The Gram Panchayat, Ponahana
v.
The Judicial Magistrate, Palwal and others

Mehar Singh, J.

v. *Mt. Gulab Kunwar* (12). It is so. But all that their Lordships said was that it is always dangerous to apply English decisions to the construction of an Indian Act where clauses under consideration are not the same, and I have endeavoured to show that sections 46 and 47 of the Metropolitan Building Act, 1855, are, for the matter under consideration, a close parallel to sections 21 and 23 of Punjab Act 4 of 1953.

In consequence, the proceedings under subsection (1) of section 21 of Punjab Act 4 of 1953 are found to be a 'criminal case' as those words appear in proviso to section 41 of that Act. On this conclusion, the petition of the petitioner-Panchayat is without substance. It is dismissed. There is no order on costs in this petition.

K.S.K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Harbans Singh, JJ.

OM PARKASH AND OTHERS,—*Petitioners.*

versus

CHIEF SETTLEMENT COMMISSIONER, PUNJAB, AND OTHERS,—*Respondents.*

Civil Writ No. 841 of 1962.

1963

Sept., 13th.

Land Resettlement Manual by Tarlok Singh—Chapter VIII, para 17 on page 180—Scope and binding effect of—Heirs of a landlord who died in Pakistan before partition—Whether entitled to allotment of land as displaced landholders.

Held, that there is no statutory basis for para 17 at page 180 in Chapter VIII of the Land Resettlement Manual by Tarlok Singh and it cannot, therefore, be said that this para embodies a rule of law calling for strict obedience on

(12) A.I.R. 1932 P.C. 207.

the part of the Courts. This Manual was published by the Punjab Government and contains the instructions and explanations or working out policy decisions arrived at in the course of the gignatic task of rehabilitating the persons from what is now known as West Pakistan.

Held, that para 17 of the Manual does not cover the cases where deceased landholders were not displaced persons at the time of their death; it only provides for cases where a landholder dies after having become a displaced person; in other words, cases where a displaced landholder dies and not where a landholder would have become a displaced landholder if alive at the time of the partition. Thus where a landholder died in Pakistan in June, 1947, long before the partition, his sons are entitled to file claims and obtain allotment as displaced landholders in their own right according to their share in the land and the allotment cannot be made in the name of the deceased landholder merely because his name appeared in the Jamabandi received from Pakistan as no mutation had been effected in the names of his sons and heirs.

Case referred to a large bench by Hon'ble Mr. Justice Harbans Singh, on 14th March, 1963, for decision of the important question of law involved in the case and the case was finally decided by Hon'ble Mr. Justice Inder Dev Dua and Hon'ble Mr. Justice Harbans Singh on 13th September, 1963.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari, *or any other appropriate writ, order, or direction be issued quashing the orders of respondents Nos. 1 to 3, dated 8th June, 1962, 26th December, 1961, and 18th September, 1961, respectively, and further praying that the petitioners' dispossession from the land in question as also its allotment to respondents Nos. 4 to 8 be stayed till the final disposal of this writ petition.*

H. S. WASU and B. S. WASU, ADVOCATES, for the Petitioners.

C. D. DIWAN, DEPUTY ADVOCATE-GENERAL and D. S. KEER, ADVOCATE, for the Respondents.

ORDER

DUA, J.—These two writ petitions (Civil Writ No. 841 of 1962 and Civil Writ No. 526 of 1962) have been Dua, J.

Om Parkash and others
v.
Chief Settlement Commissioner, Punjab and others

Dua, J.

heard together and indeed arguments have been addressed only in Civil Writ No. 841 of 1962, it being conceded that the other writ petition would stand or fall with this one. The facts out of which this writ petition has arisen have, so far as necessary for our purposes, been stated in the referring order of my learned brother and need only be briefly restated here.

