

maintained under section 172, Criminal Procedure Code in the belief that by doing so those statements can be kept back from the knowledge of the accused, then the accused cannot be deprived of the copies of those statements. The provisions of sections 162, 173(4) and 207-A(3), Criminal Procedure Code, impose an obligation upon the prosecution agency to supply copies of statements of witnesses who are intended to be examined at the trial to enable the accused to obtain a clear picture of the case against him, to utilise them in the course of cross-examination to establish his defence and also to shake the testimony of the prosecution witnesses. The words "such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record" in sub-section (1) of section 162, Criminal Procedure Code, make it abundantly clear that statements of witnesses during investigation even if taken down in the police diary maintained under section 172, Criminal Procedure Code, can be used by the accused for the purposes specified in proviso to section 162(1), Criminal Procedure Code. A very valuable right is given to the accused under the proviso to section 162(1), and he can exercise this right only if the copies of all the statements made by the witnesses during the investigation, whether recorded under section 161(3) or in the police-diary maintained under section 172, Criminal Procedure Code, are supplied to him. It follows, therefore, that the accused is entitled to the copies of statements of persons whom the prosecution proposes to examine as witnesses even though those statements are recorded in the police-diary maintained under section 172, Criminal Procedure Code.

(12) For the reasons given above, it is held that the order of the learned Sessions Judge, Sangrur is correct and the same is affirmed. There is no substance in this revision petition and the same is dismissed.

K. S. K.

MISCELLANEOUS CIVIL

Before M. L. Verma and M. R. Sharma, JJ.

PIARA SINGH UTTAM SINGH ETC.—*Petitioners.*

versus

THE STATE OF PUNJAB, ETC.—*Respondents.*

C.W. No. 426 of 1969.

March 15, 1974.

Punjab Town Improvement Act (IV of 1922)—Sections 25, 26, 27, 36 and 42—Town Improvement scheme likely to displace resident house owners—Improvement Trust—Whether bound to frame

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re-housing scheme for them—Person owning a shop and working therein—Whether a 'resident house-owner'—Application by a 'resident house owner' for being re-housed—Whether to be made within the period specified under section 36 (2).

Held, that the phraseology employed in section 27 of the Punjab Town Improvement Act, 1922 shows that whenever a resident house-owner, who is likely to be displaced, applies to the Trust to be re-housed, the Trust will be bound to frame a re-housing scheme and shall also be precluded from putting into execution the main scheme unless the re-housing scheme is completed. The object of the Act is to improve the sanitary and other conditions of a town and therefore it is unfair to dislocate the resident house-owners for providing facilities to the outsiders. It is precisely for this reason that section 27 makes it obligatory for the Trust to furnish housing accommodation to the people of the town before depriving them of their places of abodes.

Held, that the word 'house' has various shades of meaning depending upon the context in which it is used. When it is used in a statute, then it has to be interpreted in the light in which it was intended to be used by the Legislature. The ordinary 'resident house-owner' is an owner of a house who himself resides therein. This expression does not include a shopkeeper who owns a shop and also carries on his business therein. When sections 25, 26 and 27 are read together, it becomes obvious that the Legislature intended to safeguard the rights of the resident house-owners only because they formed a class by themselves. The expression 'resident house-owner', therefore, means the owner of a dwelling who actually resides therein. This term does not include in its ambit and scope the owner of a shop, which is primarily used for retail sale of goods. Hence a person owning shop and working therein cannot be regarded as 'resident house-owner' under section 27 of the Act.

Held, that a combined reading of the provisions of the Act shows that the Legislature has provided for a public notice to be issued regarding the framing of a scheme and the property which is going to be acquired for the purposes of such a scheme. Notices in this behalf are to be served upon the President of the Municipal Committee, the Medical Officer of Health, the persons who are *prima facie* owners of the property sought to be acquired as also the persons who are in actual occupation of it. The representations or objections filed against the scheme are to be considered by the Trust after hearing all concerned. Apparently, the demand for being re-housed made by the resident house-owners is one of the objections which can be filed by them. Even if the Trust turns down such a demand, the Legislature has provided an additional safeguard that the Trust shall forward along with its application for the sanction of a scheme the statements of objections and a statement of arrangements made by the Trust for re-housing all persons who are likely

to be displaced by the execution of the scheme, so that, in a suitable case, the Government itself may suggest or order the framing of a suitable re-housing scheme. This implies that an application for alternate residential accommodation has to be made within the period specified under section 36(2) of the Act because the notification issued under section 42 is conclusive evidence that the scheme has been duly framed and sanctioned and after that stage no objection can be entertained.

