Nand Lal Nirula
versus
State of Punjab and others

Dua, J.

Singh, J. in *Shiv Kumar Chopra* v. *State of Punjab*, C.W. 2573 of 1964 decided on the 18th August, 1965 in which a somewhat similar writ petition was also dismissed largely on somewhat identical grounds. No cogent criticism has been levelled on behalf of the petitioner against the ratio of that decision.

In the result this petition fails and is dismissed, but without costs.

Narula, J.

NARULA, J.—I concur with every word of the order passed by my esteemed and learned brother, Dua, J.

In our view, about the non-applicability of section 74 of the Contract Act to the terms of an agreement under a statute, we are also supported by the judgment of D. K. Mahajan, J., dated February 17, 1965 in C.W. No. 792-D of 1963, *Balwant Singh* v. *Union of India and others* (3).

B. R. T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

KARAM CHAND,—*Petitioner*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Writ No. 1385 of 1962

1966

January 27th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 24(1)—"At any time"—Meaning of— Chief Settlement Commissioner exercising jurisdiction under the section after undue delay—Whether should state grounds of justification for interference in his order—Fixation of the value of the evacuee property before transfer—Whether can be interfered with after transfer.

Held, that it is no doubt true that power is vested in the Chief Settlement Commissioner by section 24(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, to set aside or vary any order passed by any of the authorities named in that sub-section at any time if the Chief Settlement Commissioner is not satisfied

(3) 1965 D.L.T. 120.

about the legality or propriety of such order, but the expression "at any time" does not authorise the Chief Settlement Commissioner to interfere with a completed deal after any length of time implying indefiniteness. "At any time" in the said section means :—

(i) at any time so long as the property in respect of which the order is sought to be passed continues to be in the compensation pool ;

(ii) at any time thereafter if the person sought to be affected by the revised order is found to have been a party to the original order which would not have been the same if the party in question had not acted in a certain way ; and

(iii) at any time in other suitable cases provided it is within a reasonable time which would depend on the peculiar facts and circumstances of each case.

A transferee of the evacuee property from the Central Government becomes its absolute owner. It could not possibly be intended by the Parliament that the title of such an owner of immovable property should be constantly in jeopardy for an indefinite time particularly when no fault of any kind is ascribed to him in obtaining the property in question.

Held, that if the Chief Settlement Commissioner exercises his jurisdiction under section 24(1) of the Act after a long time or after undue delay, he must deal in his order with the question of delay so as to make it obvious that the delay is not undue and could not be avoided in the circumstances of the case and also to show that it is necessary in the interest of justice that interference should be made in the previous order even after lapse of so much time. Any order under section 24(1) of the Act passed after undue delay or after the lapse of several years of the passing of the property (in respect of which the order is passed), out of the compensation pool may possibly be liable to be struck down on the ground that it is opposed to the rule of law to the effect that quasi-judicial orders should not be lightly interfered with after they have once achieved finality merely because the Chief Settlement Commissioner thinks that the original order was not as good as it should have been.

Held, also that the fact that according to the opinion of a particular officer the value of certain property was fixed too low or too high before the property was transferred would not normally be a matter to be interfered with long after the absolute transfer of the

property under section 24(1) of the Act because mere wrong valuation not based on any fraud or misrepresentation of the party benefited by the error is not intended to amount to illegality or impropriety within the meaning ascribed to those terms in that section.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 22nd October, 1965 to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula on 27th January, 1966.

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 respondent No. 1, dated 30th July, 1962, and order, dated 12th May, 1962, passed by respondent No. 2.*

H. S. WASU, B. S. WASU AND N. L. DHINGRA, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL AND M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

JUDGMENT

NARULA, J.—This petition of Karam Chand, petitioner under Article 226 of the Constitution is directed against the order passed by Shri J. M. Tandon, Chief Settlement Commissioner, Punjab, Jullundur, on May 12, 1962, accepting a reference of the Managing Officer, dated March 20, 1962 and setting aside the permanent rights previously acquired by the petitioner, with respect to house No. 70 in Sukhera Basti, Abohar, which had been allotted to him as an appendage to the agricultural land given to him in that village in lieu of similar land left by him in West Pakistan and against the order of the Central Government, dated July 30, 1962, dismissing the petitioner's application under section 33 of the displaced Persons (Compensation and Rehabilitation) Act, 44 of 1954, hereinafter called the Act. Narula, J.

