CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

RAM SINGH AND OTHERS,—*Petitioners.*

*versus*

THE CHIEF SETTLEMENT COMMISSIONER (RURAL) PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1127 of 1963

April 23, 1968

*Displaced Persons (Compensation and Rehabilitation) Rules* (1955)—*Rule* 73(3)(*ii*)—*Whether confers right on the allottee to purchase excess land—Such right—Whether subject to exercise of discretion by Rehabilitation authorities—Interpretation of Statutes—'May'—When can be interpreted in mandatory sense and construed as 'shall'.*

*Held,* that from the objects and scheme of Displaced Persons (Compensation and Rehabilitation) Act and rules framed thereunder, it appears that clause (ii) of sub-rule (3) of Rule 73 of Displaced Persons (Compensation and Rehabilitation) Rules is intended to confer a right on the class of allottees covered by it and imposes a corresponding duty on the Rehabilitation Department to give the benefit of the said statutory provision wherever a case falls within the four corners of the relevant clause. It is significant that the rights under rule 73 are conferred only on displaced persons holding verified claims. For all practical purposes, therefore, the benefits which accrue to an allottee under rule 73 are of the same nature as those which are intended to be availed of by a displaced claimant under rule 25 in respect of an acquired evacuee urban property. It is not within the absolute discretion of the Rehabilitation authorities to permit the purchase of the excess land by the allottee or decline the same.

[Para 26].

*Held,* that though the word 'may' is very often used in statutes in its ordinary sense of importing mere permission or possible exercise of discretion in a particular way, the word has been construed as having been employed in given statutes in a mandatory sense. Some of the crucial tests on the subject are that when the legislature imposes a positive duty or where a public duty is involved or where a right is given or a duty imposed, or where a matter of public policy and not merely a private right is involved or where an enactment directs the doing of a thing for the sake of public good or justice or where the

statute imposes a duty or confers a power on a public officer for public purposes or for the purpose of enforcing a right (but not to create one), the word 'may' should normally be construed as meaning 'must' or 'shall'.

[Para 26].

*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* 1 *and* 2, *dated* 4*th May,* 1963 *and* 19*th April,* 1963, *respectively.*

H. S. GUJRAL, ADVOCATE, for the Petitioners.

S. K. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL (PUNJAB) FOR Nos. 1 AND 2.

B. S. SHANT, ADVOCATE, FOR B. S. DHILLON, ADVOCATE, FOR Nos. 3 TO 6.

H. L. MITTAL, ADVOCATE, for the other respondents.

JUDGMENT

NARULA, J.—This judgment will dispose of three connected petitions, i.e., Civil Writ 1127 of 1963, Civil Writ 772 of 1964, and Civil Writ 2600 of 1965. The facts leading to the filing of these petitions may first be surveyed. Ram Singh and his three brothers, sons of late Manna Singh (petitioners Nos. 1 to 4 in C.W. 1127 of 1963, and C.W. 772 of 1964) owned certain land in Multan District. Some land in the same district (now in West Pakistan) stood in the name of their father Manna Singh and had not been mutated in the names of his sons though Manna Singh had admittedly died before the partition of the country. Claims in respect of the lands left behind in West Pakistan including those which stood in the names of the four sons of Manna Singh, and including the other lands which continued to be shown in the revenue records as those of Manna Singh, were filed by Kakobai, widow of Manna Singh, as guardian of her sons, namely, Ram Singh, Kashmir Singh, Prem Singh and Kartar Singh, who were all minors at that time. Before the receipt of the relevant revenue records from Pakistan, the following allotments of agricultural land were made in the names of petitioners Nos. 1 to 4 in lieu of the land left behind in their names:—

| | | *SA.* | *U.* |
|---|---|---|---|
| (1) Ram Singh | ... | 59 | 4½ |
| (2) Kashmir Singh | ... | 42 | 3 |
| (3) Prem Singh | ... | 42 | 3 |
| (4) Kartar Singh | ... | 42 | 6 |

In lieu of the lands which stood in the name of Manna Singh in West Pakistan, 15 Standard Acres and 13½ units were allotted in the name of the deceased himself. All the aforesaid allotments were made in village Dhogri, tahsil and district Jullundur. No allotment was either claimed by Shrimati Kakobai for herself nor was any such allotment made.

(2) Subsequently, a supplementary allotment of 7 standard acres and ½ unit was made in village Shaker Khera, district Hissar, in the name of Manna Singh deceased. All those allotments were made quasi-permanent in 1949. On the complaint of one Piara Singh, the additional allotment of 7 standard acres and ½ unit in village Shaker Khera was cancelled by the order of Shri Gurbax Singh, Assistant Settlement Commissioner, dated March 23, 1956. The case of the petitioners themselves (as disclosed in paragraph 4 of Civil Writ 1127 of 1963) is that after the said decision, they gave up the land comprised in the said allotment, i.e. the area of 7 standard acres and ½ unit in village Shaker Khera.

