CIVIL MISCELLANEOUS

Before A. N. Grover and Gurdev Singh, JJ.

SHIV DAYAL AND ANOTHER,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 1535 of 1961

1964

May, 8th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Sections 19 and 24—Displaced person allotted land in India in lieu of land left in Pakistan and proprietary rights conferred—Land in Pakistan Mortgaged with Muslims there—Such mortgage—Whether can be taken notice of—Proprietary rights—Whether can be cancelled for failure of the allottee to deposit the mortgage amount—Chief Settlement Commissioner or Managing Officer—Whether competent to demand payment of mortgage debt owing to Muslims in Pakistan.

Held, (per Grover, J.).—that an order passed by the Settlement Officer, after due inquiry, issuing sanad of proprietary rights of the land allotted to a displaced person in lieu of land left by him in Pakistan, can be cancelled by the Chief Settlement Commissioner under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, only if it is "illegal or improper". According to the quasi-permanent allotment scheme, as embodied in the Land Resettlement Manual, no notice is to be taken of any mortgage subsisting in favour of the Muslims in Pakistan in the matter of allotment of land in India in the absence of any Inter-Dominion agreement. There is no rule or any other statutory provision under which any such mortgage can be taken into account. Hence if a Settlement Officer issues proprietary sanad without taking into account such a mortgage, it cannot be said by any stretch of reasoning that his order can be regarded as illegal or improper or to have any such infirmity in the matter of legality or propriety which would justify the Chief Settlement Commissioner reversing that order and substituting his own order for the same. There is no such canon of interpretation by which the language employed in section 24(1) can be construed to mean that the Chief Settlement Commissioner

has been given unfettered or arbitrary discretion in the matter of cancellation of an allotment. If he sets aside any order made by a Settlement Officer, it must be justified on the ground of illegality or improperly, otherwise, the order of the Chief Settlement Commissioner would be beyond the express terms of the aforesaid provision.

Held further, that it is the Managing Officer alone who can exercise original powers under section 19 of the Act and the original jurisdiction of the Chief Settlement Commissioner under section 24 is confined to the matters specified in sub-section (2) of that section.

Held (per Gurdev Singh, J.).—that the displaced persons who had mortgaged their lands with Muslims residing in West Pakistan were entitled to allotment of land in India in lieu thereof but this was subject to such adjustments and discharge of obligations as may arise from an Inter-Dominion agreement between India and Pakistan. No such agreement between the two countries concerning such mortgaged properties has been arrived at. In view of this fact, neither the Chief Settlement Commissioner nor the Managing Officer has any authority to demand from the displaced persons the payment of the mortgage debt owing by them to the Muslims in Pakistan. These authorities are not the Custodians of the rights and interests of the Muslims residing in Pakistan and they have no authority to realize the debts due to them from Indian citizens or the displaced persons who have settled in India on migration consequent upon the partition of the country.

Case referred by the Hon'ble Mr. Justice Gurdev Singh, on 18th November, 1963, to a larger Bench owing to the importance of the point of law involved and the case was finally decided by the Hon'ble Mr. Justice A. N. Grover and the Hon'ble Mr. Justice Gurdev Singh, on 8th May, 1964.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus, or any other appropriate writ, order or direction be issued quashing the order dated the 30th October, 1961. passed by respondent No. 2.

RUP CHAND AND S. C. CHAUDHRI, ADVOCATES, for the Petitioners.

AJIT SINGH AND RAM RANG, ADVOCATES, for the Respondents.

ORDER.

Grover, J.

GROVER, J.—The question involved in this petition under Article 226 of the Constitution, which has been referred by my learned brother Gurdev Singh, J., to a Division Bench is whether and in what circumstances it is open to the departmental authorities under the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (to be referred to as the Act), and the rules framed thereunder to cancel proprietary rights granted to displaced persons in lieu of land left in Pakistan, some part of which was subject to a mortgage in favour of Muslims there.

It is common ground that the petitioners owned a fairly large area of land in the District of Muzaffargarh in Pakistan and in lieu thereof they were allotted about 32 standard acres and 15 units in Mauza Kheri, Tehsil Jhajjar, on quasi-permanent basis. The land in Pakistan had been purchased by the petitioners before the partition of the country in the year 1945 from one Bansi Dhar in respect of which mutation No. 800 had been made on 8th June, 1945. According to paragraph 3 of the petition, in the report, dated 3rd January, 1945, in respect of the said mutation it was clearly stated that the sale price of the land was Rs. 20,000 which had been paid to the vendor and the amount of the mortgage was Rs. 600. The mortgage had been created by Bansi Dhar, the vendor, in favour of one Ghulam Haider of that village. An affidavit of Bansi Dhar, who had sold

the aforesaid land to the petitioners in Pakistan has been attached an Annexure "C", along with a copy of an extract from the register of mutations relating to Mauza Ahmed Muhana (Annexure "D"). In paragraph 5 of the petition, it was stated that at the time of the grant of the permanent *sanad* in lieu of the land mentioned before left in Pakistan, an area of about 8 standard acres and ¾ units comprising certain *khasra* numbers, the details of which were given, was excluded from the allotment made to the petitioners owing to the existence of the mortgage. On 29th July, 1961, the Managing Officer made a report (page 35 of the original file), the relevant part of which is as follows:—