Nanak Chand owned some agricultural land in Bahawalpur State now forming part of West Pakistan as a result of the partition of the country in 1947. He also owned some property at Kot Kapura, tehsil Faridkot, which now forms part of district Bhatinda and is in India. Nanak Chand had in normal course of business come to Bhatinda where he died in June, 1947, leaving behind three sons by name, Om Parkash, Sat Narain and Ram Parshotam. After Nanak Chand's demise the country was partitioned and as a result thereof his three sons had to abandon the land owned by their father in Bahawalpur State. The three sons filed separate claims in accordance with law and obtained allotment of certain land in Kot Kapura Village in lieu of the land abandoned by them in Pakistan. It appears that there was some complaint made by one Rur Singh against these three brothers which was inquired into by the Rehabilitation authorities and the Chief Settlement Commissioner, Punjab, Shri J. M. Tandon, on 8th of June, 1962, came to a finding that Nanak Chand, although he had died long before the partition of the country must be treated as a 'displaced landholder' for the purpose of allotment of land on the ground that his name continued to be shown in the *jamabandi* as owner of the abandoned land in Pakistan. In consequence of this finding considerable area of land allotted to the three sons of Nanak Chand was cancelled. It is this order of cancellation which is being assailed by the three petitioners (sons of Nanak Chand deceased) in the present writ proceedings and the challenge is based on the

argument that para 17 of the Land Resettlement Manual by Tarlok Singh (hereinafter called the Manual) appearing at page 180 on the basis of which the order of cancellation had been passed has no authority of law and, therefore, could not legally form the basis of the order and that in any case para 17 has been misconstrued and misinterpreted.

Before my learned brother Harbans Singh, J., sitting singly the respondents' counsel relied on a decision by Chopra, J., in *Jhanda Singh* v. *Chief Settlement Commissioner, Punjab* (1), in which para 17 of the Manual was given effect to. This decision has also been relied upon before us on behalf of the respondents. It may here be stated that my learned brother entertained doubts about the correctness of the view expressed in this decision and it was for this reason that the matter has been placed before this Bench so that the correctness of the view expressed in *Jhanda Singh's case* may be reconsidered. But for this decision, my learned brother was inclined to allow the writ petition. The short question, therefore, that we have to determine is the scope and binding effect of para 17 of the Manual appearing at page 180 in Chapter VIII.

This Manual is apparently published by the Punjab Government, but for this reason alone its contents do not acquire the authority or sanctity of law. It is not the Indian view of law that whatever is officially done is law; on the contrary the Indian Law is that what is done officially must be done in accordance with law. And then as stated in Foreword of the Manual by Shri P. N. Thapar this book contains the instructions and explanations for working out policy decisions arrived at in the course of the gignatic. task of rehabilitating the persons displaced from what is now known as West Pakistan. It is true that in the appendices the relative legislative enactments

(1) I.L.R. 1958 Punj. 1090.

Om Parkash and others
v.
Chief Settlement Commissioner, Punjab and others

Dua, J.

and rules, etc., are also reproduced but in the case before us it is not their binding effect but the binding effect only of para 17 at page 180 which has been canvassed. As observed by Jagannadhadas, J., in *Amar Singh* v. *Custodian, Evacuee Property, Punjab* (2), this Manual can be usefully referred to, not necessarily as an authority for every statement of fact or law contained therein but as a guide to appreciate the background of the problems which the administration had to face in te unprecedented situation, how those problems were attempted to be solved, what were the rules and practice which the administration normally followed and considered binding on itself, and what ideas inspired the course of legislation in this behalf. This view was expressed while explaining the observations that this book has the stamp of authority as made in *Dunichand Hakim* v. *Deputy Commissioner, Karnal* (3).

It need hardly be emphasised that in Republican India executive instructions without statutory basis are not law; and no statutory basis for para 17 at page 180 of the Manual has been brought to our notice. In the circumstances the respondents' contention that para 17 embodies a rule of law calling for strict obedience on the part of the Courts is thus unacceptable. Equally unacceptable is the contention that the petitioners' challenge to the impugned order involves reviewing a question of fact and, therefore, this Court should decline in its discretion to go into it. The basic facts are not disputed and the only question canvassed is: Are the departmental authorities right in declining proper relief to the petitioners solely on the basis of para 17 of Chapter VIII at page 180 of the Manual? This brings me to the scope and effect of this para, for, if this para embodies a provision in conformity with the law and covers the present case, then this Court would not interfere.

(2) A.I.R. 1957 S.C. 599.
(3) A.I.R. 1954 S.C. 578.