(3) On a complaint made against Shri Gurbax Singh, Assistant Settlement Commissioner, it was recommended by one Hari Singh Mumtaz, another Assistant Settlement Commissioner, that the order of Shri Gurbax Singh, dated March 23, 1956, should be set aside and instead of cancelling the allotments of the petitioners to the extent of about 7 standard acres, 14 standard acres and 10½ units should be cancelled. When the said recommendation of Mr. Mumtaz went up to Mr. Fletcher, who was holding the dual charge of the office of the Financial Commissioner as well as of the Chief Settlement Commissioner, Punjab, he wrote on the recommendation, the word "approved." The order of Mr. Fletcher, led the petitioners to file Civil Writ 216 of 1957, in this Court. Order of Mr. Fletcher was quashed by this Court (Gurnam Singh, J., as he then was) on March 12, 1958. A copy of the judgment of the learned Single Judge has been attached as Annexure 'C' to Civil Writ 1127 of 1963. The learned Judge held that the then impugned order of the Chief Settlement Commissioner was liable to be quashed as:—

(i) it was an *ex-parte* order passed without notice to the petitioners;

(ii) the fact that the petitioners were possibly heard later, when they tried to get the order reviewed, made no difference;

(iii) the petitioners had the right to continue to be in possession of the land comprised in their quasi-permanent allotment on account of the provisions of section 10 of the Displaced Persons (Compensation and Rehabilitation) Act (44 of 1954) (hereinafter called the Act), unless their said allotment was cancelled in accordance with the provisions of the relevant rules;

(iv) action for so cancelling their allotments could alone be taken under the rules made under the Act, the relevant rules being contained in Chapter 'X' under the heading "Payment of compensation under section 10 of the Act";

(v) the procedure laid down by rule 72 had been totally ignored in the case of the petitioners;

(vi) it was not clear from the order of Mr. Fletcher whether he was acting as Financial Commissioner or as the Chief Settlement Commissioner, while approving the recomdation of Mr. Mumtaz; and

(vii) the order in question had resulted in manifest injustice to the petitioners.

(4) In addition to the abovesaid grounds, the learned Judge also observed that certain facts stated in the recommendation made by Mr. Mumtaz were contrary to the record and ambiguous and that his recommendation was, therefore, wholly untenable as it was based on a mistake apparent on the face of the record. The result of the said judgment of this Court, against which admittedly no appeal was preferred by anyone, was that the order of Mr. Gurbax Singh, Assistant Settlement Commissioner, held the field, and all that the petitioners were liable to suffer was cancellation of allotment to the extent of about seven standard acres. Whereas the case of the respondents is that the petitioners had surrendered this extra land from village Shaker Khera, Mr. Gujral is instructed to state that Shrimati Kakobai, petitioner No. 5, is still in possession of the Shaker Khera land, and if and when the time

for surrendering the excess area found by Shri Gurbax Singh arises, it will have to be settled between her and the department, whether the area has to be surrendered from village Dhogri or village Shaker Khera. This aspect of the case does not, however, make any difference to the decision of the three writ petitions before me.

(5) Joginder Singh etc., i.e. respondents Nos. 3 to 6 in Civil Writ 1127 of 1963, made an application in 1962 to the Chief Settlement Commissioner for the cancellation of some alleged excess allotment of land in the hands of petitioners Nos. 1 to 4 in village Dhogri. After hearing the allottees (i.e. petitioners Nos. 1 to 4), Shri J. M. Tandon, Chief Settlement Commissioner, Punjab, Jullundur, by his order, dated December 4, 1962 (Annexure 'B' to Civil Writ 1127 of 1963) directed that in view of the decision of the High Court in Civil Writ 216 of 1957, to the effect that it is the Managing Officer who can cancel the excess allotment, the case be sent to the Managing Officer-cum-Assistant Registrar (Lands) with the direction that he should dispose of the matter at an early date. The Chief Settlement Commissioner further directed that in case the claim of the allottees to the effect that permanent rights in the land had already been transferred to them was found to be correct and some excess allotment was found in their hands, the Managing Officer would make a reference to the Chief Settlement Commissioner for setting aside the permanent rights to the extent to which the allotment is found to be in excess with the petitioners. In pursuance of the order of the Chief Settlement Commissioner (Annexure 'B') the Managing Officer recommended cancellation of the entire allotment originally made in the name of Manna Singh i.e., of 7 standard acres and ½ units in village Shaker Khera as being absolutely in excess, and of 15 standard acres 13½ units in village Dhogri on the ground that the same had to be distributed among the four sons of Manna Singh who were the displaced persons, and Manna Singh who had died before the partition of the country could not be deemed to be a displaced person. At the same time it was reported by the Managing Officer that Ram Singh petitioner was holding allotment to the extent of 11 standard acres 9 units in excess of his entitlement. Since permanent rights in respect of all the lands had already been transferred to the petitioners concerned, the matter was reported to the Chief Settlement Commissioner who by his impugned order, dated May 4, 1963, (Annexure 'A' to Civil Writ 1127 of 1963) accepted the recommendations of the Managing Officer and cancelled the excess allotments

referred to above. The area of 15 standard acres and 13½ units cancelled from the original allotment in the name of Manna Singh in village Dhogri and some land cancelled out of the area originally allotted to Ram Singh, was directed to be given to petitioners Nos. 2 to 4, i. e. , to the three sons of Manna Singh other than Ram Singh in equal shares of 5 standard acres and 8 units each in addition to about 42 standard acres which each of them already held. It was this order of the Chief Settlement Commissioner which has been impugned in Civil Writ 1127 of 1963, on various grounds to which I will refer a little later.