> "In view of this fact, the allottees were summoned and they appeared before the Managing Officer on 3rd February, 1961 and produced the copy of mutation No. 800 showing transfer of ownership and the case was again sent to Screening Section. They reported that no such mutation is with the *jamabandi*. The allottees were again summoned through Regd. notice to appear before me on 27th July, 1961, but they did not turn up on the fixed date. I have also seen the *jamabandi* and found that there is no such mutation and the mutation produced by the allottees is not within time.
>
> In view of the above facts, it is requested that the permanent rights to the extent of 15—12¾ standard acres may kindly be set aside. The allottees have also been informed to appear before the

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> Chief Settlement Commissioner on 8th August, 1961."

On that an order was made on 8th August, 1961 (page 37 of the original file), which is on a cyclostyled form in which certain blanks had been filled up and it was signed by Shri J. M. Tandon, Chief Settlement Commissioner. Shri Tandon agreed with the report of the Managing Officer and set aside the permanent rights with respect to 15 standard acres and $12\frac{3}{4}$ units of land. In paragraph 7 of the petition, it is stated that the Managing Officer ordered that if the petitioners wanted to retain the aforesaid area which was being cancelled, they should pay its full price at the rate of Rs. 450 per standard acre amounting to Rs. 7,108.60 nP. otherwise the possession would be taken away from them. Since the order of the Chief Settlement Commissioner, dated 8th August, 1961 had been made *ex parte*, the petitioners approached him. He passed an order on 30th October, 1961 (certified copy of which is Annexure "A"), the relevant part of which is as follows:—

> "I have heard the learned counsel for the petitioners. His contention is that firstly the land mortgaged by the petitioners in Pakistan with Muslims was less than that shown in the Managing Officer's file. And secondly according to the copy of mutation No. 800 produced by him, the land was mortgaged only for a sum of Rs. 600. The account has been got checked again and it is found that the area mortgaged by the petitioners has been correctly calculated by the Managing Officer. The copy of mutation No. 800 (this mutation is not

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appended with the *jamabandi* received from Pakistan) does not in fact pertain to the mortgage and no retiance can be placed on it regarding the mortgage amount. I, therefore, find no force in the present petition and reject the same."

The legality and the validity of the orders relating to the cancellation of permanent rights of the petitioners with respect to 15 standard acres and 12¾ units have been challenged on various grounds.

In the written statement, it was admitted that although an area to the extent of 8 standard acres and ¾ units had been deducted at the time permanent rights were granted to the petitioners, that area remained in their possession. This area was included in 15 standard acres and 12¾ units in respect of which proprietary rights have now been cancelled. Paragraph 7 of the written statement concludes by saying:—

> "The other points raised in this paragraph have been discussed in detail in Civil Writ No. 1744 of 1961, which was dismissed by this Hon'ble Court on 10th October, 1962."

In paragraph 11, it was stated that it was not for the Department to ascertain the amount of the mortgage due from the petitioners and it was for them to prove as to how much the amount of the mortgage money was. It was denied that the Chief Settlement Commissioner had ordered the petitioners to pay Rs. 7,108.60 nP. as price of the mortgaged land. It was, however, stated that the petitioners could still get the land redeemed in accordance with the departmental instructions.

Before my learned brother Gurdev Singh, J., the departmental instructions, to which reference has

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been made in paragraph 11 of the written statement, were produced. They are contained in a letter addressed by the Deputy Secretary, Government, Punjab, Department of Rehabilitation, to the Deputy Commissioners in the State, copy being R. VIII. The relevant portion contained in paragraph 2 is in the following terms:—

> "The State Government, in consultation with the Government of India, have decided that where a displaced landholder had mortgaged his land in Pakistan with a Muslim and subsequently on migration to India had obtained land in lieu thereof without proportionate cut in respect of such mortgaged land, he should get the mortgaged area redeemed by making payment at Rs. 450 (four hundred and fifty) per standard acre to Government, failing which a proportionate cut would be levied on his holding * * * * * * .In case the allottees fail to pay the mortgage money, proportionate cut would be imposed on their holdings."