(Para 12)

Case referred by Hon'ble Mr. Justice M. R. Sharma to a larger Bench on 18th April, 1973 for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Muni Lal Verma and Hon'ble Mr. Justice M. R. Sharma finally decided the case on 15th March, 1974.

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 impugned Scheme known as Chowk Adda, Hoshiarpur, Jullundur City and which has been published in the Punjab Government Gazette, vide Notification No. 2310-MC (Cell) 67/47761, dated 30th December, 1967 and declaring Section 59(b) read with Schedule 10(2) of the Punjab Town Improvement Act, 1922 to be ultravires Article 14 of the Constitution, and further directing the respondents not to execute the above said Scheme of Chowk Adda, Hoshiarpur Road, Jullundur City, without first making a 'Rehousing Scheme' as required by law under sections 42, 26 and 27 of the Act.

CIVIL MISC. NO. 2430 OF 1973.

Application under Rule 8 of Chapter 4-F(b) of the High Court Rules and Orders Volume V read with Section 151 of the Code of Civil Procedure praying that the attached affidavit be placed on record for perusal of the Hon'ble Judge.

K. S. Kawatra, Advocate with Mohinderjit Singh Sethi, Advocate, for the petitioners.

I. S. Vimal, Advocate, for Advocate-General, (Punjab), for respondents 1 & 3.

K. L. Sachdeva, Advocate for respondent No. 2.

JUDGMENT

SHARMA, J.—The Municipal Committee, Jullundur, passed a resolution on October 7, 1960, by which the Town Improvement Trust, Jullundur (hereinafter called the Trust), was requested to

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widen the Chowk Adda Hoshiarpur. The Trust agreed to frame a scheme for this purpose provided the Municipal Committee agreed to share the cost on 50:50 basis. The Municipal Committee *vide* its resolution dated February 24, 1961, agreed to this proposal. Upon this, the Trust passed a resolution on May 31, 1961, to frame a scheme covering an area of approximately five Kanals for the purpose of widening the above-mentioned Chowk. Notices under section 36 of the Punjab Town Improvement Act (hereinafter called the Act) were published in the Punjab Government Gazette dated August 18, August 25 and September 1, 1961. One citation was also inserted in the Daily Milap on August 30, 1961, inviting objections against the scheme, if any. Thereafter, individual notices under section 38 of the Act were also served on the persons who were the owners and occupiers of the land covered by the scheme. They were called upon to submit their objections within a period of 60 days of the service of the notice against the proposed scheme. The Trust passed a resolution on November 28, 1961, by which a Committee consisting of Sarvshri B. K. Dewan, Kartar Singh Babbar and Satya Pal was constituted to consider the objections received. The objections were rejected in due course of time. On December 30, 1967, the State of Punjab accorded its sanction to the scheme as envisaged by section 42 of the Act.

(2) The petitioners Nos. 1 to 6, who are stated to be owners of the property in dispute and the petitioners Nos. 7 to 20 who are stated to be tenants of the property covered by the scheme have filed a joint petition on the ground that no scheme could be put into execution unless a scheme for re-housing was framed and have challenged the relevant provisions of the Act under which the affected persons were not being paid solatium at the rate of 15 per cent on account of compulsory acquisition of land. Along with the petition, some Annexures have also been filed, which are the copies of the objections preferred by some of the petitioners after the scheme had been finally approved by the State Government.

(3) In the return filed on behalf of the Trust, it has been stated that no objections were filed against the scheme by any person under section 36 of the Act. Some objections were, however, filed under section 38 of the Act which were disposed of by the Committee in accordance with law. It has also been urged that demand for re-housing of the scheme was made only on February 7, 1969, after the scheme had been duly sanctioned. The other objection raised was that the property in dispute was not being used for

residence and none of the petitioners was a resident-house-owner within the meaning of the Act. Consequently, it was not necessary for the Trust to make a scheme for re-housing

(4) The petition came up for hearing before me on April 18, 1973. It was argued that a person who owns a shop, works and resides therein also comes within the definition of the word "resident-house-owner". Since this point was likely to crop up in a large number of cases, I requested my Lord the Chief Justice to constitute a larger Bench and this is how this case has come up for hearing before this Bench.