(6) After filing the abovesaid writ petition, the petitioners applied to the Managing Officer for being permitted to purchase the alleged excess area at its reserve price. Against the refusal of the Managing Officer to accede to the request of the petitioners an appeal was preferred to the Assistant Settlement Commissioner, Jullundur (Annexure 'D' in C. W. 772 of 1964). The appeal was dismissed by Shri Tejinder Singh, Assistant Settlement Commissioner, Punjab, on November 22, 1963 (Annexure 'C' to C. W. 772 of 1964) without specifically dealing with the claim of the petitioners for the purchase of the land. The petitioners then went up in revision to the Chief Settlement Commissioner on December 21, 1963 (copy of their revision petition being Annexure 'B' to Civil Writ 772 of 1964). According to the order of the Chief Settlement Commissioner, dated March 19, 1964 (Annexure 'A') , the only point which was argued before him on behalf of the petitioners was about their claim to purchase the excess land at its reserve price. The learned Chief Settlement Commissioner held in his impugned order (Annexure 'A' to Civil Writ 772 of 1964), that the petitioners had no vested right to purchase the excess land at its reserve price, and that in this particular case, the question of extending the concession to the petitioners to purchase the excess land did not arise as benefit of supplying first information in respect of the excess allotment of the petitioners had been allowed to the first informants, i.e., the sons of Gujjar Singh. In Civil Writ 772 of 1964, the petitioners have impugned the abovesaid orders of the Rehabilitation Authorities declining their request to be permitted to purchase the excess land at its reserve price.

(7) The third writ petition (C. W. 2600 of 1965) has been filed by Iqbal Singh and eight others (who have been added as respondents Nos. 7 to 15 in Civil Writ 1127 of 1963, with the permission of

this Court granted on April 29, 1964) on the allegation that by sale-deed, dated October 3, 1958, they purchased from petitioners Nos. 1 to 4, the four sons of Manna Singh, 15 standards acres and 13½ units of land in village Dhogri which had originally been allotted in the name of Manna Singh, but in respect of which permanent rights had subsequently been conferred on the four sons. The original sale was in favour of petitioners Nos. 1 to 7 (in Civil Writ 2600 of 1965) and one Kartar Singh. The last-mentioned person is stated to have sold his share to Gurdial Singh and Shankar Singh, petitioners Nos. 8 and 9, in Civil Writ 2600 of 1965. These alleged transferees from the four sons of Manna Singh filed their petition in this Court on October 13, 1965, for quashing the order of the Chief Settlement Commissioner, dated May 4, 1963 (Annexure 'A'), setting aside the permanent rights of Ram Singh petitioner in respect of 11-9 standard acres of land, the order of the Assistant Registrar-cum-Managing Officer, dated May 17, 1963 (Annexure 'B'), the order of Shri Tejinder Singh, Assistant Settlement Commissioner with powers of Settlement Commissioner, dated November 22, 1963, declining the claim of Manna Singh's sons for purchase of the land, and the last order of Shri J. M. Tandon, Chief Settlement Commissioner, dated March 19, 1964 (Annexure 'D'), upholding the order of Shri Tejinder Singh. The only ground pressed in this case is that all the abovesaid impugned orders were passed to the prejudice of the petitioners who are directly affected thereby without any notice to them in spite of the fact that they had become owners of the alleged excess land and mutation in their favour had already been sanctioned.

(8) The relevant factual position which emerges from the detailed survey of facts given above is that out of the three parcels of allotment cancelled by the impugned orders, the one relating to about 7 standard acres (originally ordered by Gurbux Singh, Assistant Settlement Commissioner) is not in dispute, that the cancellation of allotment of about 15 standard acres originally made in the name of Manna Singh has made no material difference as the entire land comprised in that allotment has been given back *pro rata* to the sons of Manna Singh, and that the only material dispute now relates to the cancellation of about 11 standard acres out of the original allotment of Ram Singh, petitioner No. 1.

(9) The first and the main point on which Civil Writ 1127 of 1963 had been filed, viz., that the Chief Settlement Commissioner

has no jurisdiction to cancel a Sanad once granted by the President of India conferring permanent rights in acquired evacuee property, does not admittedly survive the decision of a Full Bench of this Court in *Shrimati Balwant Kaur* v. *Chief Settlement Commissioner (Lands), Punjab* (1), and in view of the authoritative pronouncement of the Supreme Court against the contention of the petitioners in *Mithoo Shahani and others* v. *The Union of India and others* (2). The second argument in this petition which has been pressed by Mr. Gujral is that in view of the previous judgment of this Court (Annexure 'C' to Civil Writ 1127 of 1963), the revived proceedings for cancellation of the alleged excess holding of the petitioners is without jurisdiction. I regret, I am unable to agree with this contention. Gurnam Singh, J., never held that even if any of the petitioners holds land in excess of his entitlement, the appropriate authorities have no jurisdiction to cancel the same. Mr. Gujral wanted to spell out of the order of this Court in the earlier writ petition that no cancellation of the allotment of the petitioners could be ordered except under and in accordance with rule 72 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955. On that basis he argued that rule 72 cannot be invoked if once permanent rights are transferred. Mr. Gujral then contended that the learned Judge held in the previous case that the Rehabilitation Department had no power to cancel the allotment. After having carefully perused the judgment in question (Annexure 'C'), I do not think any such clear and definite finding was recorded by this Court. The orders now impugned in the present proceedings were passed under section 24 of the Act. The provisions of that section did not at all come up for discussion in the previous case. In view of this finding of mine, it is unnecessary to go into the ancillary question raised by Mr. Harbans Singh Gujral to the effect that even if the judgment of Gurnam Singh, J., is contrary to the law pronounced by the Supreme Court in *Mithoo Shahani's case* (supra), the parties will be governed by the erroneous view of the law prevailing in this Court before the Full Bench decision in *Shrimati Balwant Kaur's case* (supra), on account of the application of the principle of *res judicata.*