The first point that has been raised by Mr. Rup Chand on behalf of the petitioners is that the Chief Settlement Commissioner had no power or jurisdiction to cancel the allotment simply because the area in which the land in question was allotted was under mortgage and the amont of mortgage money as demanded in accordance with the above instructions was not paid. It is pointed out that under section 10 of the Act where any immovable property has been allotted to a displaced person by the Custodian under the conditions published in the notification of the Punjab Government dated 8th July, 1949, or the notification of the Government of Patiala

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and East Punjab States Union, dated 23rd July, 1949, and such property is acquired under the provisions of the Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition and the Central Government can, for the purpose of payment of compensation, to such displaced person transfer to him such property on such terms and conditions as may be prescribed. Section 12 provides for acquisition of evacuee property by the Central Government. Section 13 says that there shall be paid to an evacuee compensation in respect of his property acquired under section 12 in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakistan. Chapter X of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, deals with the payment of compensation under section 10. Rule 71 relates to the declaration which an allottee has to file in the office of the Settlement Officer. Rule 72 provides that where the allottee has no verified claim in respect of property other than agricultural land, the Settlement Officer shall, on receipt of a declaration under rule 71, verify the particulars specified therein in the presence of the allottee or his authorised agent, and determine the public dues outstanding against such allottee. If the Settlement Officer is satisfied that the allotment is in accordance with the quasi-permanent allotment scheme, he may pass an order transferring the property allotted to the allottee in permanent ownership as compensation and shall also issue to him a *sanad* in the prescribed form. Sub-rule (3) is to the effect that if the Settlement Officer finds from the

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enquiry referred to in sub-rule (1) that the allottee has secured an allotment in excess of that due to him or that he was not entitled to any allotment or that the allotment was obtained by means of fraud, false representation or concealment of material facts, he shall after due enquiry and after giving the allottee reasonable opportunity of meeting the objections record his findings as to the correctness or otherwise of the allotment. These findings have then to be sent with the recommendations of the Settlement Officer to the Settlement Commissioner. Rule 74 provides that no property in a rural area in respect of which any case is pending in a Civil Court or before a Deputy Custodian, Custodian or Custodian General shall be transferred to the allottee.

Now, the *sanad*, which was given to the petitioners relating to 32 standard acres and 15 units of land, was granted presumably after the above procedure had been followed. It is contended that the Settlement Officer must have satisfied himself that the allotment was in accordance with the quasi-permanent allotment scheme before the orders transferring the property in question in permanent ownership as compensation were made. Annexure "B" is a copy of the *sanad* which was granted and which is dated 11th December, 1955. In it, certain *khasra* numbers were excluded on the ground that they were mortgaged with the Muslims in Pakistan. Mr. Rup Chand says that when the area mentioned in the *sanad* was deducted on the ground that it was subject to a mortgage in Pakistan, there was no question later on of deducting more area on the same ground and further that according to the quasi-permanent allotment scheme, which is to be found at pages 72-73 of the Land Resettlement Manual by Tarlok Singh, displaced persons

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whose lands in West Punjab were held on mortgage with possession by the residents of West Punjab (Muslims) were to receive allotments in East Punjab and the Patiala and East Punjab States Union, as if their allotments were not mortgaged, but subject to such adjustments and discharge of obligations as may arise in consequence of any Inter-Dominion agreement. Mr. Rup Chand contends that indisputably no Inter Dominion agreement has been arrived at in this behalf and, therefore, the transfer of permanent rights which was made in favour of the petitioners had to be made as if the allotments were not subject to any mortgage. No rule had been framed nor any statutory directions issued under Section 32 by the Central Government by which allotments could be cancelled on the ground that the lands belonging to the allottee in Pakistan were subject to a mortgage in favour of the Muslims there. The Chief Settlement Commissioner, therefore, had no power or jurisdiction under section 24 of the Act to cancel the allotment to the extent of 15 standard acres and 12¾ units.

