I have been informed at the Bar that the procedure under the Act which was passed in December, 1956, has hitherto been that the special police officer sends up the *"challan"* for prosecution. An irregular practice, whatever its duration, would not be consecrated into a principle of law and I am not inclined to attach importance in the setting of this case to the administrative practice even though it seems to be in conformity with the result at which I have independently arrived on an examination of the provisions of the Act.

In my judgment, the view taken by the Court below is correct and I am in respectful agreement with the authority of Somasundaram, J., in *In re Kuppammal* (1).

I would accordingly dismiss these petitions for revision.

K.S.K.

LETTERS PATENT APPEAL.

Before G. D. Khosla, C.J., and Shamsher Bahadur, J.

WAZIR CHAND AND OTHERS,—*Appellants.*

versus

PIRAN DITTA AND OTHERS,—*Respondents.*

L. P. A. No. 56-D of 1959

1960

August. 5th

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 3 and 30—Application for compensation by successors of a claimant—Whether to be treated as a single unit—Writ of certiorari*—Erroneous interpretation of Rule 30—Whether an error apparent on record—Order based on such erroneous interpretation—Whether can be quashed.*

(1) A.I.R 1959 Mad. 389.

Held, that the word 'successor' in Rule 3 of the Displaced Persons (Compensation and Rehabilitation) Rules includes 'successors', because a singular must be deemed to include the plural unless the contrary appears from the context. Where, therefore, the holder of a verified claim dies, all heirs and successors are to be treated as a single unit driving their right from the person who held the verified claim and the compensation is payable to them on that basis. It is not open to the departmental authorities to split the claim into as many units as there are successors and determine their rights accordingly. It was not the intention of the rule-makers to deprive the legal representatives of the holder of a verified claim of the rights which he had held.

Held, that where the deceased had a verified claim and was entitled to the allotment of the house by reason of the fact that the compensation due to him was nearest to the value of the house, his heirs cannot be deprived of that right merely because they are more in number. Their right of occupation of the house is derived from their predecessor-in-interest and not from their own personal claims. The net compensation mentioned in Rule 30 means the net compensation due in respect of the single verified claim and not the net compensation as it is determined by being split up on account of the death of original holder of the verified claim.

Held, that Rule 30 contemplates a person or persons who are in occupation of the house and who hold verified claims. If there are more verified claim than one, then the holders of such verified claims are to be treated as separate entities.

Held, that an error in interpreting Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rule is an error apparent on the record and the order based on that erroneous interpretation is liable to be quashed by a writ of *certiorari.*

Appeal under clause 10 of the Letters Patent against the order of the Hon'ble Mr. Justice A. N. Grover, dated 18th August, 1959, dismissing the Civil Writ No. 62-D of 1959.

M. L. KAPUR, ADVOCATE, for the Appellants.

BHAVANI LAL, ADVOCATE for the Respondent.

ORDER

Khosla, C. J.

KHOSLA, C. J.—This is an appeal under clause 10 of the Letters Patent against a decision of Grover, J., by which he dismissed a petition under Article 226 of the Constitution.

The facts briefly are that a house in the town of Rohtak was in the occupation of Piara Ram and Piran Ditta. Piara Ram's legal representatives are the appellants before us and Piran Ditta is the respondent. These two persons, namely, Piran Ditta and Piara Ram, were the allottees of separate portions of this house. Both of them held verified claims. The gross claim of Piara Ram was Rs. 6,800 and of Piran Ditta Rs. 23,100. Under the rules framed by the Department, the compensation due to Piara Ram was Rs. 3,100 and the compensation due to Piran Ditta was Rs. 7,346. The question of giving the house to one of the two claim-holders arose, and the price of the house was assessed at the figure of Rs. 4,220. According to rules, the house had to be allotted to that person whose verified claim came nearest to the value of the house. This was clearly Piara Ram. Unfortunately, Piara Ram died on the 5th of May, 1953 and an application for compensation was made by his legal representatives, who were six in number. The individual compensation of these six persons was determined at Rs. 511 each, and in this view of the matter, the dispute regarding the allotment of the house arose once again. Only three of the successors-in-interest of Piara Ram were in actual possession of the house. The Deputy Chief Settlement Commissioner, while considering this matter, took the view that the compensation permissible to the three persons in actual occupation of the house must be considered as a single unit, and by this computation these three persons were

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entitled to the allotment of the house, because the figure of Rs. 1,533, which was the compensation due to these three persons, was nearer the value of the house than the compensation due to Piran Ditta. He accordingly made an order in favour of these three persons. Piran Ditta made an application under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and Mr. Johnson, Joint-Secretary to the Government of India, took a totally different view of the matter. He interpreted rule 30 of the Rules framed under the aforesaid Act as meaning that each of the persons in occupation was to be considered as an individual and distinct entity to his own separate compensation and possessing his own rights and liabilities regarding the allotment of the house. In this view of the matter, each of these three persons was considered entitled to compensation of Rs. 511, and by this method the value of the house was nearer the compensation due to Piran Ditta than to any of these three heirs of Piara Ram. He, therefore, set aside the order of Shri Maharaj Kishore and allotted the house to Piran Ditta.