The petitioner is a displaced person from West Pakistan. After the partition of the country under the Indian Inpendence Act, the petitioner was allotted 119—3¼ Standard acres of land in village Abohar, Dewan Khera, Baluana Garden Colony, etc., the major portion of his allotment being in village Abohar itself. Evacuee house No. 70 in Sukhera

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Basti, Abohar, hereinafter referred to as the house in dispute, was duly allotted to the petitioner by order, dated August 5, 1951. It is not disputed that the petitioner would have been entitled to transfer of the proprietary rights in the house in dispute free of charge if the value of the house was less than Rs. 20,000 nor is it disputed that according to the valuation of the house originally fixed by the authorities it was worth less than Rs. 20,000 and it was on that basis that it had been allotted to the petitioner. The proprietary rights in respect of the house in dispute were, therefore, conferred on the petitioner. The petitioner claims to have spent about Rs. 14,000 on the renovation, additions and improvements effected by him in the house in dispute wherein he claims to have installed an electric pump and to have got modern flooring laid and additional rooms built. The extent of the improvements and additions made by the petitioner are not admitted by the respondents. Without any notice to the petitioner and without either informing him or associating him with the revaluation proceedings the house in dispute as well as other houses in the village in question were got revalued. The revaluation of the house in dispute by a Sub-Committee appointed for the purpose came to Rs. 37,355 as in 1959. According to certain Government instructions an overall reduction of 20 per cent was made in the said figure so as to arrive at the supposed value of the house in 1947. Thus the original value of Rs. 12,000 for the house in dispute was raised to Rs. 29,884 *ex parte*. The petitioner came to know of those proceedings only when he received a notice on 28th July, 1961 (notice received by one Mohan Lal on behalf of the petitioner) to appear before the Managing Officer on 29th July, 1961. It is not disputed that the petitioner was not told as to the basis on which the value had been raised nor was he shown the revised valuation report. He was asked whether he was prepared to pay up the difference between Rs. 12,000 and Rs. 29,884. The order passed by the Managing Officer on July 29, 1961, on the original file shows that the petitioner asked for 20 days' time to show that the revised valuation was wholly incorrect. He wanted time to obtain a copy of the plan and of the revaluation report. He was, however, granted adjournment till 8th August, 1961 only. On the adjourned date the petitioner informed the Managing Officer that he had not been able to obtain the requisite copies till then and that, therefore, further time may be allowed to him to obtain those copies. This request of the

petitioner was declined in the orders of the Managing Officer, dated 8th August, 1961. As the petitioner had in the mean time filed written objections, the case was ordered to be fixed for arguments and for any further written objections which the petitioner might file after obtaining the copies on August 28, 1961. A few short adjournments were thereafter granted to accommodate the Advocate, for the petitioner. No evidence of the petitioner in support of his objections was recorded. No copy of the revaluation report was provided to him. Arguments of the petitioner were heard in support of his written objections on 22nd September, 1961 and judgment of the Managing Officer was ordered to be reserved on that day. In the written objections filed by the petitioner it was stated that the house in dispute was originally mostly *kacha*, that the petitioner was granted a proprietary *sanad* in respect thereof on 8th December, 1956, that in view of the marriage of the petitioner's son fixed in July, 1957, the petitioner had made extensive improvements, changes and additions in the house, that he had installed a hand-pump and other fittings and had got even the compound walls plastered and that all this had cost him about Rs. 14,000. In addition to the above-said objections the petitioner had also filed a detailed reply, dated 25th August, 1961 to the show-cause notice, covering 9 typed pages giving details of the costs incurred by him on the improvements, etc., and also showing that the revised value of the house in dispute was grossly exaggerated. In his objections the petitioner insisted that the value of the house in 1947 was not more than Rs. 12,000 and that the notice under reply should, therefore, be discharged. Not only were the revaluation proceedings not shown and disclosed to the petitioner but the same have been kept back even from the Court. We asked the learned Advocate General if we could see the two respective valuation reports in order to find out the reason of the drastic difference. We were told that the revaluation record is not available though the other record has been made available to the Court. We, however, find on the original record produced before us (at page 23 thereof) a statement showing proposed deductions to be made from the cost of the house in dispute as assessed. This statement appears to have been prepared by the Sub-Divisional Officer, Abohar Provincial Sub-Division, on 11th May, 1961. According to this statement extra area worth Rs. 1869 had been included in the revaluation report, the occupier had spent Rs. 2,291