Although before my learned brother Gurdev Singh, J. the learned Deputy Advocate-General, who appeared before him, relied on the departmental instructions extracted before to justify the action taken by the Chief Settlement Commissioner, greater reliance has been placed before us by Mr. Ajit Singh Sarhadi on behalf of the respondents on the power conferred by section 24 of the Act on the Chief Settlement Commissioner in the matter of cancellation of allotments and proprietary rights. It is claimed that under sub-section (1) of that section the powers of the Chief Settlement Commissioner are unfettered in the matter of cancellation of an allotment. In this connection reliance has

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been placed on the Bench Decision in *Bara Singh* v. *Joginder Singh* and others (1), which has been upheld now by the majority judgment of the Full Bench in *Balwant Kaur* v. *Chief Settlement Commisioner (Lands)* (2). In that case, the real question was whether the Chief Settlement Commissioner could reverse an order of the Managing Officer authorising the grant of proprietary rights even after a *sanad* had been granted to a claimant. It was held that the *sanad* or its grant being founded solely on the decision to transfer permanent ownership, that *sanad* must necessarily fall with the reversal of the decision on which it was based. While interpreting section 24, it was observed—

> "It is therefore obvious that in any case where a managing officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in exercise of his power of revision, correct the error, and, similarly, where a managing officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse the order and annul the transfer."

Indeed, counsel conceded in that case that the power of the Chief Settlement Commissioner was extremely wide and he could act in every case where a subordinate authority had failed or omitted to make a proper order. In *Balwant Kaur's case,* P. C. Pandit, J., who delivered the majority judgment, affirmed the view expressed by the Bench that the Chief Settlement Commissioner could cancel the order of grant of proprietary rights even after a *sanad* had been granted. In *Narain*

(1) I.L.R. 1959 Punj. 557=1959 P.L.R. 127.
(2) I.L.R. (1964) Punj. 36=1963 P.L.R. 1141.

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Singh v. *The Central Government* (Civil Writ No. 1744 of 1960), decided by Tek Chand, J., on 10th October, 1962, in which identical questions were involved, as have been raised in the present case, the learned Judge has specifically mentioned that the Deputy Advocate-General did not maintain before him that the press-notes had the force of the statute or the statutory rules. His contention was that there was sufficient reserve of power under the statute and the rules empowering cancellation of the allotments resulting in setting aside the *sanads*. He called attention to section 19, 24(1) and rule 103(d). After referring to these provisions and the decision in *Bara Singh's case*, the learned Judge held that he was bound by that decision, the contention of the petitioners that allotment could not have been cancelled on the ground that the land left in Pakistan was subject to a mortgage in favour of the Muslims could not be sustained. With very great respect to the learned Judge, it is not possible to understand how a case of the present kind would stand concluded by the decision in *Bara Singh's* case in which no point had been raised in connection with cancellation of an allotment on the ground that the land of an allottee was subject to a mortgage in Pakistan. The ambit and scope of the power under section 24(1), as laid down in *Bara Singh's case;* confined its exercise to the language of the statute itself which is that the Chief Settlement Commissioner can satisfy himself as to the legality or propriety of any order and pass such order in relation thereto as he thinks fit. The words "legality and propriety" are well understood in the context in which they have been used and the question that at once arises is whether the order of the Settlement Officer, which had been made in the year 1955 under rule 72(5) when a *sanad* was ordered to be issued in favour of the petitioners after due enquiry, was in any way

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illegal or improper. It has also been stated that according to the 'quasi-permanent allotment' scheme, as embodied in the Land Resettlement Manual, no notice was to be taken of any mortgage subsisting in favour of the Muslims in Pakistan in the matter of allotment of land in India in the absence of any Inter-Dominion agreement. There was no rule or any other statutory provision under which any such mortgage could be taken into account. It cannot by any stretch of reasoning be said that in these circumstances the order of the Settlement Officer could be regarded as illegal or improper or to have any such infirmity in the matter of legality or propriety which would have justified the Chief Settlement Commissioner reversing that order and substituting his own order for the same. There is no such canon of interpretation by which the language employed in section 24(1) can be construed to mean that the Chief Settlement Commissioner has been given unfettered or arbitrary discretion in the matter of cancellation of an allotment. If he sets aside any order made by a Settlement Officer, it must be justified on the ground of illegality or impropriety; otherwise, the order of the Chief Settlement Commissioner would be beyond the express terms of the aforesaid provision.

The order of the Chief Settlement Commissioner dated 30th October, 1961, is not quite clearly and intelligibly worded. It appears that he did not accept the figure of Rs. 600, being the mortgage money as was being sought to be established by the petitioners. All that is stated is that the account had been got checked and it had been found that the area mortgaged by the petitioners had been correctly calculated by the Managing Officer. The report of the Managing Officer has already been reproduced and hardly any relevant reason has

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been given therein for recommending that the permanent rights be cancelled to the extent of 15 standard acres and 12¾ units. The copy of the mutation, which was produced by the petitioners, was apparently not accepted on the ground that in the *jamabandi* record with the Department, there was no mention of any such mutation. The report of the Managing Officer on which the Chief Settlement Commissioner acted, as also the final order of the Chief Settlement Commissioner do not deal with the legality or propriety of the order of the Settlement Officer by which he had directed transfer of the proprietary rights of the entire area of 32 standard acres and 15 units in the year 1955 in accordance with the provisions contained in rule 72. On this ground alone the impugned orders deserve to be quashed as the Chief Settlement Commissioner has failed to exercise the power in accordance with the provisions of section 24(1).