(10) The next contention of the learned counsel for the petitioners in the 1963 case was that the Rehabilitation Authorities had

(1) I.L.R. (1964) 1 Punj. 36 (F.B.)=1963 P.L.R. 1141 (F.B.).
(2) A.I.R. 1964 S.C. 1536.

no jurisdiction to deprive Shrimati Kakobai, petitioner No. 5, widow of Manna Singh, of her right to maintenance to which she was entitled out of the estate of her deceased husband. Mr. Gujral contended that the Rehabilitation Authorities could not decide the disputed claim of Kakobai for maintenance against her sons. This argument appears to be misconceived. The Rehabilitation Authorities have not proceeded to decide any dispute *inter se* between the sons and their mother. In fact no claim had at all been made by the mother for maintenance with the Rehabilitation Authorities. The definite averments made in paragraph 2 of the return of respondents Nos. 1 and 2 show that all the claims for the properties left behind in Multan District either in the name of petitioners Nos. 1 to 4 or in the name of Manna Singh, were filed by Shrimati Kakobai as guardian of her four sons none of whom had attained majority by then. Moreover, this point was admittedly not taken before the Department Authorities. Even if such a question could possibly be argued, it would be impossible to decide it for the first time in these proceedings as it would involve various disputed questions of law and fact relating to the time of the death of Manna Singh, the custom by which the parties were governed and various other such matters. I do not, therefore, think that this argument can possibly be permitted to be raised in this case.

(11) The next submission of Mr. Gujral was that the order of Shri Gurbux Singh, Assistant Settlement Commissioner, dated March 23, 1956, not having been appealed against by anyone, had become final under section 27 of the Act, and could not, thereafter be affected or reopened in any subsequent proceedings. Section 27 of the Act reads as follows :—

> "**Finality of orders.**—Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act, including a managing corporation, shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceeding."

(12) It is significant that the section starts with a *non obstante* clause and is subject to what is otherwise expressly provided includes section 24 of the Act which states :—

> "**Power of revision of the Chief Settlement Commissioner.**—(1) The Chief Settlement Commissioner may at any time

call for the record of any proceeding under this Act in which a Settlement Officer, an Assistant Settlement Officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Managing Officer, or a managing corporation has passed an order for the purpose of satisfyig himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under sub-section (1), if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then notwitstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, cancelling the lease or allotment granted to him; and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under sub-section (2), may, within thirty days of the date of the order, make an application for the revision of the order in such form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit."

(13) In view of the Full Bench judgment of this Court and the authoritative pronouncement of the Supreme Court already referred to, it appears that the finality of the orders referred to in

section 27 of the Act is subject to the reopening of the matter by the Chief Settlement Commissioner in appropriate proceedings on some valid grounds under section 24 of the Act. That being so, it cannot be held that the impugned orders were without jurisdiction on the allegation that the Chief Settlement Commissioner had thereby contravened the provisions of section 27.

(14) Counsel then submitted that the proceedings under section 24 were themselves without jurisdiction as those were initiated on the basis of an application of Joginder Singh and others referred to in paragraph 1 of the order of the Chief Settlement Commissioner, dated December 4, 1962 (Annexure 'B'), and inasmuch as the application of Joginder Singh and others had been made in 1962 for setting aside the earlier order of Shri Gurbax Singh, dated March 23, 1956, the application under section 24 was *prima facie* hopelessly barred by time. It was contended that rule 104 of the 1955 rules provides that a petition for revision under the Act has to be filed within the same period as a memorandum of appeal and that the period prescribed by section 23 of the Act for preferring an appeal to the Chief Settlement Commissioner being thirty days, the time within which an application for revision could be made under section 24 of the Act was also thirty days only. It was then submitted that though under the proviso to section 23, the Chief Settlement Commissioner is entitled to entertain an appeal after the expiry of the period of thirty days, he has the jurisdiction to extend time, if he is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within time. It is on that ground alone that the Chief Settlement Commissioner can extend time prescribed for filing a revision petition. This, contends Mr. Gujral, was never done in this case as neither Joginder Singh, etc. made any application for condonation of delay nor the Chief Settlement Commissioner applied his mind to this aspect of the matter, nor he even purported to extend time in exercise of his power under the proviso to section 23 read with rule 104. Though this argument of Mr. Gujral does appear to be attractive at the first sight, there is not much in it because the petitioners were represented by counsel before the Chief Settlement Commissioner and never raised the question of limitation before him. I say so because the order does not show that the question of limitation was raised before him, and the petitioners have not contended in the writ petition that they raised it. On the analogy of the decision of this Court in the Division

Bench judgment in *Sewa Singh* v. *State of Punjab and others* (3), in connection with a similar point which arose regarding the application of rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, I am bound to hold that if the question of limitation was not raised before the Chief Settlement Commissioner, it cannot be raised in writ proceedings for the first time. In this view of the matter, it is not necessary to deal with the argument of the respondents to the effect that the Chief Settlement Commissioner had in any case power to reopen the matter *suo motu,* though it is conceded that in this particular case, the Chief Settlement Commissioner did not actually reopen the matter *suo motu,* but reopened the proceedings on the application of Joginder Singh and others.