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on additional constructions and Rs. 2,748 on special repairs and Rs. 1,400 on installing water-pump and electricity. Some amount was included in the said statement on account of annual repairs for the last 10 years. According to this statement the value already fixed by the Revaluation Committee should have been reduced by Rs. 12,300. It has not been explained why this was not done. If the revised value of Rs. 29,884 is reduced by Rs. 12,300 as suggested in the above-said statement, the net value of the house in dispute on the relevant date would be less than Rs. 20,000 and the petitioner would indisputably be entitled to continue to be the owner of the house without paying anything.

The learned counsel for the petitioner states that the judgment, which was reserved by the Managing Officer on 22nd September, 1961, was never pronounced. It appears that in the mean time some other similar cases were sent up to the Chief Settlement Commissioner for setting aside the allotments in those cases and that the Chief Settlement Commissioner had directed in those cases that the allottees should be given an option to pay up the difference of the price and the case should be submitted to the Chief Settlement Commissioner for cancellation of the allotment only if the allottee failed or refused to pay up the difference. This appears to have been treated by the Managing Officer as a general direction for all cases. The direction appears to have been interpreted by the Managing Officer to be that no inquiry was necessary into the objections against the revaluation. Therefore, the Managing Officer submitted a report, dated 8th January, 1962, to the Chief Settlement Commissioner. It reads as follows:—

> "In other cases of Shri Kundan Lal, Kharaiti Lal, etc., sent to C.S.C., for setting aside P/rights of the houses allotted to them of the value of more than Rs. 20,000 he directed that before sending the same to him the choice of the allottee for not paying the difference of valuation between the one fixed by the Valuation Committee be obtained and if the allottee refused to pay the difference then the case referred to him. As such fresh notice for the purpose be issued and allottee directed to appear on 22nd January, 1962."

From the above order it appears that the direction of the Chief Settlement Commissioner referred to therein was

taken by the Managing Officer to exonerate him from the responsibility of deciding the objections of the petitioner on merits. He appears to have thought that all that was necessary was to give the allottee a chance to make up the difference and that on his failure to do so the Managing Officer had to send up the case to the Chief Settlement Commissioner for cancellation of the permanent allotment. Accordingly notice, dated January 16, 1962 was issued to the petitioner to attend before the Managing Officer on January 22, 1962 and to state as to whether he was willing to pay the difference of Rs. 17,884 between the value fixed by the Valuation Committee and that originally entered in the *sikni* register. It was added to the above-said notice that failure of attendance of the petitioner would be considered as his willingness for cancellation of the transfer of the house in question. Thereafter the petitioner obtained various adjournments on different grounds. But the fact remains that he did not offer to pay up the difference between the figures of the two valuations. It was in the above circumstances that the Managing Officer (Rehabilitation), Jullundur, made a report, dated March 20, 1962, to the Chief Settlement Commissioner in this case. In the report it is stated that Shri B. S. Grewal, Financial Commissioner, (Rehabilitation)-cum-Chief Settlement Commissioner, Punjab, on a complaint about the irregular allotment of houses in Basti Sukhera and Jammu (Abohar) visited Abohar, heard the parties and passed order, dated May 10, 1958 in which he observed that the valuation of the houses in the villages in question had been done in an improper manner under influence of interested parties without obtaining technical advice. Mr. Grewal had also observed that some of the allottees had obtained more than one house. He had proceeded to cancel the permanent rights of those persons and had directed that allotment should be made in accordance with the relevant rules after a proper valuation of the properties with the assistance of the Executive Engineer, P.W.D. (B. & R.). The report proceeded to state that some of the allottees went up in revision under section 33 of the Act to the Central Government against the aforesaid order of Shri B. S. Grewal and that the Government of India found force in the revision petition and set aside the wholesale orders of Shri Grewal and directed that the cases may be examined individually. Thereupon, continued the Managing Officer in his report, the value of the house in dispute had been reassessed by the Valuation

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Committee. Without referring to the objections filed by the petitioner against the revaluation, the Managing Officer then proceeded to state, that a notice was issued to Karam Chand, petitioner, to pay up the difference but the petitioner had failed to make the payment. The Managing Officer further reported that evidence of actual fraud or misrepresentation by an allottee was not necessary and that the department had already allowed a rebate of 20 per cent over the present value in order to obtain the value of the property at the time of its allotment. The Managing Officer then added that the additions and alterations had not been substantiated and in any case the same had been carried out without the permission of the department and, therefore, no deduction was allowed on that account from the assessment made by the Committee. The Managing Officer ultimately recommended in his note that since the petitioner had not offered to pay the difference, there was no alternative but to submit the case to the Chief Settlement Commissioner for cancellation of permanent rights on the solitary ground that the allottee had not agreed to pay the difference between the value assessed by the Committee and the one originally entered in the register.

