accordance with the detailed procedure set out in sections 30-B to 30-D of the Act. There is no force in the second contention of the learned counsel. A vague allegation of the scheme not having been properly published was made in the petition and equally vague reply has been given that the publication was made according to rules. Unless some specific allegation is made against the manner in which the scheme was published it is impossible for the respondents to give a better reply. This contention cannot, therefore, be allowed to prevail for want of any definite particulars.

No other point has been argued before me in this case.

The writ petition fails and is dismissed but the parties are left to bear their own costs.

R. S.

APPELLATE CIVIL

Before S. K. Kapur, J.

KARAM NARAIN,—*Appellant*

versus

NARSINGH DASS,—*Respondent*

S.A.O. No. 62-D of 1965

1965

November, 15th.

Delhi Rent Control Act (LIX of 1958)—S. 14(6)—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 34—Evacuee property transferred on 25th May, 1963, with effect from 1st October, 1955—Period of five years under section 14(6)—Whether to be counted from 1st October, 1955—Rule 34—Whether ultra vires.

Held, that Rule 34 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, by fiction makes purchasers—transferees of evacuee property as owners from a given date. This fiction, which has been created by law, must be taken to its logical conclusion and full effect given thereto. When the law itself regulates the date of transfer and fixes it at a particular point of time, that must, for the purposes of section 14(6) of the Delhi Rent Control Act, 1958, also be taken as the date of transfer. Under this section the date of acquisition must mean the date when the law deems the owner to have acquired the property. Hence when the evacuee property is transferred on 25th May, 1963, with effect from 1st October, 1955, in pursuance of Rule 34, the period of five years under section 14(6), must be counted from 1st October, 1955.

Held, that Rule 34 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, is neither contrary to the parliamentary intention nor *ultra vires* the Act nor void on ground of unauthorised delegation. No doubt, rules and regulations promulgated must neither subvert, nor be contrary to the statute, but if in a given case a rule can be given effect to for certain purposes, it cannot be struck down as inconsistent with the Act, merely because special meaning is assigned by the Act to certain expressions, also used in the rule. In such a case the rule would be merely confined to such of the purposes to which effect can be given.

Second Appeal from the order of Shri Pritam Singh, Rent Control Tribunal, Delhi, dated 30th November, 1964, affirming that of Shri A. P. Choudhry, Additional Rent Controller, Delhi, dated 11th August, 1964, ordering eviction of respondents on grounds of bona fide *requirements. Also ordering eviction of Lajpat Rai and Awtar Singh and dismissing application for ejectment of Hari Chand and Karam Narain.*

DALIP K. KAPUR AND H. C. GUPTA, ADVOCATES, for the Appellant.

B. D. BEHAL, ADVOCATE, for the Respondent.

JUDGMENT.

Kapur, J. KAPUR, J. This judgment will dispose of S.A.O. No. 62-D of 1965 and S.A.O. No. 68-D of 1965. It is common ground between the parties that the decision in S.A.O. No. 68-D of 1965, will abide the judgment in S.A.O. No. 62-D of 1965. I am, therefore, confining myself to the facts of the latter appeal.

Narsingh Dass respondent is a landlord. He filed an application for eviction of Karam Narain, tenant on the ground of *bona fide* personal requirement. The Rent Controller ordered the eviction of the tenant. The said decision of the Rent Controller was affirmed by the Rent Control Tribunal by his judgment, dated 30th November, 1964. The present appeal is directed against the said judgment of the Rent Control Tribunal.

Two contentions have been raised before me : (1) the application for ejectment was barred under section 14(6) of the Delhi Rent Control Act, 1958 (hereinfater called Act No. 1), and (2) the finding of the Rent Control Tribunal that the premises in question were required *bona fide* by the landlord is erroneous. The house in question was an evacuee property and on 25th May, 1963, the Custodian

transferred the same to the landlord, with effect from 1st October, 1955. The date 1st October, 1955, was fixed in pursuance of rule 34 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter called the '1955 Rules'). It is said on behalf of the tenant that under section 14(6) of Act No. 1, a landlord who has acquired any premises by transfer cannot make an application for recovery of possession under sub-section (1) of section 14 on the grounds specified in clause (e) of the proviso thereof, unless a period of five years has elapsed from the date of the acquisition. According to the learned counsel for the appellant, the fictional date of transfer fixed under rule 34 of the 1955 Rules does not govern the provisions of section 14(6) of Act No. 1 and consequently 25th May, 1963, must be taken as the date of acquisition by the landlord. It is further urged that rule 34 of 1955 Rules is *ultra vires* for the following reasons and, therefore, cannot be taken into consideration for determining the date of acquisition under section 14(6) of Act No. 1:—

