Veeraraghavacharlu, etc. (3); is equally unavailing to the petitioner and so is *Mohatap Bahadur* v. *Kali Pada Chatterjee, etc.* (4).

For the foregoing discussion, I do not think the petitioner has made out any case for entitling him to the allotment of the land in question on the basis of *cypres* doctrine. The petition thus fails and is hereby dismissed but without any order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

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

MOHAN LAL SHARMA,—*Petitioner.*

versus

THE CENTRAL GOVERNMENT AND OTHERS,—*Respondents.*

Civil Writ No. 1648 of 1960.

1962

November, 6th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 32—Memorandum containing Banjar cut formula—Whether legal or valid—Cancellation of allotment made on the basis of Banjar cut formula—Whether liable to be quashed by certiorari.

Held, that the memorandum issued by the Punjab Government containing the Banjar cut formula has no legal validity. An order cancelling the allotment or lease of land on the basis of the Banjar cut formula is liable to be quashed by *certiorari* on the ground of an apparent error of law. The temporary allotment of land to displaced persons on oral verification cannot be termed *ex gratia* grant. The only provision under which cancellation of temporary allotments or leases can be made are section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and rule 102 of the Rules made under that Act and Rehabilitation authorities never acted in accordance with

(3) A.I.R. 1937, Mad. 750
(4) A.I.R. 1914 Cal. 200

them. It is for the Managing Officer to cancel the allotment or lease under those provisions and he will have to exercise his individual judgment in the matter unfettered by any executive instructions of the nature contained in the memorandum which have no legal binding force.

Case referred by the Hon'ble Mr. Justice P. C. Pandit, on 15th December, 1961, to a larger Bench for decision of two questions of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice A. N. Grover on 6th November, 1962.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari *or any other suitable writ, direction or order be issued quashing the orders of respondents Nos. 4 to 6, dated 1st July, 1960, 6th April, 1960 and 21st January, 1960, respectively and also the Circular Letter issued by respondents No. 3 in consultation with respondent No. 2 on the basis whereof the petitioner's allotment had been cancelled.*

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

A. M. SURI, ADVOCATE, for the Respondents.

JUDGMENT

Grover, J.

GROVER, J.—This is a petition under Article 226 of the Constitution which has been referred by a learned Single Judge for decision to a Bench.

The petitioner is a displaced person from Pakistan where it is alleged that his father owned land in Chak No. 14 and Toola in Bahawalpur State. As the *jamabandis* of these villages had not been received from Pakistan, the petitioner's father Balmokand Sharma was allotted land, the allotment being temporary to the extent of 63.3 standard *acres* in village Bahmaniwala, tehsil Fatehabad, on the basis of oral verification. A Sanad was granted in respect of this land in which

it was mentioned that the allotment was temporary. It was further stated therein that the land was being allotted in terms of notification No. 4891-S and notification No. 4892-S, dated 8th July, 1949. These notifications had been issued in pursuance of powers conferred by the rules made by the State Government under clauses (f) and (ff) of sub-section (2) of section 22 of the East Punjab Evacuees (Administration of Property) Act, 1947.

The *jamabandi* of Chak No. 14 was received from Pakistan, but unfortunately the *jamabandi* of village Toola had not been received so far. On 26th October, 1959, the Punjab Government issued a memorandum (copy of which is Annexure 'B') to the Land Claims Officer, Punjab, Jullundur, with regard to grant of Sanads to displaced land allottees whose claims were verified on the basis of oral evidence. The relevant part of this memorandum may be usefully set out—

> "The question of grant of permanent Sanads to displaced persons from Bahawalpur and N.W.F.P., who were given temporary allotments of evacuee agricultural land on the basis of oral evidence was discussed by the F.C.D., Punjab, with the Chief Settlement Commissioner, New Delhi, on 17th December, 1958. As a result of that discussion, the following decisions have been taken, to finally settle the claims of the displaced allottees from Bahawalpur and N.W.F.P. whose Pakistan village Jamabandi records have not been received.
>
> (i) The claims of such displaced persons should be finalised according to the procedure prevailing in the office of the

Mohan Lal Sharma
v.
The Central Government and others

Grover, J.

Chief Settlement Commissioner, New Delhi, after imposing Banjar cuts in their land claims. These Banjar cuts should be based on the average percentage of Banjar land in villages of a particular Tehsil for which Jamabandis have been received and should be applied to land claims of those displaced persons whose Jamabandis have not been received. The revised percentage of cut as approved by the State Government, Bahawalpur State is as under:—

* * * *."