Reference has been made at the bar to the provisions of the East Punjab Refugees (Registration of Land Claims) Act XII of 1948 in which the word 'refugee' has been defined in section 2(d) to mean a landholder in the territories now comprised in the Province of West Punjab, or who or whose ancestor migrated as a colonist from the Punjab since 1901 to the Province of North-West Frontier Province, Sind or Baluchistan or to any State adjacent to any of the aforesaid Provinces and acceding to the Dominion of Pakistan, and who has since the 1st day of March, 1947, abandoned or been made to abandon his land in the said territories on account of civil disturbances or the fear of such disturbances or the partition of the country, and the term 'landholder' has been defined in section 2(c) to mean an owner of land or a tenant having a right of occupancy under the Punjab Tenancy Act, 1887 or a tenant as defined in section 3 of the Colonization of Government Lands Act, 1912, and such other holder or grantee of land as may be specified by the Provincial Government.

It has been contended for the petitioners that Nanak Chand deceased cannot be described to be a "refugee" as defined in the above Act, unless one can come to the conclusion that he had since 1st March, 1947, abandoned or been made to abandon his land in Bahawalpur as contemplated by section 2(d). It is stressed that there is nothing on the record to show that the deceased had so abandoned or been made to abandon his land in the erstwhile State of Bahawalpur on account of civil disturbances or the fear of such disturbances on the partition of the country. Section 4 providing for registration of land claims entitles a refugee to submit to the Registering Officer an application for registration of his claim in respect of his land abandoned by him or which he has been made to abandon. East Punjab Refugees (Registration of Land Claims) Rules, 1948, made under section

Om Parkash and others
v.
Chief Settlement Commissioner, Punjab and others

Dua, J.

10 of the Act provide, *inter alia*, that a claim application may be presented by the applicant either in person or through a recognised agent or be sent by registered post. These provisions, it is argued, also do not contemplate registration of claims by deceased persons like Nanak Chand.

The petitioners' counsel has next referred us to the Statement of Conditions for granting allotment of land issued by the Custodian under the East Punjab Evacuees' (Administration of Property) Act, 1947, and stress has again been laid on the definition of the expression "displaced person" in para 2(e) which is identical with the definition of the word "refugee" as contained in the Land Claims Act XII of 1948. Para 3 of this Statement of Conditions provides for allotment to be made in favour of displaced persons for the period for which the land remains vested in the Custodian subject to the provisions of the present Act. Our attention has then been drawn to the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949), in which the expression 'displaced person' has again been defined in section 2(c) in terms similar to those contained in the Statement of Conditions mentioned above and the word 'allottee' has been defined in section 2(b) to mean a displaced person to whom the land is allotted by the Custodian under the conditions mentioned above including his heirs, legal representatives and sublessees. Drawing further support from these statutory provisions the petitioners' learned counsel has contended that what the law contemplates is that the displaced person entitled to an allotment must be one who has himself abandoned or been made to abandon his land in what is now known as Pakistan and that Nanak Chand deceased could by no stretch be considered to be such a displaced person. The contention indeed goes a step further and emphasises the absence of any finding by the departmental authorities

that Nanak Chand was a displaced person as defined in the statutory provisions mentioned above.

Here, it is appropriate to reproduce para 17 on which the department relies:—

> "17. Even where a displaced landholder in whose name land stands in the records received from West Punjab has died, the allotment is made in the name of the deceased. In the *fard taqsim*, therefore, the entry will be in the name of the deceased landholder. Possession is ordinarily given to the heirs but there must be regular mutation proceedings before the entry in column 3 of the *fard taqsim* is altered in favour of the heirs."

The department's position is that the allotment has to be made in the name of the person who is shown in the record even though he had never himself become a refugee or a displaced landholder. The petitioners' contention on the contrary is that this para has within its fold cases of persons who were landholders at the time of their becoming displaced persons or refugees and who died afterwards but before allotment could be made in their favour.

The petitioners' next submission is that in any case the instructions contained in this para merely emphasise the importance of the entries in the revenue papers for convenient and practical working of the scheme and not as a rigid rule which must always be adhered to irrespective of the obvious justice of the claims of persons claiming title to the property as "refugees" or "displaced landholders".