The matter was then brought to this Court by means of an application under Article 226 of the Constitution, and it was contended on behalf of the heirs of Piara Ram that there was an error apparent on the record inasmuch as Mr. Johnson had taken a totally wrong view of the law and had obviously misinterpreted the provisions of rule 30. Grover J., who considered the matter, came to the conclusion that there was no error apparent on the record and that the view taken by Mr. Johnson was the view permissible in law and that, therefore, no writ could issue. The present appeal is against this order of Grover J.

Before us it has been argued that the proved claim of Piara Ram must be considered as a

single unit. The application was made by Piara Ram, and his claim was verified Subsequently, the question of making an application for compensation arose. That application is to be made under rule 3 which is as follows:—

> "3. *Persons entitled to make application for compensation.*—An application for compensation may be made by a displaced person having a verified claim or if such displaced person is dead, by his successor-in-interest."

It is clear that the 'successor' here includes 'successors', because a singular must always be deemed to include the plural unless the contrary appears from the context. In this case the application was made by all the successors-in-interest of Piara Ram. They were entitled to make such an application in respect of the proved claim of Piara Ram. The form of application was drawn up according to rule 4, but the Department chose to split up the compensation due to Piara Ram into six parts fixing the amount payable to each of the six successors-in-interest at Rs. 511. It is nevertheless obvious that this compensation was due in respect of a single verified claim and not on account of six verified claims, because had that been the case, the amount permissible by way of compensation would have been somewhat larger. Therefore, the compensation, which was due to the successors-in-interest of Piara Ram, must be deemed to be a single unit, and in this view of the matter, when we come to consider the provisions of rule 30, we find that it is not a single individual occupying a house, who is to be considered as an entity, but individual or individuals, who derive their right from one verified claim. I do not think it was the intention of the

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rule-makers to deprive the legal representatives of the holder of a verified claim of the rights which he had held. Take, for instance, the case of an individual, who dies leaving two heirs, both of whom reside in a house. The deceased had a verified claim and was entitled to the allotment of the house by reason of the fact that the compensation due to him was nearest the value of the house. By his death, his heirs should not be held to have been deprived of that right merely because they are two in number. Their right of occupation of the house is derived from their predecessor-in-interest and not from their own personal claims. Rule 30 may now be quoted—

> "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;
> * * * *".

It will be seen that the person, who is entitled to make a claim for the allotment of the property is a person, who holds a verified claim. The three heirs of Piara Ram who were in occupation of this house, did not hold any verified claim at all, because the verified claim was held by Piara Ram. They have merely been held entitled to compensation in respect of that verified claim. Therefore, rule 30, contemplates a person or persons, who are in occupation of the house and who hold a verified claim. If there are more verified claims than one, then the holders of such verified claims are to be treated as separate entities. In this case, for instance, Piara Ram and

Piran Ditta were to be considered as separate holders of verified claims and, therefore, possessing separate and distinct rights to the allotment of the house. As such they were rivals of one another. I do not see how the heirs of Piara Ram, for instance, could become rivals of one another, but this conclusion must inevitably follow if we are to treat each one of them as a distinct entity possessing separate and distinct rights as opposed to all the other occupants of the house including their own brothers. This interpretation of rule 30 would do violence to the opening phrase which contemplates persons holding different verified claims and not persons, who derive their rights from a single verified claim. If in this context the latter part of the rule is read, then it will be clear that the net compensation mentioned is the net compensation due in respect of that single verified claim and not the net compensation as it is determined by being split up on account of the death of the original holder of the verified claim. The heirs of Piara Ram must, therefore, be considered as a single unit both for purposes of determining whether they hold a verified claim and also for determining what is their net compensation. Their net compensation is obviously either the compensation which was due to Piara Ram or the joint net compensation of the three persons living in the house if the persons, who are not in possession are to be excluded. In either view of the matter, they would be entitled to the allotment of this house, although my view clearly is that rule 30 contemplates all the heirs of a deceased holder of a verified claim. This is the only way in which rules 3 and 30 can be made consistent with one another.

If this view of the rules is taken, then it is clear that Mr. Johnson completely erred in interpreting rule 30 and there is an error apparent on

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the record inasmuch as he completely misunderstood the significance of rule 30 and thereby deprived the appellants of their right to the allotment of this house.

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I would accordingly allow this appeal and setting aside the order of Grover J., allow the petition for a writ of *certiorari*. The order of Mr. Johnson will be quashed and the matter will be disposed of in the light of the remarks made by me. In the circumstances of the case, there will be no order as to costs.

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—I agree.

R.S.

CIVIL MISCELLANEOUS

Before Bishan Narain, J.

ASSOCIATED HOTELS OF INDIA LTD.,—*Petitioners.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 90-D of 1957.

1960

August, 9th.

U. P. Entertainment and Betting Tax Act (VIII of 1937)—Section 3—Hotel maintaining a swimming pool which is open to residents free of charge and to non-residents on payment—Non-resident bathers in the swimming pool—Whether liable to pay entertainment tax—Constitution of India (1950)—Article 226—Entertainment Tax Officer issuing notice that charges for admission to swimming pool are taxable—Whether entitles the recipient of the notice to file a writ for getting the notice quashed.

Held that, that facilities provided by the management of the hotel to the bathers in the swimming pool maintained by it cannot be considered to be "entertainment" within the U. P. Entertainment and Betting Tax Act, 1937, however wide a meaning is given to this expression. The