(15) The last argument which arises out of the averments contained in this writ petition was that though the High Court had directed in the previous case that the Managing Officer alone could cancel the allotment of the petitioners, the Chief Settlement Commissioner merely enacted a farce in sending the case to the Managing Officer on that account, but directing the Managing Officer in the same breath to submit the case to the Chief Settlement Commissioner himself for cancellation of the permanent rights of the petitioners to the extent of the excess allotment found in their favour. I am not able to find anything objectionable in the order of the Chief Settlement Commissioner in this respect. He was indeed bound to send the case to the Managing Officer in view of the observations of this Court. The Managing Officer would indeed have been entitled to cancel the quasi-permanent allotment of excess land, but had no jurisdiction to cancel permanent rights. It was in this situation that the Chief Settlement Commissioner observed that the Managing Officer should proceed with the matter, but that if he found that permanent rights had been conferred on the petitioners (who were respondents before the Chief Settlement Commissioner) as contended by them, he would then have to send up the case to the Chief Settlement Commissioner for cancellation of such rights in the excess land. This argument of Mr. Gujral also, therefore, fails.

(16) Mr. Harbans Singh Gujral lastly thought of asking for the leave of the Court to address a novel argument. The submission was that all the surplus acquired evacuee land in Punjab had been

(3) I.L.R. (1967) 2 Punj. & Hry. 89.

transferred in a package deal to the State of Punjab in 1961, and the Central Government in which the said property had otherwise vested under section 12 of the Act had since 1961 washed its hands of such land. The result of the package deal, it was contended, was that the provisions of the Act and the rules framed thereunder ceased to apply to that land which was the subject-matter of the said deal and it became as much the ordinary property of the State of Punjab as any other land which already belonged to the State. If this is so, argued learned counsel, the Chief Settlement Commissioner acting in exercise of his powers under the Rehabilitation Act had no jurisdiction to pass any order relating to the land in dispute. According to Mr. Gujral, the land in dispute having been admittedly acquired evacuee property became surplus land in the hands of the Punjab Government to the extent to which it was found to be in excess of the entitlement of the petitioners before April, 1961. It was then added that even such land which could be found to be in excess of the entitlement of the petitioners after April, 1961, would have become surplus land in the hands of the State of Punjab and would be covered by the package deal. This point was admittedly not urged either before the departmental authorities or at any earlier stage in these proceedings. The point does not even find mention in the writ petition. Reliance has been placed by Mr. Gujral for these propositions on a recent unreported Division Bench judgment of this Court, *Ram Chander* v. *The State of Punjab and others* (4), Pandit, J., against whose judgment the Letters Patent Appeal had been filed while disposing of the writ petition of Ram Chander (Civil Writ 2417 of 1965), held that the package deal divested the Central Government and its Officers of any authority over land which had been transferred to the State of Punjab, and that, therefore, the orders of the Rehabilitation Authorities in the Government of India on which the State was placing reliance were no longer binding or operative. The learned Judges of the Letters Patent Bench (S.B. Capoor and Shamsher Bahadur, JJ.), held in Ram Chander's appeal against the judgment of Pandit, J., that the package deal had effected the transfer of the property from the Central Government to the Punjab State, and the logical result which flows from that situation was that the Rehabilitation Authorities as delegates of the Central Government could not pass any order under the Act in respect of the property which formed the subject-matter of the package deal. In order to apply the law

(4) I.L.R. 1968 (2) Punjab and Haryana, 651.

laid down by the Division Bench in *Ram Chander's case,* it is necessary to find out whether the land in dispute formed the subject-matter of the package deal or not. The documents relating to the package deal are not before me. In this view of the matter, the question sought to be raised by Mr. Gujral cannot, in my opinion, be allowed to be raised for the first time at this stage. Since this point involves the question of jurisdiction depending on proof of facts, it is for the petitioners to seek their appropriate remedy for having this matter determined if any such remedy is available to them. But I cannot see my way to deal with this matter without the entire relevant material being available before me, and without the matter having been dealt with by the Rehabilitation Authorities.

(17) No other question having been argued in Civil Writ 1127 of 1963, this writ petition fails and is dismissed.