On 21st January, 1960, the Managing Officer made an order (copy Annexure 'A'), saying that *Jamabandis* of Chak No. 14 had been received but the *Jamabandis* of the other place in Bahawalpur where the petitioner's land was situate had not been received. Applying what is called Banjar Cut formula as embodied in the aforesaid memorandum, the Managing Officer proceeded to determine that the petitioner was in occupation of an excess area to the extent of 18.5¾ standard *acres*. He directed that the same be cancelled and the balance of the area in his occupation be converted into permanent ownership. The petitioner filed an appeal which was disposed of by Shri Balmukand Sharma, Assistant Settlement Commissioner, who exercised the powers of Settlement Commissioner, by his order dated 6th April, 1960 (copy Annexure 'C'). It was argued before him that the so-called Banjar cut formula was illegal and *ultra vires* and the Government had no jurisdiction to cut down the value of compensation by means of that formula. Shri Balmukand Sharma, however, proceeded on the basis that the aforesaid

formula had been prescribed by the Central Government and according to section 32 of the Displaced Persons (Compensation and Rehabilitation) Act, it was open to the Central Government to give directions to the State Government in such matters. In his view, the direction was perfectly within the purview of the Central Government and, therefore, he found no force in the appeal which was dismissed. The petitioner then moved the Chief Settlement Commissioner on the revisional side. The argument raised before him was on the same lines as before and on paragraph 7, where it has been stated Shri Sharma's view and proceeded on the basis that the Central Government had formulated the Banjar cut formula which was to apply to those cases where the *jamabandi* records had not been received from Pakistan. The memorandum issued by the Punjab Government was treated as a direction given by the Central Government under section 32, with the result that the revision petition was dismissed.

In the return of the respondents, it is admitted that the petitioner's father was allotted land to the exent of 63.3 standard *acres* in village Bahmniwala on the basis of oral verification. Reliance has, however, been placed on the instructions contained in the memorandum referred to before and paragraph 7, where it has been stated that the instructions contained in the aforesaid memorandum are applicable to cases of those persons who "have no legal right to the allotment of land". The position taken up is that the legal rights of the displaced persons accrued only where their claims had been verified from the records of the *jamabandis* received from Pakistan or they had been supported by some evidence. In the present case, the petitioner had adduced no proof of the land left in village Toola and, therefore, the land

Mohan Lal Sharma
v.
The Central Government and others

Grover, J.

which had been allotted to him was only by way of *ex gratia* grant. Thus he had no legal right to maintain the present petition.

The learned counsel for the petitioner has drawn our attention to what is stated at page 10 of the Land Resettlement Manual, which is a book of unquestioned authority, so far as the settlement of displaced persons in the territories of erstwhile Punjab and Pepsu is concerned. After referring to the notifications containing the statement of conditions dated 8th July, 1949, it is stated at page 10 that "the expressions 'allotment' and 'lease' are used so as to correspond respectively to 'quasi-permanent' and 'temporary' grant of land. Allotment on the basis of entries in *jamabandis* or equivalent proof is described as quasi-permanent, while grant of land by the Custodian on the basis of oral verification in the absence of *jamabandis* is described as temporary." At page 75 of the Manual, it is stated as follows:—

> "To distinguish the effect on the allotment to an individual of different types of evidence, allotment on the basis of entries in *jamabandis* or equivalent proof was described as quasi-permanent. Allotment made on the basis of oral verification in the absence of *jamabandis* was generally described as temporary."

The relevant portion of section 10 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter to be referred to as the Act) is in the following terms:—

> "Where any immovable property has been leased or allotted to a displaced person

by the Custodian under the conditions published.

(a) by the notification of the Government of Punjab in the Department of Rehabilitation No. 4895-S or 4892-S, dated the 8th July, 1949, or

(b) by the notification of the Government of Patiala and East Punjab States Union in the Department of Rehabilitation No. 8R or 9R, dated the 23rd July, 1949, and published in the official Gazette of that State, dated the 7th August, 1949.

and such property is acquired under the provisions of this 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 acquisition, and the Central Government may, 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.

It has not been disputed that the land allotted to the petitioner's father, who is now dead, had been acquired by the Central Government and vested in that Government. The allottee by virtue of the provisions contained in section 10 was to continue in possession of such property on the same conditions on which he had held it immediately before the date of acquisition. Those conditions were

Mohan Lal Sharma
v.
The Central Government and others

Grover, J.

contained in notification No. 4891-S, dated 8th July, 1949, it being common ground that the second notification No. 4892-S would not apply to the present case. Condition 5 of the first notification may be reproduced:—

"The Custodian, or as the case may be, the Rehabilitation Authority shall be competent to resume, amend, withdraw or cancel the lease on any one of the following grounds:—

(a) It is contrary to the orders of the East Punjab Government or the instructions of the Financial Commissioner, Rehabilitation or of the Custodian, Evacuee Property, East Punjab;

(b) The lessee has infringed or appears to be preparing to infringe, any of the terms of the lease;

(c) The lease was obtained by false declaration or insufficient information;

(d) The area leased or occupied by the lessee is more or less than he was authorised to take on lease or occupy under the instruction issued by the East Punjab Government or the Financial Commissioner, Rehabilitation, or the Custodian, Evacuee Property, East Punjab;

(e) Where the claims of other parties with respect to the land have been established or accepted by the Custodian or the Rehabilitation Authority;

(f) When the lessee has been convicted of an offence under the Act; or

(g) If the lessee fails to take possession of the land within the time mentioned in clause 4(b) above or within such further time as he may be allowed by the Custodian or the Rehabilitation Authority, or, after having taken possession, fails to cultivate the land or a part thereof."