(5) On behalf of the petitioners, it is submitted that the word 'house' includes in its ambit 'a shop' and so those shopkeepers who are also residing in the shop should be regarded as resident house-owners. He has relied upon the following passages appearing in Corpus Juris Secundum Volume 41 at pages 363 and 364:—

"House—

An ambiguous word, with various meanings, dependent on, or made evident by, the purpose of the parties and the subject matter of the instrument."

and

"In a legal sense, it is more comprehensive, is not limited to a structure designed for human habitation, and may mean a building or shed intended or used as a habitation or shelter for animals of any kind, a building in the ordinary sense, or any building, edifice, or structure enclosed with walls and covered, regardless of the fact of human inhabitancy".

(6) It has been argued that it is not necessary that a structure should be used for habitation before it can be regarded as a house. I have given my anxious thought to the argument raised. Normally speaking, the word 'house' has various shades of meaning depending upon the context in which it is used. Sometimes a firm is mentioned as a 'business house'. In the legislative sense it may mean the place of the legislative session, the total elected membership of the one or the other Branch of that Department, for instance, a Lower House or an Upper House. Sometimes a gambling den is described as a public gaming house and sometimes a place where a commodity like cloth is sold is described as a cloth house; but the primary meaning of this term, which is commonly understood, is a place or a building which is used for the habitation of man. When

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this term is used in a statute, then it has to be interpreted in the light in which it was intended to be used by the Legislature; for instance, section 5 of the Punjab Pre-emption Act provides that no right of pre-emption shall exist in respect of a shop, *serai* or *katra*. In some of the decided cases, arguments were raised whether a particular building was a shop or a house. The observations made in some of them are quite instructive. In *Sant Singh v. Gobind Ram* (1), it was observed as under:—

“I have no doubt that the word ‘shop’ denotes a building primarily used for the retail sale of Goods.”

In *Wadhawa Mal v. Lachman Das and others* (2), it was observed as under:—

“No goods were sold in the building, and, this being so, the building cannot be said to be a shop, which, as was stated in *Bhamba Ram v. Allah Bakhsh* (3), denotes a building or an apartment which is primarily used for buying and selling goods. Counsel for the appellant has referred to *Attar Singh v. Sant Singh* (4) in which warehouses attached to shops were regarded as being in the nature of shop property, but the building now in dispute is not attached to a shop, although some-shop-keepers have rented it and have been using it for storing their goods.”

In *Jhabban Lal and another v. Muhammad Umar and another* (5), the Court observed as under:—

“..... in deciding whether a particular building is to be considered as a house or as a shop for the purpose of pre-emption the primary use to which the building is put at the time of the sale has mainly to be considered. The length of its use is no doubt an important factor to be considered but that is not the only consideration. That question mainly enters into consideration for the purpose of determining whether the character of the property has *bona fide* and definitely been established. The requisite

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- (1) A.I.R. 1923 Lah. 209.
 - (2) A.I.R. 1924 Lah. 213.
 - (3) (1915) 69 P.R. 1915.
 - (4) (1906) 113 P.R. 1906.
 - (5) A.I.R. 1925 Lah. 544 (D.B.).

duration of user must accordingly depend on the facts of each case and on other circumstances that may be proved. The nature of the locality in which the building is situated is another factor to be considered along with other circumstances. If the building is used for more than one purpose, then the primary or more important of such purposes is to be considered. Structural appearance of the building must also be taken into consideration."

In *Sandhi v. Khair-ud-din and others* (6), the question whether business premises should be regarded as a shop or not came up for consideration and Dalip Singh, J. observed as under:—

"It seems to me that the rulings which lay down that a shop is primarily a place where goods are bought and sold are correct and that to extend the meaning to 'business premises' in the general sense of the word is to make an unwarrantable extension of the meaning of the word 'shop', but in any case, I do not think that the fact that a carpenter works in the place where he resides turns the building into business premises or into a shop."

The facts on which *Jas Raj Juniwal v. Gokal Chand Jaini* (7) was decided were somewhat similar to the facts of the instant case. Din Mohammad, J. speaking for the Court, observed as under:—

"It will be obvious even from that judgment that decided cases cannot serve as a useful guide in determining the character of a building. This will always remain a question of fact to be decided upon the peculiar circumstances of every case as it arises. In the case before us, the building is situated in a lane. It is no doubt true that that lane opens into a bazar, but that is immaterial. No such business is being carried on in these premises as would convert it into a shop. Its upper storey is admittedly used for residential purposes and it has always been described as a dwelling house. It was so described even in the sale deed executed by the vendor himself who is indirectly interested in the success of this appeal. We are therefore, clearly of opinion that the building in dispute is not a shop but is a house subject to the right of pre-emption."