When the case reached the Chief Settlement Commissioner, the counsel for the petitioner urged before him that the price fixed by the Committee had not been correctly assessed. This contention of the counsel for the petitioner was disposed of by Shri J. M. Tandon, Chief Settlement Commissioner, Jullundur, in his order, dated 12th May, 1962 in the following words:—

> "I am afraid this contention cannot be accepted because it had already been decided that the prices assessed originally were wrong and they were got reassessed by a valuation committee."

The reference to the previous decision is to some *ex parte* decision arrived at behind the back of the petitioner.

The order shows that it was then argued on behalf of the petitioner that the decision of the valuation committee on its merits was wrong and that the Chief Settlement Commissioner did not allow this contention to be developed and repelled it by the following observations:—

> "I am afraid this contention has also no force because the Committee which has assessed the value

> consisted of officials, techincal and non-official members and I see no justification to hold that the price assessed by the Committee is wrong."

The Chief Settlement Commissioner held in his said orders (copy annexure B to the writ petition) that the price of the house had been wrongly assessed at Rs. 12,000 and that thereafter a committee for the purpose of evaluation of the houses in Abohar was set up who had reassessed the gross value at Rs. 37,355 and net value (after allowing 20 per cent deduction) at Rs. 29,884. The impugned order then proceeds as follows:—

> "Since the departmental instructions provide that in such cases unless the allottee pays the difference in price, he cannot retain the house allotted, I accept this reference and set aside the permanent rights acquired by Shri Karam Chand with respect to house No. 70 allotted in his name in village Basti Sukhera (Abohar)."

It is significant that no allegation or finding of any fraud or misrepresentation of any kind against the petitioner was made in the order of the Chief Settlement Commissioner.

Against the above-said order of the Chief Settlement Commissioner the petitioner went up in revision to the Central Government under section 33 of the Act. Copy of the revision petition is annexure C to the writ petition. In the said revision petition it was first stated that the house in question having gone out of the compensation pool in 1956 by its permanent transfer to the petitioner, the Rehabilitation Authorities had no jurisdiction to set aside the permanent transfer unless the petitioner was proved to have practised some fraud or misrepresentation on the department and that no fraud or misrepresentation had in this case been either alleged or proved against the petitioner. The second ground of attack in the revision petition was that the revaluation had been done behind the back of the petitioner without giving him any opportunity of being heard and that this was contrary to the principles of natural justice. The third main contention in the revision petition was that the Committee had evaluated the property as it stood on the date of revaluation by ignoring the

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cost incurred by the petitioner on improvements, additions and alterations. The last main argument in the revision petition was that allowing a rebate of 20 per cent over the 1959 price in order to reach the 1947-48 value of the property was fallacious as the value of land alone in the area had gone up from Rs. 2 per square yard in 1948 to Rs. 9 per square yard in 1959. Various faults were found with the merits of the revaluation report. It was significantly mentioned that the non-official members of the Committee for revaluation had protested and given a dissenting note against the revaluation of the site. This revision petition of Karam Chand was dismissed by the Central Government without hearing the petitioner and the dismissal was communicated to the petitioner by the Under-Secretary to the Government of India by his letter, dated 30th July, 1962 (annexure D).

When this writ petition for quashing the above-said revaluation proceedings and orders of the Chief Settlement Commissioner and the Central Government came up for hearing before my learned brother, Dua, J., on October 22, 1965, it was observed by my learned brother that this is eminently a fit case which should be disposed of by a larger Bench and, therefore, directed that the papers of this case may be laid before the learned Chief Justice for passing suitable orders under clause (xx) read with proviso (b) of Rule 1, Chapter 3-B of the High Court Rules and Orders, Volume V. That is how this case has come up before us in Division Bench.

