962 P.L.R. 629.

(2) C.W. 40 of 1960 decided on 10th November, 1960.

(3) C.W. 685 of 1960 decided on 25th April, 1961.

(8) The facts of the case are elaborately set out in the order of reference and need not be repeated. The order of reference may be read as part of this order. The sole contention advanced by Mr. Wasu, the learned counsel for the petitioner; is that his client being a claimant and in possession of the industrial establishment was entitled as of right to its allotment in terms of rule 25. On the other hand, the contention of Mr. Sarhadi, who appears for the auction-purchaser of this establishment, is that the petitioner has no vested right and the rule is directory and not mandatory. He has further maintained that the petitioner is guilty of laches and, therefore, is not entitled to relief under the extraordinary jurisdiction of this Court. Mr. Sarhadi has also maintained that there is no evidence on the record to show that the petitioner satisfies the requirement of rule 25, i.e., claim is more than Rs. 4,000 as provided in rule 25. Mr. Sarhadi particularly relies upon the observations of the Settlement Commissioner in Annexure 'B'.

(9) The principal question that is to be settled in the first instance is whether rule 25 is mandatory or directory. The matter is not *res integra*. In *Shri Ramji Dass v. The Ministry of Rehabilitation, and two others* (2), Shamsher Bahadur, J., in his decision; ruled that the word "may" in rule 25 has to be read as "shall", in other words the rule is mandatory. A letters Patent Appeal against this judgment was dismissed *in limine*. This decision was noticed and accepted by Mehar Singh, J., (as my Lord the Chief Justice then was) in *Karam Singh v. The Chief Settlement Commissioner, and others* (3). Again the interpretation of rule 26 came up for consideration before me in Civil Writ 1583 of 1960. The two decisions under rule 25 were cited before me and in view of those decisions I referred the matter to a larger Bench as to whether the word "may" in rule 26 has to be read as "shall" as it had been read in rule 25. This matter came up before a Division Bench consisting of Dulat and Pandit, JJ. They did not cast any doubt on the two decisions on rule 25 delivered by Shamsher Bahadur and Mehar Singh, JJ. On the other hand, the indications are that they approved those two decisions, but they hold that the word "may" in rule 26 has to be read as "may" and not "shall". The basic distinction between rule 25 and rule 26 is that rule 25 deals with claims, for the satisfaction of which the Displaced Persons (Compensation and Rehabilitation) Act has been enacted, whereas rule 26 and so also rule 70(3) have been enacted for the disposal of evacuee property which was not meant to satisfy the claims of the displaced persons holding verified claims or

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property which could be so utilized. Therefore, there could be no obligation on the department to transfer properties to the non-claimants who were in possession of the same, whereas an obligation did exist in the case of claimants in possession of such properties. If this distinction is kept in view, no fault can be found with the two single Bench Decisions which have taken the view that the word "may" in rule 25 has to be read as "shall". I may further mentioned that these two decisions have held the field right up to today and no discordant note has been struck so far. I am, therefore, inclined to agree with these two decisions and hold that the word "may" in rule 25 was rightly read as "shall" by the learned Judges, who delivered the decisions in Civil Writ 40 of 1960 and C.W. 685 of 1960.

(10) I now propose to dispose of the remaining contentions of Mr. Sarhadi. His first contention is that Mr. Sapra who held that the petitioner was a claimant, held in the absence of the respondents and his observations are mere *obiter dicta*. No exception can be taken to this contention. He further contends that the Settlement Commissioner observed that there was no cogent evidence that the petitioner was a claimant. If the matter had rested with the Settlement Commissioner, possibly I would not be inclined to interfere. But when the matter went to the Chief Settlement Commissioner in revision, the Chief Settlement Commissioner did not specifically deal with this matter. On the other hand, he proceeded to deal with the right of the petitioner on its merits. The principal ground on which the claim of the petitioner was rejected was that the property had been auctioned and the petitioner had not challenged the order of auction. It may be mentioned that the petitioner has remained in possession of the property all through and he would only get a right to challenge any adverse order when proceedings are taken to dispossess him. Moreover, an auction which is contrary to the provisions of rule 25 will not be a valid auction. Of course, the petitioner can only get the property if he satisfies the requirements of rule 25. Mr. Sarbadi is right so far that there is no proper determination whether the petitioner is entitled under rule 25 to the property even if the rule is held to be mandatory. Therefore, this matter will have to be determined by the department whether the petitioner satisfies the requirements of rule 25, inasmuch as he is a claimant who has the requisite amount of unsatisfied claim still standing which has to be satisfied by the allotment of the property in dispute.

(11) The second contention of Mr. Sarhadi is that the petitioner is guilty of laches. The petitioner's case all through has been that

Mangal Sain was his partner, and Mangal Sain was all the time contesting the auction. It is only when Mangal Sain's petition was rejected on the ground that he was not a claimant, that the petitioner was forced to step in. In these circumstances it cannot be held that the petitioner is guilty of laches. As a matter of fact, there is no clear finding given by any of the Rehabilitation Authorities that Mangal Sain was not a partner of the petitioner. Had there been such a finding, the position might have been different. I am, therefore, unable to accept the second contention of Mr. Sarhadi.

(12) The last contention of Mr. Sarhadi is that the petitioner did not specifically say in his petition that he had a claim of more than Rs. 4,000. It is not denied that the petitioner did say that he was a claimant whose claim had to be settled. Therefore, it is merely not stating a fact fully, but the relevant fact has been stated, and I have held that it will still be open to the department to determine whether the claim of the petitioner is of the requisite value so as to give him a right to the property under rule 25. This disposes of all the contentions of Mr. Sarhadi.

(13) For the reasons recorded above, I allow this petition, quash the orders of the Chief Settlement Commissioner, the Settlement Commissioner and the Managing Officer, and direct them to decide the claim of the petitioner on merits. In the circumstances of the case there will be no order as to costs.

PREM CHAND JAIN, J.—I agree.

R.N.M.

LETTER PATENT APPEAL

*Before Mehar Singh, C.J. and Bal Raj Tuli, J.*

BIHARI LAL,—*Appellant.*

*versus*

DEPUTY COMMISSIONER, AMRITSAR AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 237 of 1968.

July 24, 1968.

*Punjab Municipal Election Rules (1952)—Rule 11—Nomination papers containing declaration of a candidate that he belongs to Scheduled Caste—Such*