(18) The facts relevant to the decision of Civil Writ 772 of 1964, have already been set out. The first question that was pressed by Mr. Gujral in this case was that the word "may" in clause (ii) of sub-rule (3) of rule 73 of the 1955 rules should be interpreted to mean "must" on the analogy of the judgment of this Court referred to in *Sodhi Harbakhsh Singh* v. *The Central Government and others* (5), wherein a list of some cases has been given in which it was held that the word "may" in rule 25 of the 1955 rules is equivalent to "shall" in its effect. Rule 25 reads as follows :—

> "**Transfer of acquired evacuee property which is an allottable property to person in occupation thereof who hold, a verified claim.**—(1) Where an applicant for payment of compensation is in sole occupation of an acquired evacuee property which is an allottable property, such property may be transferred to him in lieu of the compensation payable to him under the Act :
>
> Provided that the total amount of net compensation payable to the applicant is not less than half in the case of property other than an industrial concern and less than 1/4th in the case of an industrial concern or such other smaller proportion as the Chief Settlement Commissioner may

(5) I.L.R. (1962) 2 Punj. 712=1962 P.L.R. 629.

in either case determine, of the value of the property as determined under rule 24:

Provided further that no industrial concern shall be transferred to the applicant unless he pays up the arrears, if any, of the lease money outstanding against him in respect of such concern.

(2) Where the value of the property exceeds the net amount of compensation payable to the applicant, the applicant shall be required to pay the balance—

(a) in one lump sum; or

(b) in instalments, as following:—

(i) in the case of property other than industrial concern—

(a) where the value of the property does not exceed in the case of a shop in a rural area or in a town other than those mentioned in Appendix X, two thousand rupees and in the case of any other property five thousand rupees in four equal annual instalments,

(b) where the value of the property exceeds the limits specified in clause (a) or where the property consists of a shop situated in a town specified in Appendix X, in two equal annual instalments.

(ii) in case of an industrial concern in instalments spread over a period not exceeding two and a half years:

Provided that in the case of an acquired evacuee property including an industrial concern which is an allottable property, the applicant may at his option, pay the balance together with interest in seven equated instalments.

(3) Where the amount of net compensation payable to the applicant exceeds the value of the property, the property may be transferred to the applicant and he may be paid the balance of the compensation in cash or in the form of property in accordance with the provisions of these rules.

(4) Where the value of the property is equal to the amount of net compensation, the property may be transferred to the applicant and in such a case the claim for compensation shall be deemed to have been fully satisfied."

Clause (ii) of sub-rule (3) of rule 73 is in the following terms:—

"The Settlement Commissioner may after considering the recommendation of the Settlement Officer, direct the Settlement Officer to transfer to the allottee in permanent ownership less area than originally allotted to him unless the allottee is prepared to pay for the excess area either in cash or by adjustment against the compensation payable to him in respect of his verified claim for any urban property or rural building."

(19) The above-quoted part of the rule follows sub-rule (1) of rule 73 which requires the Settlement Officer on receipt of a declaration under rule 71 to make an enquiry in the manner specified in rule 72 only in those cases where the allottee has a verified claim in respect of property other than agricultural land, and then send a copy of the declaration and other relevant papers to the Settlement Commissioner. Mr. Gujral laid emphasis on the phraseology of clause (ii) of sub-rule (3) of rule 73, and submitted that the negative form in which the provision is made shows the mandatory nature of the requirements of the provision. The use of the word "unless" in the relevant clause is relied upon for the argument that the Rehabilitation Authorities would have no jurisdiction to deprive an allottee who falls within the category of persons covered by rule 73 of the excess land found to be in possession over and above his entitlement if he is prepared to pay for such an excess area either in cash or by adjustment against the compensation payable to him. The first argument of the respondents against this contention of Mr. Gujral was that the allegation contained in paragraph 11 of this writ petition to the effect that the petitioners also "had" a verified claim for buildings left in Pakistan in the sum of Rs. 44,530, verified by the Claims Officer on June 16, 1952, in addition to their claims for agricultural land has not been admitted and has in fact been denied in the corresponding paragraph of the return of the respondents, and that in this view of the matter a disputed question of fact arises without the decision of which it may not be possible to dispose of the argument. The petitioners have filed a copy of the order of Shri Radha Kishan Baweja, Claims Officer, Jullundur, dated June 16, 1952 (Annexure 'E'), verifying the claim of the petitioners for non-agricultural properties at

Rs. 44,530. For the Chief Settlement Commissioner and the Assistant Settlement Commissioner to state in the face of that order that the contents of paragraph 11 of the writ petition are "denied for want of knowledge" does not in my opinion bring any credit to the Department. It was incumbent on respondent Nos. 1 to 3 to state whether the order Annexure 'E' is a forgery or if it represented true facts. In these circumstances, I hold that the petitioners did have a verified claim according to the order of Shri Radha Kishan Baweja (Annexure 'E'), produced by them.

(20) The next submission of the respondents was that from the averments made in the writ petition, it is not possible to infer that on the relevant date when the petitioners submitted their application for purchase, nothing remained payable to the petitioners against their verified claim in question. Respondents submitted on the authority of a Full Bench judgment of this Court in *Tirath Singh* v. *Union of India and others* (6), that if the petitioners had received the entire compensation payable against their said verified claim before the date of their application for purchase, it could not be said that they were holding any verified claim at the relevant time within the meaning of sub-rule (1) of rule 73. It is pointed out that whereas rule 73(1) states that the allottee "has a verified claim" as a condition precedent for the application of the rule, even the petitioners themselves stated in paragraph 11 of the writ petition that they merely "had" a verified claim. This is indeed so.