In the written statement of the Chief Settlement Commissioner, dated nil, supported by an affidavit of Shri J. M. Tandon, dated nil, it is stated that the original value of Rs. 12,000 had been "wrongly assessed by the Patwari most probably with the connivance of the petitioner. In the rejoinder to that written statement filed by the petitioner it was stated that this house along with all other houses in the village in question had not been valued by the Patwari at all but had originally been valued by the Naib-Tehsildar at the spot with the help of a powerful and independent non-official body consisting of Shri Chandi Ram Verma, M.L.A., Rai Sahib L. Kundan Lal Ahuja, President, Municipal Committee, Abohar (now M.L.C.), Bedi Gurbakhash Singh and Shri Basheshar Nath and that the house in question had been correctly valued Rs. 12,000. In the said rejoinder the petitioner further emphasised the

fact that he (the petitioner) had no say at all in the original valuation. In reply to the rejoinder a counter-affidavit of Shri J. M. Tandon, Chief Settlement Commissioner, dated nil, has been filed in this Court. In connection with the above matter it has been stated on behalf of the Rehabilitation authorities in the counter-affidavit that "it is immaterial whether the value of the house was assessed by the Patwari or the Naib-Tehsildar" but in any case it is "a fact that the field staff was influenced by the members of the so-called powerful and independent non-official body consisting of Shri Chandi Ram Verma, M.L.A., Rai Sahib Kundan Lal Ahuja, President, Municipal Committee, Abohar, Bedi Gurbakhash Singh and Shri Bisheshar Nath....".

It is, therefore, apparent from the above-mentioned pleadings of the parties in this case before us that even according to the return made to the rule issued in this case there is no allegation of the petitioner having been associated in the fixation of the original price or having ever made any misrepresentation or committed any fraud in connection with the value of the house in dispute being fixed at Rs. 12,000. On the other hand it is difficult to congratulate the Rehabilitation Department and its concerned officers on the shifting stand which they have taken in their above-mentioned pleadings in this behalf.

Regarding the grant of any opportunity to the petitioner at the time of revaluing the house it is pleaded in para 11 (iii) of the written statement of the Rehabilitation authorities as below:—

> "There was thus no question of any notice to the petitioner who had been represented in the Committee by the non-official members."

In reply to this allegation it has been sworn by the petitioner in his rejoinder that the non-official members never agreed to the valuation of the house which is now being sought to be enforced and that they had in fact put their own dissenting note in writing, a fact which could be verified from the record if the proceedings of the valuation committee were brought before the Court. As stated above, the revaluation proceedings have not been produced before us.

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Nor can it really be argued by the respondents that the non-official members associated on the valuation committee could be treated as representatives of the petitioner who was not even aware at that stage of the revaluation proceedings.

Regarding the point of time in respect of which the property has been revalued it is clearly admitted in the written statement of the Chief Settlement Commissioner that the value of the house in dispute has been assessed as it stood in the year 1959 but that 20 per cent depreciation has been allowed on that value.

Adverting to the claim of the petitioner for reducing the present value of the property by the amount spent by the petitioner on the house in dispute in making additions, alterations and improvements therein the Chief Settlement Commissioner has stated as follows:—

> "The investment to the extent of Rs. 14,000 alleged to have been made by the petitioner on the improvement of the house is denied."

It is significant that the department's estimate of the amount spent by the petitioner on the improvements, etc., in question has not been disclosed to the Court in the written statement though it appears to be Rs. 12,300 according to the departmental record referred to above. The above-quoted answer of the respondent to the relevant allegation of the petitioner can also imply that the amount spent by the petitioner on the improvements, etc., was less than Rs. 14,000.

In fairness to the learned Advocate General it must be recorded that at the very outset of the hearing he fairly and frankly conceded that in view of the fact that the revaluation had been done behind the back of the petitioner and without any notice to him and that even subsequently an opportunity had been denied to the petitioner to have the same checked up in his presence or to rebut the material on which the revised value had been fixed, the petitioner was entitled to succeed and to have the impugned order set aside because of our judgment in *Balwant Singh and others* v. *Deputy Chief Settlement Commissioner and others* (1). In that case we held as follows:—

> "We, however, want to make it clearly that we may not be understood to hold that in every case of

(1) I.L.R. (1965) 2 Punj. 785=1965 Current Law Journal (Pb.) 655.