Mr. Rup Chand has also pointed out that the Chief Settlement Commissioner had no authority to demand the payment of the mortgage money due to the Muslim mortgagees who were residing in Pakistan and to cancel the permanent rights in respect of that land from the holding of the petitioners for failure to pay the mortgage amount and further that no proper effort was made to ascertain the correct mortgage amount. The petitioners have asserted that they were asked to make payment of the amount calculated at the rate of Rs. 450 per standard acre and because they failed to do so, the proprietary rights were cancelled. The *ex parte* order of cancellation made on 8th August, 1961, by the Chief Settlement Commissioner clearly shows that the petitioners were called upon to deposit the mortgage amount and since they had failed to do so, their permanent rights were being cancelled. Before my learned brother Gurdev

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Singh, J., reliance was placed on the aforesaid instructions and keeping that in view and reading paragraph 11 of the written statement as a whole, as also the order dated 8th August, 1961, the position of the Department seems to be that the area which has been cancelled had to be cancelled owing to the existence of the mortgage in favour of the Muslims in Pakistan in respect of which the petitioners failed to pay up the mortgage money calculated at the rate mentioned in the departmental instructions. There is no provision either in the Act or the rules which would justify such a course being adopted. The departmental authorities had not been empowered by law to realise an amount which had no relation to the actual amount of the mortgage money and which had to be calculated in accordance with a uniform rate per acre as stated in the departmental instructions. The rate of Rs. 450 per acre is mentioned in rule 56 which relates to conversion of standard acre into cash but admittedly that rule has no applicability to the present case in view of the saving clause contained in rule 69. The impugned orders seem to have been based solely on the departmental instructions in question, although for obvious reasons that was not clearly admitted in the written statement or during the course of arguments before us. Mr. Ajit Singh Sarhadi has laid a good deal of emphasis on the well-established rule that this Court will not interfere under Article 226 on the merits of a departmental order but the orders which have been impugned in the present case wholly lack legal validity and are *ultra vires* the powers of the Chief Settlement Commissioner.

An attempt has been made to defend the impugned orders on the ground that the Chief Settlement Commissioner could exercise the same powers as the Managing Officer under section 19 of the Act,

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read with rule 102, and the reasons mentioned in the orders in question would fall within rule 102(d), according to which a Managing Officer can cancel an allotment for any sufficient reason to be recorded in writing. It is unnecessary to consider this matter for the simple reason that no orders had been made by the Managing Officer under section 19, cancelling the allotment of the petitioners and when the Chief Settlement Commissioner cancelled the proprietary rights, he was not examining the legality and validity of any order made by the Managing Officer under section 19, read with rule 102. Moreover, it is the Managing Officer alone who can exercise original powers under section 19 and the original jurisdiction of the Chief Settlement Commissioner under section 24 is confined to the matters specified in sub-section (2) of that section *vide Bachan Singh* v. *The Chief Settlement Commissioner* (Civil Writ No. 1338 of 1960, decided on 16th May, 1961), *Naranjan Singh* v. *The Central Government* (Civil Writ No. 1320 of 1960, decided on 3rd August, 1961), and *Jota Singh* v. *The Chief Settlement Commissioner* (Civil Writ No. 1043 of 1960, decided on 12th September, 1961), as also *Thakar Jaishi Ram* v. *the Chief Settlement Commissioner* (3) and *Major Gopal Singh* v. *Custodian, Evacuee Property* (4). As the proprietary rights had already been granted in this case in accordance with the provisions contained in rule 72, the Managing Officer merely made a report that the proprietary rights to the extent of 15 standard acres and 12¾ units be cancelled owing to the existence of the mortgage and did not take any action under section 19, read with rule 102. It was only under section 24(1) that the Chief Settlement Commissioner could order cancellation of those rights but, as has been already determined, the impugned orders were not sustainable under that provision.

(3) 1958 P.L.R. 45.
(4) A.I.R. 1961 S. C. 1320 at P. 1323.

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In the result, the petition is allowed and the impugned orders relating to cancellation of the proprietary rights in 15 standard acres and 12¾ units are quashed. In the circumstances, the parties are left to bear their own costs.

Gurdev Singh, J.

GURDEV SINGH, J.—I am also of the same opinion and concur in the order proposed by my learned brother, Grover, J.