(6) A.I.R. 1927 Lah. 328.

(7) A.I.R. 1935 Lah. 808.

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(7) It would thus be clear that so far as the Pre-emption Act is concerned, the Courts while deciding whether a building was a shop or a house laid particular emphasis upon the use to which the building in dispute was being put. One thing is however quite clear that a house and a shop were never regarded as one and the same thing. Though the principles laid down in these cases are quite helpful yet this question has to be decided primarily with reference to the provisions of the Act.

(8) The Act was brought on the statute book with a view to making improvements and expansion of the towns in Punjab State. For this purpose, various schemes mentioned in Chapter IV of the Act have to be framed. Section 22 of the Act lays down the matters to be provided for by general improvement schemes or re-building schemes. Section 23 entitles the Trust to frame street schemes and deferred street schemes, and section 24 empowers the Trust to make development and expansion schemes. The provisions which follow are of some importance and their relevant portions read as under:—

Section 25: Housing accommodation scheme :

If the trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within its local area such trust may frame 'a housing accommodation scheme' for the purpose aforesaid:

Provided that if the State Government are satisfied that within the trust area it is necessary to provide housing accommodation for industrial labour

Section 26: Rehousing scheme :

Whenever the trust deems it necessary that accommodation should be provided for persons who are displaced by the execution of any scheme under this Act, or are likely to be displaced by the execution of any scheme, which it is intended to submit to the Central Government for sanction under this Act it may frame a rehousing scheme for the construction, maintenance and management of such and so many dwellings and shops as ought in the opinion of the trust, to be provided for such persons."

Section 27.—Rehousing of displaced resident house-owners:
Any resident house-owner who is likely to be displaced

by the execution of any scheme under this Act, may apply to the trust to be re-housed, and no such scheme shall be put into execution until a re-housing scheme as provided for in section 26 for the re-housing of such resident houseowners as may apply under this section has been completed.

Explanation.—The demolition of a portion of a dwelling house which renders the remaining portion uninhabitable shall be deemed to be a displacement of the person or persons residing in the said dwelling house.”

It is obvious that a “housing accommodation scheme” envisaged by section 25 means a scheme to provide dwelling houses. Under the enacting clause the making of a scheme is discretionary but under the proviso a trust is bound to provide such a scheme for industrial labour if the State Government so directs. No shops have to be provided for the industrial labour and if the proviso is meant only to restrict the scope of the enacting clause, it must be inferred that schemes mentioned in the enacting clause and the proviso are of the same nature. The effect of the proviso is that when the Government desires a housing accommodation scheme to be framed for industrial labour, the trust will comply with the direction of the Government and the making of the scheme will become obligatory.

(9) Section 26 is an enabling section. It empowers a trust to make a rehousing scheme for accommodating those who are displaced from either shops or houses. The word ‘rehousing’ has been used in this section to cover the idea of providing a building. Otherwise, there was no necessity of mentioning the words, “for construction of shops and dwellings” in the section. Merely because shops and dwellings are to be constructed for the purpose of a re-housing scheme it does not mean that whenever shopkeepers are dislocated the trust must frame a scheme for accommodating them. The section says that when the Trust deems it necessary, it may frame a re-housing scheme for providing shops also to displaced shop-keepers. Thus, the framing of such a scheme has been left to the discretion of the Trust.

(10) On the other hand, the phraseology employed in section 27 shows that whenever a resident house-owner, who is likely to be displaced, applies to the Trust to be rehoused, the Trust will be bound to frame a re-housing scheme and shall also be precluded

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from putting into execution the main scheme unless the re-housing scheme is completed. The ordinary meaning of the term "resident house-owner" is an owner of a house who himself resides therein. This expression, in my opinion, does not include a shop-keeper who owns a shop and also carries on his business therein. When all these three sections are read together, it becomes obvious that the Legislature intended to safeguard the rights of the resident house-owners only because they formed a class by themselves. If the object of the Act is to improve the sanitary and other conditions of a town, then it would be unfair to dislocate the resident house-owners for providing facilities to the outsiders. It is precisely for this reason that section 27 makes it obligatory for the Trust to furnish housing accommodation to the people of the town before depriving them of their places of abodes. In other words, if a case is covered by section 27 of the Act, which means that if a resident house-owner is displaced and he has applied to the Trust to be re-housed, the scheme framed by the Trust cannot be put into execution until a re-housing scheme for the rehabilitation of such person is framed. In view of the aforementioned discussion, I am of the firm view that the term "resident house-owner" means the owner of a dwelling who actually resides therein. This term does not include in its ambit and scope the owner of a shop which is primarily used for retail sale of goods. Secondly, the provisions of section 27 are mandatory in character.