fixation of value under rule 34-B of the Compensation Rules, it is necessary for the statutory authority to call the occupant at the initial stage in the very first instance before fixing the value. It would be open to the authority concerned to call the occupant if he has already been found to be eligible for allotment under rule 34-C or to fix the value without calling him and to intimate the same to the lessee. If, however, the lessee feels aggrieved by the *ex-parte* fixation of value and questions or impugns the same before the same authority in appropriate proceedings or in an appeal against such an order, it would not be open to the authority concerned to refuse to the aggrieved party an adequate opportunity to show cause against such *ex-parte* fixation of value. The nature of the opportunity to be given will depend upon the circumstances of each case. But the principles of natural justice would not be satisfied if the aggrieved party is not allowed to rebut the evidence on which the *ex-parte* value has been fixed and/or is not allowed to lead his own evidence to show what the correct or the proper value should be. The aggrieved party should certainly be entitled to know the evidence on which the *ex-parte* value has been fixed in order to be able to rebut it."

The instant case is somewhat stronger than *Balwant Singh's case*. In this case the house in dispute had been permanently transferred to the petitioner. An attempt to revalue it at a higher price was really in the nature of attempting to deprive the petitioner of the property which had otherwise vested in him absolutely. That such proceeding should have been initiated and concluded without notice to the petitioner is not consistent with the principles of natural justice. In any case the refusal of the Chief Settlement Commissioner to allow the petitioner to show that the revaluation was wrong is directly opposed to the law laid down in *Balwant Singh's case*. It was on this account that Shri J. N. Kaushal, the learned Advocate-General, conceded that in either case this writ petition had to be allowed and the impugned order set aside. In view of the fact that this case has been referred to a Division Bench to decide the larger and more important general

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questions arising in this context we decided to hear the learned counsel for the parties at length on the scope of the powers of the Rehabilitation authorities in this respect though it was possible to dispose of this case on the short ground mentioned above.

Before dealing with the said larger question it may also be noticed that it was not disputed before us that the relevant date on which the value of the property has to be taken into account for the purposes of transfer of the urban agricultural house is the date of the original allotment of the house and not the date on which its value is fixed. That being so, it should be a question of fact in each case to be decided in a proper manner and it appears to be wholly unsatisfactory way of dealing with things to allow a general rebate of 20 per cent over the value fixed at any time of any property in any circumstances so as to arrive at its market value in 1947-48 or on the date of its allotment to the particular person which date is bound to vary from case to case.

It is also noteworthy that in the matter of revaluation of property the cost incurred by a person in improving it or adding to it must be excluded even though the improvements or additions are made without the sanction of the Rehabilitation authorities or the municipal authorities. An allottee is not to be punished for making improvements particularly after permanent rights of ownership in the property have passed to him. Whether he did it with or without the permission of the authorities is wholly irrelevant for the purpose of finding out the actual value of the property on the date of its allotment prior to those additions or alterations.

One more point raised by the petitioner has to be dealt with before coming to the general question. It was argued by Mr. Wasu, the learned counsel for the petitioner, that even if the property could be revalued in the circumstances of this case and even if its value determined on a subsequent date was found to be higher than the original value there was no question of the allottee being charged with or being asked to pay the difference between the original value and the revised value up to a maximum sum of Rs. 20,000. The argument is that the allottee would be entitled to get the house free if its market value on the relevant date was less than Rs. 20,000. According to the petitioner, therefore, if the value of the house is found to

be Rs. 29,884 and even if it is found that the petitioner can be compelled to pay this amount on the pain of having his allotment cancelled he cannot be asked to pay more than Rs. 9,884, i.e., the amount in excess of Rs. 20,000 up to which he is entitled to acquire the house free of the cost as a mere appendage to the relevant allotment of agricultural land. We find great force in this contention.

The general question on account of which this reference to a larger Bench appears to have been necessitated and which is certainly a very important question likely to arise in a large number of cases is about the circumstances in which the Rehabilitation authorities can claim from a transferee of property from the compensation pool some amount on the allegation that the original valuation of the property fixed by their officers was erroneous or to proceed to cancel the transfer on the solitary ground that the authorities now think to be the correct value of such allottee is not prepared to pay what the Rehabilitation in respect of which permanent rights have once been transferred to the allottee on the basis of the original value.