For explaining the scope and effect of this para the counsel has taken us through some of the provisions in Chapter II of the Manual dealing with the subject of

Om Parkash and others
v.
Chief Settlement Commissioner, Punjab and others

Dua, J.

copies of *jamabandis* obtained from Pakistan and the preliminary scrutiny for the determination of rights contained in paras 23 and 24. Certain emphasis has in this connection been laid by the counsel on para 24 which envisages an inquiry about the transfer of land not incorporated in *jamabandi*. This, it is argued, shows that para 17 was never intended to be rigidly construed irrespective or regardless of the obvious justice of a displaced person's claim. Some instances have in this connection also been cited at the bar in which even the department itself did not rigidly follow this para. The first instance relates to the case of Shri Sapuran Singh who was at one time Deputy High Commissioner for India at Lahore. Proof of his father's death was admitted from some mutation in Amritsar District and the entries in the *jamabandis* which arrived from Pakistan were not strictly adhered to for the purpose of allotment. This instance relates to May, 1953. Another case of April, 1960, is of one Shri Ishar Singh of Faridkot in which the alleged sale of June, 1947, was recognised in spite of there being no entry in the *jamabandi*. In this case report relating to the sale had been entered in the *roznamcha* but mutation could not be sanctioned before partition. Bracketed with this case were three other cases similarly dealt with. The third case of 1961 is of Shri Jaimal Singh who had purchased land in Pakistan from Shri Hari Chand. In this case too mutation of sale had been entered but it could not be sanctioned before partition and in the *jamabandi* received from Pakistan the relevant entry continued to be in Hari Chand's name. The precedent of Ishar Singh's case was followed. The 4th case of 1953 relates to Kabul Singh and others where partnership was recognised on other evidence in spite of there being no entries regarding their shares in *jamabandis*.

As observed earlier para 17 has not been shown to have any statutory authority for its basis and, in

my opinion, it merely embodies executive or administrative directions for general guidance. The language of this para also, considered in the light of the provisions of law noticed above, postulates a displaced landholder dying after having become a displaced person within the relevant legal provisions mentioned above. It does not apply to the case of a person who was not a displaced landholder at the time of his death. To accede to the department's contention that whosoever is shown in the *jamabandi* received from Pakistan as owner—irrespective of the fact that at the time of his death he was not a displaced person—must, according to para 17, be treated as a displaced landholder would, in my opinion, tend to create unnecessary difficulties and complications for the displaced claimants which the legislative policy underlying the statutory provisions dealing with this subject does not contemplate. That it is so would also seem to have been realised by the departmental authorities who dealt with the four instances to which our attention has been drawn. I am, therefore, clearly of the opinion that para 17 neither constitutes nor embodied binding rule of law, nor does it cover cases where deceased landholders were not displaced persons at the time of their death; it only provides for cases where a landholder dies after having become a displaced person; in other words, cases where a displaced landholder dies and not where a landholder would have become a displaced landholder if alive at the time of the partition. The decision of the learned Single Judge in *Jhanda Singh's case* is thus, with all respect, not in accord with the correct rule of law. On this view the petitioners' grievance has merit and the impugned orders deserve to be quashed because Nanak Chand deceased could by no means be treated to be a displaced landholder at the time of his death; indeed the respondents learned counsel too has not attempted seriously to argue to the contrary. His only contention

Om Parkash and others
v.
Chief Settlement Commissioner, Punjab and others

Dua, J.

as mentioned earlier has been that the case is concluded by a finding of fact and that merely an erroneous construction of para 17 would not justify interference on the writ side. These contentions call for no further detailed comment and are obviously inadmissible in view of the foregoing discussion. If on the basis of erroneous view of the scope and meaning of para 17 an order is passed prejudicially affecting the petitioners' right, it would, on the fact and circumstances of this case, be an error apparent on the face of the record justifying interference on the writ side.

In the result these petitions succeed and allowing the same I quash the impugned orders. In the circumstances, however, there would be no order as to costs.

Harbans Singh J.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAJINDAR KAUR AND OTHERS,—*Appellants*

versus

DAROPDI AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1879 of 1961

1963

Sept., 30th.

Code of Civil Procedure (Act V of 1908)—O. 8 r. 5—Scope of— La Ilmi *or not known—Whether amounts to "not admitted".*

Held, that in rule 5 of Order VIII of the Code of Civil Procedure, 1908, it is mentioned that every allegation of fact in the plaint shall be deemed to be admitted, if the defendant did not deny it specifically or by necessary implication. The only exception has been made in the case of persons under disability. Undoubtedly, minors are also covered by this exception. The effect of this exception is that if