(11) The next question which deserves consideration is the time when a resident house-owner is supposed to apply for being re-housed. On behalf of the petitioners, it has been urged that there is no period of limitation provided for this purpose in the Act, and it should be open to the resident house-owners to make an application at any time before the scheme is put into execution. On behalf of the Trust it is submitted that such an application has to be made as soon as a notice for inviting objections is issued under section 36 of the Act after a scheme has been framed. After hearing the learned counsel on this point, I am of the view that both these extreme positions are untenable. Section 36 of the Act is analogous to section 4 of the Land Acquisition Act. It lays down that after a scheme has been framed the Trust shall prepare a notice stating therein that the scheme has been framed, the boundaries of the locality comprised in the scheme and the details of the land and buildings sought to be acquired. This notice is to be published weekly for three consecutive weeks in the official gazette and in a newspaper with a statement of the period within which

objections will be received. A copy of this notice has to be served upon the President of the Municipal Committee and the Medical Officer of Health. Section 37 of the Act lays down that these two functionaries may file any representations against the scheme within 60 days from the receipt of the scheme. Section 38 lays down that within 30 days of the publication of the first notice envisaged by section 36 of the Act the Trust shall serve notices upon the persons who after due enquiry can reasonably be regarded as owners and also the occupiers of such property. Section 40 lays down that after the expiry of the period indicated in the notice for the receipt of objections under section 36(2) of the Act, the Trust shall consider all the objections or representations after hearing the concerned persons. It may thereafter either abandon the scheme or apply to the State Government for sanctioning the scheme with such modifications, if any, as the Trust may deem necessary. Sub-section (2) of section 40 lays down that every application submitted to the State Government for sanctioning the scheme shall be accompanied by details of the scheme etc. etc., and the statements of objections, if any, received under sections 36 and 37 of the Act and a statement of arrangements made by the Trust for rehousing all persons who are likely to be displaced by the execution of the scheme and for whose re-housing provision is required. The idea seems to be that the State Government should also be apprised of the true situation at the time when it accords sanction to the scheme. Section 42 lays down that the State Government shall notify the sanction of every scheme under the Act, and such a notification in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

(12) A combined reading of all these provisions shows that the Legislature has provided for a public notice to be issued regarding the framing of a scheme and the property which is going to be acquired for the purposes of such a scheme. Notices in this behalf are to be served upon the President of the Municipal Committee, the Medical Officer of Health, the persons who are *prima facie* owners of the property sought to be acquired, as also the persons who are in actual occupation of it. The representations or objections filed against the scheme are to be considered by the Trust after hearing all concerned. Apparently, the demand for being re-housed made by the resident house-owners is one of the objections which can be filed by them. Even if the Trust turns down such a demand, the Legislature has provided an additional safeguard that the Trust shall forward alongwith its application for

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the sanction of a scheme the statements of objections and a statement of arrangements made by the Trust for re-housing all persons who are likely to be displaced by the execution of the scheme, so that, in a suitable case, the Government itself may suggest or order the framing of a suitable re-housing scheme. This implies that an application for alternate residential accommodation has to be made within the period specified under section 36(2) (a) of the Act. When the notification under section 42 is issued, it shall be conclusive evidence that the scheme has been duly framed and sanctioned. After that stage no objection can be entertained on the ground that the scheme is bad and cannot be put into execution because no re-housing scheme for displaced resident house-owners has been framed.

(13) There was some controversy about the service of notices under section 36 of the Act and in order to resolve that we asked the learned counsel for the Trust to produce the record before us. A perusal of the record shows that on September 5, 1961, as many as 153 persons filed objections in response to notice dated August 21, 1961. The relevant portion of the objection petition reads as under :—

“That the inhabitants of the locality in question are almost all displaced persons having migrated from the West Pakistan, after the partition of the Province in August, 1947—say some 14 years ago. We have all been uprooted and had lost all our belongings in West Pakistan. It is with great difficulty that we have by now settled in this locality and are feeding our families with the utmost labour and after experiencing very great troubles in making both ends meet. In case our properties are acquired by the Improvement Trust, this would mean, in unequivocal terms, that we shall all along with our aged parents and young children will be thrown on the road side once again with the result that we all will starve once again. The families affected in this scheme are about 100. As soon as it has been heard that their properties are being acquired, they are all feeling disgusted and their future appears hopeless.”