The facts of the case are set out in his order, and it is not necessary to recapitulate the same. The order, dated 8th August, 1961, by which the Chief Settlement Commissioner cancelled permanent rights of the petitioners in respect of 15 standard acres and 12¾ units of land which is on page 5 of the respondents' records, reads as under:—

> "This is a reference from the Managing Officer wherein he has found that Shri *Shiv Dayal*, *Baldev Raj*, sons of *Shri Mool Chand* had mortgaged their land with Muslims in Pakistan in lieu of which they have been allotted 15 standard acres and 12¾ units of land in village *Kheri H. B.* 4, tahsil Jhajjar, district *Rohtak*. They failed to deposit the mortgage amount when they were called upon to do so. Since the allottees have acquired permanent rights, this case has been referred to this Court for the cancellation of the same.
>
> (2) A notice was issued to the allottees to appear before me today but *they have* not turned up. I agree with the report of the Managing Officer and set aside the permanent rights with respect to 15 standard acres and 12¾ units of land

> allotted to the allottees in the village noted above. The file be returned to the Managing Officer for taking further action."

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This order is on a cyclostyled form in which the words underlined have been filled in the blanks.

The sole ground set out in it for cancellation of permanent rights in respect of a part of the land held by the petitioners is that a part of the land left by them in Pakistan, in lieu of which they were allotted agricultural land in India, was under mortgage with Muslims in Pakistan, and they had failed to deposit the mortgage amount despite being called upon to do so. Though it has been contended on behalf of the petitioners that they had not been allotted any land in lieu of the area that was under mortgage with the Muslims in Pakistan, yet for the purposes of this petition the finding of fact recorded by the Chief Settlement Commissioner that out of the area allotted to him on quasi-permanent basis 15 standard acres and 12¾ units of land were in lieu of the land that was mortgaged with the Muslims in Pakistan, may be accepted, The question that, however, requires consideration is whether the Chief Settlement Commisioner had the power to cancel the permanent rights in respect of that area because of the petitioners' failure or refusal to deposit the mortgage amount.

Before dealing with this matter it may be observed that the order of the Chief Settlement Commissioner implies that if the petitioners had deposited the mortgage amount which they owed to the Muslim mortgagees residing in Pakistan, then they would have been allowed to retain, this area of 15 standard acres and 12¾ units and there would

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have been no occasion for cancelling permanent rights which they had already acquired in respect of this area. It is thus obvious that before the petitioners could be penalised for non-payment of the mortgage amount it had to be determined what that amount was and we have to see if the Chief Settlement Commissioner had the power or authority to demand its payment. The petitioners' case throughout was that the mortgage amount was only Rs. 600. In support of this plea they produced a copy of the mutation. This was, however, not accepted by the Managing Officer and the Chief Settlement Commissioner on the sole ground that no such copy of the mutation was attached to the relevant *jamabandi* received from Pakistan. Even if that was so, there is nothing either in the impugned order or in the records produced by the respondents to indicate that the petitioners' statement with regard to the mortgage amount was incorrect and as a matter of fact the mortgage was for a higher amount. Neither the Chief Settlement Commissioner nor the Managing Officer, on whose recommendation he proceeded to set aside the permanent rights gives any indication of the amount which according to the department would be due to the mortgagees. Without determination of the amount, no demand for the payment of the mortgage-money could be made nor the petitioners be penalised, even assuming that the Chief Settlement Commissioner had the authority to demand its payment or to cancel permanent rights in the land for non-payment of the mortgage money. If the department disputed the petitioner's statement with regard to the mortgage-money it ought to have investigated the matter and recorded a definite finding without which it could not be held that the petitioners had committed default in the payment of the mortgage debt.

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At one stage it was contended that the mortgage amount, to which reference is made in the order of the Chief Settlement Commissioner and the reference by the Managing Officer, had to be paid in accordance with the departmental instructions contained in the letter, No. RI/49147—64, dated 20th November, 1959, addressed by the Deputy Secretary to Government, Punjab, Department of Rehabilitation, to the Deputy Commissioners in the State, copy of which marked R. VIII was produced when the case came up before me sitting in Single Bench, the relevant extract from which has been reproduced by my learned brother, Grover, J. According to it a displaced person was required to "get the mortgaged area *redeemed* by making payment at Rs. 450 (four hundred and fifty) per standard acre to Government, failing which a proportionate cut would be levied on his holding."