(21) It was then contended by the respondents that the impugned orders in this case do not show that the petitioners ever stated before the departmental authorities that they were holding any verified claim. The answer of Mr. Gujral to this argument was that the application of the petitioners for purchase has been thrown out on the preliminary point that the matter of grant of permission to purchase is in the absolute discretion of the authorities and that if the applications of the petitioners had not been thrown out on that ground, the petitioners would have proved to the satisfaction of the authorities that they were otherwise entitled to purchase the land and that all the conditions precedent for application of rule 73 had in fact been satisfied in this case.

(6) I.L.R. (1968) 1 Punj. & Haryana 519=1968 P.L.R. 332.

(22) Mr. S. K. Jain, the learned counsel for respondents Nos. 1 to 3, invited my attention to the unreported judgments of this Court in *Ranjit Singh* v. *Chief Settlement Commissioner, Civil Secretariat, Jullundur and another* (7), and in *Chela Ram* v. *The Chief Settlement Commissioner, Punjab, Jullundur and others* (8), and argued that rule 62 of the 1955 rules which entitles a person to purchase land in excess of his entitlement which may be in his possession is not applicable to the Punjab. This argument does not help me to decide this case as Mr. Gujral has nowhere made any claim under rule 62, nor does he indeed contest the proposition that on account of the operation of rule 69, no one can make any claim under rule 62 in the Punjab. But the judgment of a Division Bench of this Court (Dua and Mahajan, JJ.), in *Jagmohan Singh* v. *Union of India and others* (9), appears to be more in point. In that case an allottee of land in excess of his entitlement was given the option to purchase the excess land at the market price. He claimed in his writ petition in this Court that he was entitled to purchase land at its reserve price under rule 72. Repelling that contention Mahajan, J., who wrote the judgment of the Division Bench held that so far as the Act and the rules were concerned, the fact of the matter was that the allottees had no right to demand the transfer of excess allotment of land at a particular price "as rules 56 and 62 did not apply to them." The learned Judges held that the land belonged to the Central Government and the Central Government had a right to sell it at a price it deemed fit, and that so far as the writ petitioners were concerned, there was no vested right in them to get the transfer of the excess land. It was further observed that if the petitioners wanted the land they could take it only if it was offered to them and at the price at which it was offered. Though the judgment in *Jagmohan Singh's case* (*supra*) was also based on the interpretation of rules 56 and 62, it is relevant only for the purposes of interpreting the relevant clause in rule 73. Whereas in rule 62(b), the language is stronger and it is provided that if the land allotted to such person exceeds the area which should have been allotted to him and "if the allottee wishes to retain the excess land, he shall be required to pay the value of the excess land", the language used in rule 73(3) is that the Settlement Commissioner "may after considering the recommendation of the Settlement Officer" direct the Settlement Officer to transfer the

(7) C.W. 11 of 1961 decided on 15th March, 1961.

(8) C.W. 1516 of 1961 decided on 18th May, 1962.

(9) A.I.R. 1963 Punj. 163.

lesser land than originally allotted unless the allottee is prepared to pay for the excess area also. Mr. Gujral then relied on some departmental instructions by which it had according to the learned counsel been directed that in the interest of the displaced persons who had been in possession of the land allotted to them for a long period, the excess should not be taken away from them if they were prepared to pay for the same. This argument is based on the averments contained in sub-paragraph (ii) of paragraph 14 of the writ petition which are in the following terms:—

> "That even apart from the above rule under the departmental directions which have got the force of law, the excess land as in the petitioners' case is bound to be sold to the petitioners instead of being retrieved from them."

(23) In reply to this contention, it is stated in the return of respondents Nos. 1 to 3 as follows:—

> "The contention of the petitioners is irrelevant. Sale of cancelled area to the allottees is only a concession allowed by the Department under executive instructions. It is not governed by any provisions of the Displaced Persons (Compensation and Rehabilitation) Act and rules framed thereunder and has no statutory force. The Department, therefore, is not bound to sell the excess area to the petitioners, particularly when it is not available for sale and has already been allotted to other unsatisfied claimants."

(24) In so far as the question of allotment to other unsatisfied claimants is concerned, it is not disputed that such paper allotment has been made in respect of the excess area, but that actual physical possession of the area in question which was to be taken from petitioner No. 1, is still with him though the area of about 15 standard acres which had originally been allotted in the name of Manna Singh in village Dhogri is now claimed to be in possession of the vendees who are the writ petitioners in Civil Writ 2600 of 1965. After carefully considering the matter, I am of the opinion that though rule 62 has no application to the case, the claim of the petitioners was clearly governed by rule 73(3)(ii) on the condition that they were holding a verified claim at the relevant time. The relevant departmental instructions not having been produced before me, it is not possible for me to pronounce on their effect. The observations of a Division Bench of this Court in *Bhagat Gobind Singh* v. *Punjab State and*

*others* (10), to the effect that though departmental instructions do not have the force of law, but in implementation of the provisions of the Act such instructions do play a part and come in for consideration of the authorities implementing them, cannot, therefore, be of much use to the petitioners in this case.

