

Acquisition Act on the application of the appellants but if the award is null and void, then these proceedings are also without any jurisdiction. Moreover the appellants' case is that they had purchased the land in 1944 for Rs. 2,75,000 and its market price at the time of the acquisition was Rs. 13,00,000. Murari Singh has awarded only Rs. 2,58,300, that is, less than the price prevailing in 1944. The appellants' counsel urged that in such circumstances the award of an unauthorised person should not be allowed to prevail because a properly authorised person may take a more reasonable view of the matter. In my view, it will not be proper exercise of discretion to allow an award made by an unauthorised person to stand.

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For these reasons, we accept this appeal and modify our judgment dated the April, 1959 by holding that the award made by Murari Singh on 23rd February, 1957 is null and void.

The result is that the appeal is accepted to the extent indicated above. In the circumstances of the case, however, we leave the parties to bear their own costs of the appeal as well as of the application for review.

G. D. Khosla, C.J.—I agree.

G. D. Khosla,
C.J.

B.R.T.

CIVIL MISCELLANEOUS.

Before A. N. Grover, J.

DIWAN CHAND,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No. 523-D of 1959

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 30 and 31—Construction, scope and object of—Agreement amongst the different occupants—Whether of any effect.

1960

March 23rd

Held, that the proviso to rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, employs language which leaves no doubt that in order to attract its provisions the property should be capable of being partitioned suitably so as to enable the Settlement Commissioner to allot to each occupant a portion of the property so partitioned having regard to the amount of compensation. When the proviso is read with the purview the words "each such person" appearing in the proviso can only have reference to the occupants mentioned in the purview. The object clearly is that if the property can be so divided that a portion can be allotted to each occupant then it will not be offered to the person whose compensation is nearest to the value of the property, but if it cannot be so partitioned then it must be offered to such person whose compensation is nearest to the value of the entire property. Rule 31 also shows that the intention is to transfer the entire property to one person and where he is not a claimant it is to be allotted to that person who occupies the largest portion of the property. Where there are two competing displaced persons occupying a portion of the property which is equal in area even then the property has to be transferred to that person who has been in occupation of such portion for a longer period. The scheme of both these rules seems to be fairly simple, namely that the property should be transferred to one person even if there are more occupants than one except in those cases where the property can be suitably partitioned and the portions so partitioned can be allotted to each one of the occupants under rule 30.

Held, that while considering whether a particular property is covered by the proviso to rule 30 it is wholly immaterial how the occupants decide *inter se* among themselves to press or not to press for the allotment of such portions which are in their occupation or to which they may be entitled. If the property cannot be suitably partitioned so as to accommodate all the occupants, it must be offered to the person whose compensation is nearest to the value of the property in terms of the opening part of rule 30.

(Note : Letters Patent Appeal against this judgment was dismissed in limine. Editor).

Petition under Articles 226/227 of the Constitution of India, praying that the impugned orders of the second respondent, dated 27th October, 1959, may be quashed by a writ in the nature of Certiorari or other appropriate writ, order or direction and respondents No. 1 and 2 may be directed to proceed in accordance with law and to transfer the ground floor of the property in question to the petitioner.

R. S. NARULA, ADVOCATE, for the Petitioner.

JINDRA LAL, DALJIT SINGH & A. N. ARORA, ADVOCATES,
for the Respondents.

ORDER.

GROVER, J.—In this petition under Article 226 of the Constitution the facts may be shortly stated.

Grover, J.

The petitioner occupied a portion of the ground-floor of a certain house situate in Delhi in 1947, which was evacuee property. According to him, in 1950 the first-floor and the *barsati* on the second-floor were similarly occupied by Behari Lal respondent No. 4. Lal Chand, respondent No. 3 came to occupy the other portion of the ground-floor. All this was done under authority from the Custodian. The aforesaid property was subsequently acquired by the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The total value of the entire building was fixed at Rs. 6,712.

As there were more persons than one holding verified claims in occupation of the property in question it became necessary to decide in terms of the proviso to rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, whether the property could be suitably partitioned. The Settlement Commissioner by his order dated 7th May, 1958, did not go into the question of division of the property saying that the property being allotable no further question of horizontal division could be considered. The matter was taken up in appeal and there were remand proceedings, which were once again

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challenged in appeal, with the result that a remand was made to the Settlement Commissioner a second time.' The Assistant Settlement Commissioner to whom the case went for disposal held on 15th June, 1959, that as there were four different occupants of the property and that as it was incapable of division into four separate units; no division was at all possible. He directed that Behari Lal, respondent be declared eligible for the entire property. It may be mentioned that the aforesaid respondent had submitted his claim in November, 1958 for adjustment against the price of the entire property and it had been so adjusted. The petitioner and Lal Chand, respondent filed a revision petition before the Chief Settlement Commissioner, which was disposed of by the Deputy Chief Settlement Commissioner on 12th August, 1959. It was held by him that the property appeared to be divisible and that it should be divided into two units out of which the first and the second floor might be given to Behari Lal and the ground-floor given to any one of the various occupants, who might be entitled to the same according to the rules. Behari Lal, respondent moved the Central Government under section 33 of the Act, and the proceedings came up before respondent No. 2. Before him it appears that Lal Chand respondent No. 3 and Haveli Ram, erstwhile occupier of a portion of the ground-floor gave it in writing on 22nd October, 1959, that there was no dispute, whatever between the occupants of the ground-floor and that they had no objection if the entire ground-floor was transferred either to the petitioner or to Lal Chand, respondent. On 27th October, 1959, however, the revision was accepted by respondent No. 2 and he directed the transfer of the entire property to Behari Lal, respondent. It is this order, which has been impugned in the present petition.