There is a catena of authority that such departmental instructions or press notes do not have the force of law and any action based on them, unsupported by any provision in the Displaced Persons (Compensation and Rehabilitation) Act, 1954, or the rules framed thereunder, may be set aside. Reference in this connection may be made to *Bishan Singh, S. Ladha Singh* v. *Central Government and others* (3). Being conscious of this legal position, the respondents' counsel did not rely upon these instructions but defended the action taken by the authorities on the plea that under sections 19 and 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Chief Settlement Commissioner had ample power to cancel proprietary rights in any land allotted to the displaced persons under the quasi-permanent scheme. Reliance in this connection was placed

(5) I.L.R. 1961 (1) Punj.=A.I.R. 1961 Punj, 451.

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upon an unreported decision of Tek Chand, J., in *Narain Singh* v. *The Central Government* (Civil Writ No. 1744 of 1960, decided on 10th October, 1962).

On perusal of that judgment we find that the learned Judge; while holding that the departmental instructions contained in the letter of the Deputy Secretary, Government, Punjab, Department of Rehabilitation, dated 20th November, 1959 referred to above were of no avail to the respondents, accepted the contention that in view of the provisions of sections 19 and 24(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and the statutory rule 102 framed under it, the Chief Settlement Commissioner had sufficient reserve of power to cancel the allotment and set aside the permanent rights. Reliance in this connection was placed on a Bench decision of this Court in *Bara Singh* v. *Joginder Singh* (1). The respondents' learned counsel, S. Ajit Singh Sarhadi, urged that as the view expressed in *Bara Singh's case* had recently been affirmed by a Full Bench of this Court in *Shrimati Balwant Kaur* v. *Chief Settlement Commissioner (Lands), Punjab* (2), the impugned order of the Chief Settlement Commissioner was perfectly valid.

The Full Bench was dealing with several writ petitions that had arisen out of the orders passed by the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, cancelling proprietary rights in respect of some land allotted to several displaced persons on quasi-permanent basis. The view taken by a Division Bench of this Court in *Bara Singh's case* (supra) was in conflict with that of the Full Bench of Rajasthan High Court in *Partumal* v. *Managing Officer, Jaipur and others* (6). The question that

(6) A.I.R. 1962 Raj. 112.

arose for consideration of the Full Bench was formulated by P. C. Pandit, J., who delivered the majority judgment in these words:—

> "The question that falls for determination is whether the Full Bench decision of the Rajasthan High Court in *Partumal* v. *Managing Officer, Jaipur and others* or the Bench decision of this Court in *Bara Singh* v. *Joginder Singh,* lays down the correct position of law.

The learned Judge after considering the relevant provisions and the various authorities answered this question by saying:—

> "I have no hesitation in holding that *Bara Singh's case* lays down the correct proposition of law;"

D. K. Mahajan, J., concurred with this, but Harbans Singh, J., the third member of the Bench, expressed dissent and held that once a *sanad* had been issued or a sale-deed executed the same could not be cancelled by the Chief Settlement Commissioner under section 24 of the Act. As the Full Bench merely upheld the decision in *Bara Singh's case,* it is to the latter authority that we have to advert to ascertain the rule of law laid down by this Court.

In that case the Court was dealing with the validity of an order of the Chief Settlement Commissioner by which he cancelled the allotment of a house situated in Mauza Adampur and the grant of proprietary Sanad in respect of it to one Gurdip Singh on the ground that Gurdip Singh having been killed in communal disturbances in Pakistan had never settled in India and was thus

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not entitled to any allotment of house-property. The learned Single Judge before whom the matter came up by way of writ petition under Article 226 of the Constitution held that once the Sanad was granted to the heirs of Gurdip Singh conferring proprietary rights on them, it was not open to the Chief Settlement Commissioner to cancel the transfer because the order transferring the property had merged in the Sanad and consequently the grant could be resumed only by the President in accordance with the conditions of the Sanad. In appeal, the Letters Patent Bench on examination of the relevant provisions including sections 19 and 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and the relevant rules framed under it, reversed the order and laid down the following propositions:—

(i) Where a Managing Officer wrongly omits to cancel an allotment in the circumstances where he should have cancelled it, the Chief Settlement Commissioner can in exercise of his power of revision correct the error, and similarly where a Managing Officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse the order and annual the transfer.

(ii) The Sanad or its grant being founded solely on the decision to transfer permanent ownership; that Sanad must necessarily fall with the reversal of the decision on which it is based.

(iii) The important thing is the decision to transfer ownership rights, and the Sanad

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is merely a formal document evidencing that transfer, and if the decision itself is found to be wrong, the Sanad which is founded on that decision must go with it.