(1) The said rule is inconsistent with section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called Act No. 2);

(2) The said rule is inconsistent with notification No. SRO-2219 enacted under sub-section (2) of section 29 of Act No. 2;

(3) The said rule is an unauthorised piece of delegated legislation; and

(4) The said rule is contrary to the parliamentary intention.

The contention has first to be answered on the assumption that rule 34 of 1955 Rules in valid. If that be so, the date of transfer in section 14(6) in Act No. 1 will, in my opinion, be the date fixed by rule 34 of Act No. 2. Rule 34 of 1955 Rules deals with the particular class of property, namely, property transferred under Chapter V of Act No. 2. The said Chapter deals with payment of compensation by transfer of acquired evacuee properties. It is

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not disputed that the property was transferred under the said Chapter V and that 1st October, 1955, has been correctly fixed in conformity with the said rule 34 of 1955 Rules. That being so, it appears to me that a fiction created by rule 34, which is a fiction created by law, must be taken to its logical conclusion and full effect given thereto. When the law itself regulates the date of transfer and fixes it at a particular point of time, that must for the purposes of section 14(6) of Act No. 1 also be taken as the date of transfer. No doubt, the whole thing turns on the intention of the legislature and the meaning to be assigned to the words "unless a period of five years had elapsed from the date of the acquisition" in section 14(6) of Act No. 1. I see no justification in confining the scope of fiction under rule 34 of 1955 Rules to the provisions of Act No. 2 only. Rule 34 by fiction makes the purchasers transferees of the property as owners from a given date and when section 14(6) of Act No. 1 talks of a date of acquisition, it must mean the date when the law deems the owner to have acquired the property. If 1st October, 1955, is taken as the date of acquisition, the application would be after the expiry of five years from that date and, therefore, maintainable.

There then remains the question of validity of rule 34 of 1955 Rules. I find no validity in the contention that the same is inconsistent with section 29 of Act No. 2. It is said on behalf of the appellant that section 29 does not recognise any fictional date for transfer and to that extent rule 34 of 1955 Rules runs contrary to the said provision in Act No. 2. So far as sub-section (1) of section 29 of Act No. 2 is concerned, it merely provides that a person in occupation before the transfer shall be deemed to be a tenant of the transferee on the same terms and conditions as to the payment of rent or otherwise on which he held the property immediately before the transfer. If a rule otherwise within the rule-making power notionally fixes a date of transfer, that may only mean that the terms and conditions regulating the rights of the landlord and tenant would be the same on which he occupied the premises before such date of transfer. To that extent, there would be no inconsistency.

Emphasis is then laid on the proviso to section 29 of Act No. 2 and it is said that the protection for a period

of two years conferred on the tenants under the said provision starts from the date of actual transfer and consequently a rule cannot destroy that protection by notionally fixing an earlier date. According to the learned counsel, such a date may be more than two years prior to the date of actual transfer. In that event, the protection would be completely nullified which could never have been the intention of the legislature. In *Mst. Ranjit Kaur and others* v. *Harbel Singh* (1), a Bench of this Court held that—

> "Where the conveyance-deed specifically provided that the property was being transferred with effect from 1st October, 1955, by virtue of Rule 34 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, the property would be deemed to have been transferred with effect from 1st October, 1955, because this date was, by a special order, specified in the deed of conveyance itself. That being the case, the tenants cannot claim the benefit of the provisions of section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, where the application for ejectment is made after the expiry of the period of two years from the date of transfer specified in the conveyance-deed."