(25) This leaves for consideration only one aspect of the matter, i.e., whether clause (ii) of sub-rule (3) of rule 73 enjoins a duty on the department to allow an allottee to purchase the excess land if he falls within that clause, and if he is prepared to pay the price for the excess area, whether it is within the absolute discretion of the department to permit the purchase or decline the same. It is settled law that the mere use of the word 'may' in a statutory provision does not by itself show that the power vested in the authority in question is discretionary. The following passage from Maxwell on 'Interpretation of Statutes' (Page 231 of 11th edition) can be referred to with advantage in this connection—

> "In enacting that they 'may', or 'shall, if they think fit', or 'shall have power', or that 'it shall be lawful' for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have to say the least a compulsory force, and so would seem to be modified by judicial exposition."

(26) Though the word 'may' is very often used in statutes in its ordinary sense of importing mere permission or possible exercise of discretion in a particular way, the word has been construed in cases out of number as having been employed in given statutes in a mandatory sense. Some of the crucial tests that have often been laid down in judicial pronouncements on the subject are that when the legislature imposes a positive duty or where a public duty is involved or where a right is given or a duty imposed, or where a matter of public policy and not merely a private right is involved or where an enactment directs the doing of a thing for the sake of public good or justice or where the statute imposes a duty or confers a power on a public officer for public purposes or for the purpose of enforcing a right (but not to create one), the word 'may' should normally be construed as meaning 'must' or 'shall'. ('The Law Lexicon of British

(10) I.L.R. (1963) 1 Punj. 500=1963 P.L.R. 105.

India' by Ramanatha Iyer, 1940 edition, page 799). After carefully taking into consideration the objects and scheme of the Act and the rules framed thereunder, it appears to me that the relevant clause in rule 73 is intended to confer a right on the class of allottees covered by it and imposes a corresponding duty on the Rehabilitation Department to give the benefit of the said statutory provision wherever a case falls within the four corners of the relevant clause. It is significant that the rights under rule 73 are conferred only on displaced persons holding verified claims. For all practical purposes, therefore, the benefits which accrue to an allottee under rule 73 are of the same nature as those which are intended to be availed of by a displaced claimant under rule 25 in respect of an acquired evacuee urban property. The only ground on which the application of the petitioners was thrown out by the respondents was that they had absolute discretion in the matter. That ground in my opinion is wholly misconceived. The orders of the respondents impugned in this case (Civil Writ 772 of 1964) are, therefore, liable to be set aside on that short ground. Having no discretion in the matter, the Rehabilitation Authorities will have to decide the claim of the petitioners or of petitioner No. 1 as the case may be for the transfer of the excess area on payment of its price on merits in accordance with law. In the view I have taken of this matter, it is not necessary to decide the additional contention of Mr. Gujral to the effect that respondents were not in fact the first informants and had, therefore, no rights to claim the allotment of any land found in excess with the petitioners. That is again a matter which may be raised by the petitioners, if so advised, in appropriate proceedings before the Rehabilitation Authorities.

(27) Mr. Gujral also contended that he was also an unsatisfied claimant for agricultural land because of his claim for *shamlat* land etc., and that he had raised this point specifically in his grounds of appeal to the Assistant Settlement Commissioner and the grounds for revision to the Chief Settlement Commissioner. This is again a matter which will have to be dealt with by the Rehabilitation Authorities in appropriate proceedings.

(28) For the foregoing reasons, I allow Civil Writ 772 of 1964, and set aside the orders of the Managing Officer, Assistant Settlement Commissioner, and the Chief Settlement Commissioner, declining to consider the application of the petitioners for purchase of the excess land on merits, and direct that the claim of the petitioners in that

respect shall be considered after hearing the petitioners and all other persons interested in the matter, and shall be decided in accordance with law on merits.

(29) Mr. Lalit Mohan Suri concedes that in view of the fact that the land which is claimed by his clients to have been purchased by them from petitioners Nos. 1 to 4, having been reallotted to them, his writ petition has become infructuous and may be disposed of as such though he maintained that if the situation was not as it has been found, he would still be saved from being dispossessed of the property purchased by his clients on account of the principles of section 43 of the Transfer of Property Act, as his clients are said to be the *bona fide* purchasers for value without notice of the alleged defect in the title of their vendors. In view of the admitted position that the land which was claimed by the petitioners in C.W. 2600 of 1965, was the land which was originally allotted in village Dhogri in the name of Manna Singh and has in spite of the cancellation of the said allotment been reallotted in its entirety to petitioners Nos. 1 to 4, this writ petition is dismissed as infructuous.

(30) The result is that Civil Writ 1127 of 1963 is dismissed on merits, Civil Writ 2600 of 1965 is dismissed as infructuous, and Civil Writ 772 of 1964 is allowed leaving the parties to bear their own costs in all the three cases.

---

*K. S. K.*

CIVIL MISCELLANEOUS

*Before Tek Chand, J.*

M/s MALERKOTLA POWER SUPPLY COMPANY,—*Petitioner.*

*versus*

THE EXCISE AND TAXATION OFFICER, SANGRUR AND OTHERS,—*Respondents.*

Civil Writ No. 2210 of 1964

May 1, 1968.

*Punjab General Sales Tax Act (XLVI of 1948)—S. 3(e)—Electric energy—Whether deemed to be 'goods'—Words and Phrases—'Property'—Meaning of—Constitution of India—Article 226—Order refusing certificate of registration—*