Thus, what *Bara Singh's case* and the Full Bench decision in *Balwant Kaur's case* settled is that even after the grant of the Sanad the proprietary rights and the allotment of property can be cancelled by the Chief Settlement Commissioner, but these decisions do not answer the main question that is being considered by us, namely, whether the Chief Settlement Commissioner is competent to cancel the proprietary rights and the allotment of land for the petitioners' failure to pay Rs. 450 per acre demanded by the Settlement Authorities or the amount of the mortgage debt owing by them to the Muslims residing in Pakistan. While dealing with the powers of the Chief Settlement Commissioner to cancel the allotment in *Bara Singh's case*, Dulat, J.; who delivered the judgment of the Court merely observed:—

> "The Chief Settlement Commissioner has given reasons for setting aside the transfer; the main reason being that the allotment itself was not in order and that again on the finding that under the rules Gurdip Singh who never came to settle in India was not entitled to the allotment of a house
>
> Rule 102 of the rules mentions the conditions on which an allotment can be cancelled, and among other things the rule authorizes such cancellation for 'any other reason to be recorded in writing' the only provision being that reasonable opportunity of being heard is given to the allottee."

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It is on these observations that S. Ajit Singh Sarhadi, has relied in justification of the impugned order of the Chief Settlement Commissioner. He contended that the petitioner was not entitled to any allotment of land in lieu of that portion of his land which was under mortgage with the Muslims residing in Pakistan. He, however, could not point out any provision in the scheme of allotment or any rule or notification under the Administration of Evacuee Property Act or the Displaced Persons (Compensation and Rehabilitation) Act, 1954, to support his contention that the petitioner was not entitled to any allotment in lieu of the mortgaged land. On the other hand, we find that the Joint Rehabilitation Board had taken a decision with regard to the mortgage rights; which is stated at page 73 of Tarlok Singh's Land Resettlement Manual in these words:—

> "(3) Displaced persons whose lands in West Punjab were held on mortgage with possession by the residents of West Punjab (Muslims) will receive their allotments in East Punjab and the Patiala and East Punjab States Union, as if their allotments were not mortgaged, but subject to such adjustments and discharge of obligations as may arise in consequence of any Inter-Dominion agreement."

From this it is obvious that the displaced persons who had mortgaged their lands with Muslims residing in West Pakistan were entitled to allotment of land, but this was subject to such adjustments and discharge of obligation as may arise from an Inter-Dominion agreement between India and Pakistan. It is admitted by the respondents' learned counsel that no such agreement

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between the two countries concerning such mortgaged property has been arrived at. In these circumstances, there is no basis for the assertion that the petitioners are not entitled to the allotment of land in lieu of the land that they had mortgaged in West Pakistan with the Muslims residing there. Thus, it is not a case of undeserved allotment to which rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules may apply. If it was not an undeserved allotment, there was no question of the petitioners being offered a concession to retain the property on payment of Rs. 450 per acre. In view of the fact that no Inter-Dominion agreement regarding the mortgage rights has so far been arrived at, neither the Chief Settlement Commissioner nor the Managing Officer had any authority to demand from the petitioners the payment of the mortgage debt owing by them to the Muslims residing in Pakistan. No provision of law has been brought to our notice showing that these authorities were competent to demand the debts owing to the persons residing in Pakistan. They are not the Custodians of the rights and interests of the Muslims residing in Pakistan and they have no authority to realize the debts due to them from Indian citizens or the displaced persons who have settled in India on migration consequent upon the partition of the country.

Section 24(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, upon which reliance is placed on behalf of the respondents in defence of the impugned order of the Chief Settlement Commissioner does not confer unrestricted power on the Chief Settlement Commissioner acting as Regional Authority under the Act to set aside the proprietary rights or allotments. Interference under this provision of law will be called

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for where he is not satisfied with "the legality or propriety" of an order passed by one of the subordinate authorities mentioned therein. It is not shown that in making the allotment and granting proprietary rights in respect of the land in dispute the Managing Officer or the Settlement Officer had acted in violation of any provision of law or ignored any circumstance which would make their orders open to attack on the ground of propriety, and as such no case for interference by the Chief Settlement Commissioner in exercise of his revisional powers was made out.

For the foregoing reasons I find that the Chief Settlement Commissioner had exceeded his authority in passing the impugned order, and I agree with my learned brother that the same must be quashed and the petition allowed, leaving the parties to bear there own costs.

K.S.K.

APPELLATE CIVIL

Before H. R. Khanna, J.

SHRI CHANDER RAM,—*Appellant*

versus

SHRIMATI SABIYA WATI,—*Respondent.*

F.A.O. 80-D of 1962

Hindu Marriage Act (XXV of 1955)—S. 25—Order for permanent alimony—Whether can be made in favour of a defaulting or a guilty party.

1964

May, 8th.

Held, that there is nothing in section 25 of the Hindu Marriage Act, 1955, to show that the order for payment of alimony can be made only in favour of a wife who is not