The only point, which has been seriously pressed before me relates to the construction of the proviso to rule 30. It will be useful to set out the aforesaid rule together with the proviso and explanation I, explanation II being not relevant.

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"30. *Payment of compensation where an acquired evacuee property, which is "an allotable property, is in occupation of more than one person. If more persons than one holding verified claims are in occupation of any acquired evacuee property, which is an allotable property, the property shall be offered to the person, whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired evacuee property, which is allotable as may be available:*

Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him.

Explanation I.—The provisions of the rule shall also apply where some of the persons in occupation of any acquired evacuee property, which is an allotable property hold verified claims and some do not hold such claims.

* * * *

The submission of the learned counsel for the petitioner is that the property in the present case was divisible or partible at least into two portions, namely the ground-floor and the first-floor and in such circumstances it should have been allotted to the various occupants having regard to the

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amount of compensation payable to them. It is urged that the purview of rule 30, which lays down that the property shall be offered to the person, whose compensation is nearest to the value of the property would only apply if such property is not partible at all and once it is partible it does not matter whether it can be so partitioned as to allow allotment to every occupant. The Deputy Chief Settlement Commissioner has expressed the opinion, which has been strenuously pressed before me that once the portions satisfy the tests of divisibility then if there is a tie between the persons in each divisible portion, it should be resolved by having recourse to rule 30 or 31. On the other hand, the Deputy Secretary, who exercised the powers of the Central Government under section 33 has taken the view that the proviso to rule 30 contemplates division only in such cases where the portion of the property occupied by each allottee could be transferred to him.

To my mind the proviso employs language which leaves no doubt that in order to attract its provisions the property should be capable of being partitioned suitably so as to enable the Settlement Commissioner to allot to each occupant a portion of the property so partitioned having regard to the amount of compensation. When the proviso is read with the purview the words "each such person" appearing in the proviso can only have reference to the occupants mentioned in the purview. The object clearly is that if the property can be so divided that a portion can be allotted to each occupant then it will not be offered to the person whose compensation is nearest to the value of the property, but if it cannot be so partitioned then it must be offered to such person whose compensation is nearest to the value of the entire property. It is not possible to see, how the proviso can be

read in the manner in which the learned counsel for the petitioner wants it to be interpreted. Taking a simple illustration, if there are four occupants of a particular property and it can be divided only into two portions surely all the four occupants cannot be accommodated. In such an eventuality, according to the learned counsel for the petitioner, two will have to go out and two will be entitled to allotment and this will be done after having regard to the amount of compensation payable to each one of them. Such a conclusion cannot be reached on a proper interpretation of the provisions mentioned above. The scheme of rule 30 clearly is that if the property can be suitably divided so as to accommodate all occupants then they will be entitled to be allotted such portion of the property as may be suitable for them having regard to the amount of compensation payable to them. If, however, the property cannot be partitioned or divided properly in the aforesaid manner, then it must be offered to that person, whose compensation is nearest to the value of the property. Rule 31 also shows that the intention is to transfer the entire property to one person and where he is not a claimant it is to be allotted to that person who occupies the largest portion of the property. Where there are two competing displaced persons occupying a portion of the property, which is equal in area even then the property has to be transferred to that person who has been in occupation of such portion for a longer period. The scheme of both these rules seems to be fairly simple, namely that the property should be transferred to one person even if there are more occupants than one except in those cases where the property can be suitably partitioned and the portions so partitioned can be allotted to each one of the occupants under rule 30.

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It is not possible to accede to the other contention that has been raised that the other occupants apart from Behari Lal and the petitioner were no longer interested in allotment of any portion to them or had no objection to the entire ground-floor being transferred to the petitioner. While considering whether a particular property would be covered by the proviso to rule 30 it appears wholly immaterial, how the occupants decide *inter se* among themselves to press or not to press for the allotment of such portions, which are in their occupation or to which they may be entitled. If the property cannot be suitably partitioned so as to accommodate all the occupants, it must be offered to the person, whose compensation is nearest to the value of the property in terms of the opening part of rule 30.

For the reasons given above, no question of quashing the order of respondent No. 2 arises. Consequently the petition is dismissed, but I make no order as to costs.

B. R. T.

APPELLATE CRIMINAL.

STATE,—Appellant.

versus

DR. VIMLA AND ANOTHER,—Respondents.

Criminal Appeal No. 41-D of 1958

1960

 March 24th

Penal Code (XLV of 1860)—Sections 419, 463 and 464—Person getting the balance of insurance policy transferred in the name of a minor without disclosing the minority and by signing all the papers herself in the name of the minor—Whether guilty of offences of cheating by personation and forgery—Accrual of injury—Whether a necessary ingredient of fraud.