The learned counsel for the petitioner has urged before us that there was no breach of the conditions set out in clause 5 of the statement of conditions on which the petitioner's father and after his death, the petitioner held the allotment and, therefore, the same could not be resumed. The only provision under which such an allotment could be cancelled is section 19 of the Act which again has to be read with rule 102 of the Rules framed under the Act. It is only clause (d) of that rule under which the present case could have been decided as none of the other grounds covered by clauses (a) to (c) exists. The case of the petitioner, therefore, is that cancellation of allotment or lease in his favour even though it was of a temporary nature, could be done only in accordance with the aforesaid provisions and there was no jurisdiction in the Rehabilitation authorities to apply the instructions contained in the memorandum. Alternatively, it is pointed out that the Rehabilitation authorities proceeded on a wholly erroneous basis, namely, that the memorandum contained instructions or directions issued by the Central Government under section 32 of the Act. It is apparent from a perusal of the memorandum that the instructions embodying what is called the Banjar cut formula were not issued under section 32 by the

Mohan Lal Sharma
v.
The Central Government and others

Grover, J.

Central Government. Section 32 is to the effect that the Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions contained in the Act or of any rules or orders made thereunder. As the memorandum does not contain any such directions, there is an apparent error in the orders which have been impugned.

The learned counsel for the respondents has laid a good deal of stress on the fact that the allotment or lease in question was merely of a temporary nature and that the petitioner had only produced oral proof and had not adduced any documentary evidence in the shape of *jamabandi* entries etc. to show how much land was held by the petitioner's father in Bahawalpur (now in Pakistan) and the nature and quality of that land. It is said, therefore, that it was open to the Government to cancel the aforesaid allotment or lease at any time. The learned counsel for the respondents further says that even if the Statement of conditions contained in the notification dated 8th July, 1949 are applicable, the present case would be covered by sub-clauses (a), (c) and (d) of clause 5.

On giving the matter due consideration, it is not possible to accede to the submissions made on behalf of the respondents. Sub-clause (a) of clause 5 of the statement of conditions cannot possibly apply as it must relate to the orders of the East Punjab Government or the directions of the Financial Commissioner, Rehabilitation, or the Custodian of Evacuee Property, East Punjab, which were in existence at the time when the allotment was made. Even otherwise the memorandum which was issued in 1959 incorporating the Banjar cut formula cannot be considered to be an order of the East Punjab Government nor

can it be said to contain the directions of the Financial Commissioner, Rehabilitation or of the Custodian, Evacuee Property. It is not possible to accept the suggestion that the lease was obtaind by the petitioner's father by making any false declaration or on insufficient information. The scheme as contained in the Manual itself contemplated oral evidence being accepted, the only limitation being that grant of land on the basis of oral verification in the absence of *jamabandis* would be of a temporary nature, nor can the respondents take any advantage of sub-clause (d) of clause 5 for reasons similar to those which have been stated in respect of the applicability of sub-clause (a). The result, therefore, is that the respondents could cancel the allotment or lease subsisting in favour of the petitioner's father and now in favour of the petitioner only by reference to the powers conferred by section 19 of the Act and rule 102 of the Rules framed thereunder. This matter, however, never engaged the attention of the respondents and no action was taken by them under the proper provisions. For these reasons it is also not possible to hold that the grant should be treated merely as one made *ex gratia*. There is a good deal of force in the submission of the learned counsel for the petitioner that the impugned orders are based on an assumption which has no foundation viz., that the memorandum contains directions given by the Central Government under section 32 of the Act. This by itself would constitute an error apparent which would justify interference by *certiorari*.

The only other aspect which must engage our attention is the question whether it is a fit case in which we should interfere in exercise of our extra-ordinary powers under Article 226 of

Mohan Lal Sharma
v.
The Central Government and others

Grover, J.

the Constitution. It is pointed out that the so-called Banjar cut formula is fair and just and if it has been applied in respect of the petitioner's allotment or lease, this Court should decline to interfere as the orders made by the Rehabilitation authorities had not led to miscarriage of justice. Here it must be noticed that the memorandum containing the Banjar cut formula has no legal validity. Such executive instructions have been struck down by this Court in number of cases, the latest decision being *Bishan Singh* v. *The Central Government* (1). The respondents proceeded on a basis which had no legal foundation inasmuch as the instructions contained in the memorandum were treated as directions under section 32 of the Act which they were not. The only provision under which such a cancellation could be made are section 19 of the Act and the rule 102 of the Rules and the Rehabilitation authorities never acted in accordance with them. It is for the Managing Officer to cancel the allotment or lease under those provisions and he will have to exercise his individual judgment in the matter unfettered by any executive instructions of the nature contained in the memorandum which have no legal binding force. It would not consequently be fair and just to the petitioner to deprive him of the opportunity which he will have of showing cause against the proposed cancellation, if the Managing Officer decides to take action under the proper statutory provisions. We would, therefore, quash by *certiorari* the impugned orders, leaving it open to the respondents to take proper action under relevant statutory provisions, if so advised. In the circumstances we make no order as to costs.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

B. R. T.

(1) I.L.R. (1961) 1 Punj. 415=1961 P.L.R. 75.