Referring to this judgment, the learned counsel for the appellant seeks to support his argument regarding the rule being destructive of rights conferred by section 29 of Act No. 2. It was also said that this judgment did not lay down the law correctly and the Bench ought to have held that section 29 of the Act No. 2 was to prevail. I am not really concerned with the correctness of that decision, for here the contention which I am called upon to answer is only regarding the validity of rule 34 of 1955 Rules. If in section 29, the date of transfer means the actual date of transfer, then to that extent it may have to be given effect to in preference to the provisions of rule 34. That would be so because of the requirement of the section itself. That will not, however, make rule 34 inconsistent with Act No. 2, for it may still subsist for other purposes of the Act. For instance, under

(1) 1963 P.L.R. 1023.

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sections 4 and 5 of Act No. 2 the public dues have to be deducted from the compensation payable. The effect of rule 34 would be that the transferee will not be liable to pay any charges for use and occupation from the date of transfer fixed under rule 34 of 1955 Rules. Rule 34 will, therefore, subsist, *inter alia*, for such purposes. No doubt, rules and regulations promulgated must neither subvert, nor be contrary to the statute, but if in a given case a rule can be given effect to for certain purposes, it cannot be struck down as inconsistent with the Act, merely because special meaning is assigned by the Act to certain expressions, also used in the rule. In such a case the rule would be merely confined to such of the purposes to which effect can be given. If, on the other hand, section 29 of Act No. 2 postulates that a fictional date of transfer can be fixed by rules, then in that event too there would be no inconsistency between the two provisions.

Coming now to the notification No. SRO-2219, I again find no substance in the argument of the appellant. There is nothing on the record to show that the conditions prescribed by the said notification were applicable to this case. The learned counsel maintains that it is not necessary to see whether the notification in terms is applicable to the case at hand or not, for his object is only to show that the rule varies the date of transfer as envisaged in the said notification. For the reasons given earlier it must be held that the rule cannot be struck down on this ground. Even otherwise, I am doubtful whether a rule can be struck down on the ground that it is inconsistent with a notification issued under the provisions of the Act.

It brings me now to the next contention of the appellant regarding the rule-making power under the Act. Under section 8(2) of Act No. 2, the Central Government may, by rules, provide for all or any of the matters specified therein. The matter specified under clause (d) of subsection (2) of section 8 is, "any other matter which is to be, or may be prescribed". Again, under section 40, the Central Government may make rules to carry out the purposes of this Act. Under clauses (d) and (g) of subsection (2) of section 40, rules may provide for "the dues which may be deducted from the amount of compensation to which a displaced person is entitled,"

and for "the terms and conditions subject to which property may be transferred to a displaced person under section 10, respectively". In my opinion, sub-section (2) of section 40 and the other clauses of sub-section (2), referred to above, do confer a power on the rule-making authority to frame a rule like rule 34 of 1955 Rules. The said rule appears to have been framed for the benefit of the displaced persons so as to increase the amount of compensation. The various provisions in Act No. 2, particularly, sections 4, 5, 8 and 40, lay down sufficient guiding principles for regulating the exercise of rule-making power. A further safeguard has been provided in sub-section (3) of section 40 requiring every rule to be laid before each House of Parliament. In these circumstances, it must be held that the rule is neither contrary to the parliamentary intention nor *ultra vires* the Act, nor void on ground of unauthorised delegation.

Regarding the challenge to the finding of the Rent Control Tribunal about the *bona fide* personal requirement by the landlord, in my opinion, it is a pure finding of fact arrived at after proper consideration of the material on the record. I find no cause to interfere with the said finding in exercise of my power under section 39 of Act No. 1.

It is then said on behalf of the appellant that out of the three portions of the house in occupation of different tenants, the landlord had already obtained possession of one portion with another tenant and taking that into consideration the finding of the Tribunal regarding *bona fide* need should be reversed. It is not disputed that that portion consists of a room 7′ × 5.3′. That would hardly change the position.

In the result the appeal must fail and is dismissed, but there will be no order as to costs. Tenant will have two months' time to vacate.

K. S. K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

M/S RASDEEP TOURING TALKIES,—*Petitioners*

versus

THE DISTRICT MAGISTRATE, KARNAL AND ANOTHER,—*Respondents*

Civil Writ No. 2595 of 1965

1965

November, 15th.

Punjab Cinemas (Regulation) Act (XI of 1952)—*S. 9*—*Punjab Cinemas (Regulation) Rules (1952) framed thereunder*—*Rule 3 (iv)*—*Whether* ultra vires *Article 19(1)(g) of the Constitution.*