

Hartej Bahadur Singh
 v.
 The State of Punjab and others
 Grover, J.

but ought to have been allotted to Respondent No. 5 as he was entitled to its use and occupation and not the petitioner. If the petitioner came to be allotted that land and given possession thereof, the matter would clearly be covered by section 43 (1)(b) of the Act. This is the view taken by the Financial Commissioner and the Commissioner and I see no reason to differ from them. At any rate, even if two views are possible it is difficult to see how there can be any interference under Article 226 of the Constitution as it is well-settled that if either view can be correct, the Court would decline to interfere by *certiorari*.

In the result, this petition fails and it is dismissed, but I make no order as to costs.

R.S.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

KARAM SINGH,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No: 1556 of 1961:

1963
 Nov., 11th.

Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rules 18 and 21—Person having two verified claims, one in his individual capacity and the other in his capacity as an heir to an uncle—Whether can be clubbed together for determination of compensation.

Held, that for the purpose of assessing compensation payable to a displaced person, his verified claims in his individual capacity cannot be clubbed with the verified claims to which he succeeded by inheritance. Both these verified claims have to be processed separately. "Different Capacities" in Rule 21 mean the capacities already referred to in Rules 18, 19 and 20. If the Legislature intended to deal with the capacity of a claimant as an heir to another claimant, it would have specifically made a provision to that effect.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the orders of respondents Nos. 2 to 5, dated the 4th May, 1961, 28th April, 1961, 7th December, 1960 and 29th October, 1960, respectively.

H. S. WASU, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, for the Respondent.

ORDER

Mahajan, J.

MAHAJAN, J.—There is no dispute on facts in this petition under Article 226 of the Constitution of India. The total claim of Karam Singh petitioner in his individual capacity amounted to Rs. 26,659. His uncle Gurditta Mal had a claim which was verified to the extent of Rs. 16,760 in his individual capacity. Gurditta Mal had made a will in favour of Karam Singh petitioner. Gurditta Mal died. On his death disputes arose between Karam Singh petitioner and some other persons as to who was his successor. These disputes were settled by the order of the Settlement Commissioner with delegated powers to the Chief Settlement Commissioner, dated the 8th of August, 1957 (copy Annexure 'C'), whereby the share of Karam Singh petitioner in Gurditta Mal's claim was fixed at Rs. 11,243-12-0. The Department while assessing the amount of compensation payable on these verified claims clubbed his individual claim with the claim to which he succeeded by inheritance. This course was objected to by the petitioner, but the authorities below did not accede to his contention. The petitioner has now moved this Court under Article 226 of the Constitution of India.

The learned counsel for the petitioner draws my attention to Rule 18 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. This rule is in these terms—

“18. For the purposes of determining the compensation payable to an applicant, the

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Regional Settlement Commissioner shall, except as otherwise provided in these rules, add up the assessed value of all claims of the applicant in respect of all kinds of properties, other than agricultural land, situated in a rural area, left by him in West Pakistan and the compensation shall be assessed on the total value of all such claims.”

A bare reading of the rule leaves no manner of doubt that the contention of the learned counsel for the petitioner is correct.

The learned Advocate-General, on the other hand, contends that Rule 18 itself states that this rule shall be subject to other rules under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954) and the other rule which the learned Advocate-General points out and according to which he justifies the action of the Department is Rule 21. This is in these terms—

“21. Where a person holds a number of verified claims in different capacities, the total compensation payable to him shall be determined in accordance with the provisions of Rules 18, 19, and 20.”

Rule 21 makes special reference to Rules 18, 19 and 20. Rule 18 has already been quoted. Rule 19 deals with special provision for payment of compensation to joint families. In the present case there is no claim by the petitioner on the basis of Rule 19. Rule 20 relates to claims of co-owners. The petitioner is also not making a claim under Rule 20. It will also be evident from Rules 19 and 20 that though the basis of the claim is different, yet the claimant is seeking

compensation in his own individual right. He is not claiming on the basis of a derivative right to a claim otherwise or by inheritance. The learned Advocate-General lays stress on the words "verified claim in different capacities occurring in Rule 21 and contends that "different capacities" will include the capacity of the petitioner as an heir. I am, however, unable to agree with this contention. "Different capacities" in Rule 21 means the capacities already referred to in Rules 18, 19 and 20. If the Legislature intended to deal with the capacity of a claimant as an heir to another claimant, it would have specifically made a provision to that effect. I put it to the learned Advocate-General "If the claims of the uncle and nephew had been settled before the uncle died, will it make a difference when the nephew succeeded to that claim by inheritance?" The answer was that it would make no difference. I see no basis for a distinction if the uncle died before the verified claims were processed and the compensation determined. It is significant that in Rule 18 it is clearly stated that the compensation has to be determined on the total value of all claims pertaining to properties left by a claimant in West Pakistan. Therefore it is the property left by the petitioner to which he can make a claim. The property left by his uncle cannot be said to be the property left by him within Rule 18. Properties left by a joint family are properties which the claimant, who claims to be a member of the joint family, can properly be said to have left in West Pakistan. Though the capacity in which he held those properties and so also in the case of properties held by him as a co-sharer with other persons is different from the capacity in which the properties left by him in West Pakistan in his personal and exclusive occupation are concerned. This cannot be said to be the case where he gets the property of another displaced person by reason of inheritance or by

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Karam Singh transfer. The capacities contemplated by Rule 21 are set out in Rules 13, 19 and 20 and in any case have to be analogous to them. The interpretation which I have placed on Rule 21 is in consonance with the scheme of the Act which has been enacted to compensate an individual for what he lost in Pakistan.

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For the reasons given above, there is force in this petition. I allow the same and quash the orders of the Department clubbing together the personal claim of the petitioner and the claim to which he has succeeded by inheritance to his uncle. Both these claims should be separately processed. As the question has arisen for the first time, there will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Harbans Singh, J.

MUNSHI SINGH,—*Petitioner.*

versus

THE SUB-DIVISIONAL MAGISTRATE, REWARI, AND
ANOTHER,—*Respondents.*

Civil Writ No: 753 of 1962:

1963

Nov., 12th.

Punjab Security of Land Tenures Act (X of 1953)—S. 24-A—Carving out of surplus land by authorities without notice to the landlord—Whether ultra vires.

Held, that the carving out of a block by the authorities under the Punjab Security of Land Tenures Act, 1953 out of the consolidated block or blocks allotted to a land-owner after consolidation for purposes of declaring it as surplus without notice to the land-owner is *ultra vires*. The procedure to be followed in such a case is the same as is provided in section 24-A(1) of the Act.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, mandamus,