(14) It is no doubt true that the objectors did not expressly claim a re-housing scheme envisaged by section 27 of the Act but at the same time it cannot be denied, if this objection is read in a

reasonable manner, that the objectors did claim that they had settled in this locality and if this scheme was executed their aged parents and young children will be thrown on the roadside. This objection implies that the objectors were clamouring for being rehoused.

(15) During the pendency of this petition also it was claimed on behalf of the Trust that none of the petitioners was residing in a house belonging to himself. Of all the petitioners, only Piara Singh filed an affidavit in support of the plea that he was actually residing in a part of the premises sought to be acquired. In order to determine the true facts, we directed the Senior Subordinate Judge, Jullundur, to inspect the spot and report whether the claim made by Piara Singh petitioner was genuine or not. He reported that the walled portion behind the shops and some rooms on the first floor were being used as residence by Piara Singh petitioner. This report was read out before the learned counsel for the parties and none of them filed any objection against the same. It would, therefore, have to be taken as proved that Piara Singh petitioner was a resident house-owner. The learned counsel for the Trust objected that the dominant purpose for which the building was being used should be taken into consideration and it should not be regarded as a house merely because Piara Singh petitioner is using some rooms built on the first floor as his residence. In *Jhabban Lal's case* (supra) which arose under the Punjab Pre-emption Act, it was held that if the building was used for more than one purpose then the primary or more important of such purposes is to be considered. I am, however, of the view that the Legislature has not evinced this intention under the Act. The explanation appearing at the end of section 27 lays down that the demolition of a portion of a dwelling house, which renders the remaining portion uninhabitable, shall be deemed to be displacement of the person residing in the said dwelling house. The report submitted by the learned Senior Subordinate Judge, Jullundur, shows that the entrance of the house belonging to Piara Singh was located between the shops in occupation of Jyoti Traders and Shan Sale Centre. Behind the shops there was a court-yard, a portion of which was also a small room adjoining the tin-shed. There was also a small room adjoining the tin-shed. One cot and one quilt were lying in this room. A buffalo was found tethered in the court-yard. Even if the rooms on the ground floor may not come within the strict definition of the term "house" the room in the court-yard would. Piara Singh petitioner was certainly using this

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room as residence. If the outer gate leading to this court-yard was acquired and demolished this would certainly render the remaining portion uninhabitable within the meaning of explanation to section 27 of the Act. I am of the considered view that Piara Singh petitioner comes within the definition of the term "resident house-owner" and he deserves to be provided with alternate residential accommodation before the scheme is put into execution.

(16) No other petitioner asserted before us that he was actually residing in one of the houses which were sought to be acquired. None of them, therefore, can be regarded as a resident house-owner.

(17) As a result of the foregoing discussion, I allow the petition *qua* Piara Singh petitioner only and hold that the scheme shall not be put into execution unless he is allotted alternate residential accommodation. The petition so far as it relates to the other petitioners is dismissed. There shall be no order as to costs.

VERMA, J.—I agree.

N.K.S.

REVISIONAL CIVIL

Before Bal Raj Tuli, J.

JAGAN NATH, ETC.—Petitioners.

versus

TEK CHAND, ETC.,—Respondents.

C.R. No. 1197 of 1972.

March 15, 1974.

Code of Civil Procedure (Act V of 1908)—Section 115(c), Order V Rules 1, 2 and 20 and Order IX Rule 13—Service of summons on the defendant in suit without copy of the plaint—Whether 'due service'—summons of a suit sent to the defendant by registered post without a copy of the plaint accompanying the summons—Refusal of the defendant to receive the registered cover—Such defendant—Whether 'duly served'—Defendant not 'duly served' but proceeded against ex-parte—Court—Whether has option not to set aside the ex-parte decree—Order refusing to set aside the ex-parte decree against a defendant not 'duly served'—Whether revisable under section 115(c).

Held, that according to Rules 1 and 2 of Order V of the Code of Civil Procedure, 1908, a summons is 'duly served' only when it is