Before endeavouring to answer the above question we must notice the relevant law which has already been settled in respect of such analogous matters. Section 19 of the Act gives the Managing Officer power to vary or cancel leases or allotments of any property acquired under the Act notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under the Act. Rule 102 authorises the Managing Officer to cancel an allotment or terminate a lease of any property in the compensation pool entrusted to him on various grounds set out in that rule. This case does not admittedly fall in clauses (a) to (c) of rule 102. Clause (d) of that rule authorises the cancellation of an allotment or termination of a lease "for any other sufficient reason to be recorded in writing". The proviso to that rule prohibits any action being taken thereunder without giving a reasonable opportunity of being heard to the allottee or lessee likely to be affected by the proposed order.

In *Bara Singh* v. *Joginder Singh and others* (2), it was held that the Chief Settlement Commissioner can at any

(2) I.L.R. 1959 Punj. 557=1959 P.L.R. 127.

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time reverse an order of the Managing Officer authorising the grant of proprietary rights even after a sanad had been granted to the claimant. 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. It was not necessary in that case to set out the circumstances in which such power could be exercised by the Chief Settlement Commissioner. It is conceded in this case that on the record before us no allegation of fraud or misrepresentation against the petitioner is made out. Admittedly the case does not, therefore, fall within the purview of section 24(2) of the Act. It has, however, been authoritatively held by a Full Bench of this Court in *Balwant Kaur* v. *Chief Settlement Commissioner (Lands), Punjab* (3) (per Mahajan and Pandit, JJ.), that the powers given to the Chief Settlement Commissioner under sub-section (2) of section 24 are not any way restrictive of his powers under sub-section (1), but are on the other hand merely illustrative. Whereas sub-section (2) applies to cases of fraud, false representation or conceelment of material facts, no such restriction is laid down by sub-section (1) of section 24 under which any orders of the authorities named therein can be set aside or varied by the Chief Settlement Commissioner on the ground that the same are either not legal or not proper. There was some difference of opinion about the correctness of the Division Bench judgment of this Court in *Bara Singh's case,* but the same was set at rest by the above-said Full Bench judgment in *Balwant Kaur's case.* The dictum of the Full Bench has since been approved by their Lordships of the Supreme Court in *Mithoo Shahani and others,* v. *The Union of India and others* (4). In that case it was held that the view of this Court about the title acquired under an order of allotment falling with the setting aside of the said order as expressed by the Full Bench in *Balwant Kaur's case* was correct. In this connection their Lordships of the Supreme Court held as below:—

> "It is manifest that sanad can be lawfully issued only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made is set aside, it would follow, and

(3) I.L.R. (1964)1 Punj. 36(F.B.)=1963 P.L.R. 1141.
(4) 1964 P.L.R 695.

the conclusion is inescapable, that the grant cannot survive, because in order that that grant should be valid, it should have been effected by a competent officer under a valid order. If the validity of that order is effectively put an end to, it would be impossible to maintain unless there were any express provision in the Act or in the rules that the grant still stands".

Regarding the meaning and scope of the expression "at any time" as contained in section 24(1) of the Act it was observed in the Full Bench judgment of this Court in *Balwant Kaur's case* as follows:—

"Section 24 of the Act says that the Chief Settlement Commissioner "may at any time call for the record of any proceeding under this Act, * * * and may pass such order in relation thereto as he thinks fit." What is the meaning of the words "at any time" occurring in this section, that is to say, within what time limit can the Chief Settlement Commissioner exercise his revisional powers either *suo moto* or on the application of an aggrieved party? Rule 104 ..... It is difficult to lay down any hard and fast rule in this connection. It will depend on the facts of each particular case as to whether there are grounds for entertaining the revision after the period of limitation prescribed in the rules. However, the Chief Settlement Commissioner *suo moto* can interfere with the orders of his subordinates and no limitation is prescribed for that either in the rules or in the statute, but it is understood that he would interfere within a reasonable time depending on the circumstances of each case. It is assumed that he would exercise his discretion in a reasonable manner and not arbitrarily."

On the other hand the learned Advocate-General has invited our attention to the judgment of the Supreme Court in *Purshotam Lal Dhawan* v. *Diwan Chaman Lal and another* (5), where it was laid down in connection with the use of the same expression (at any time) in section 27 of

(5) A.I.R. 1961 S.C. 1371.

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the Administration of Evacuee Property Act, 30 of 1950 that the power of the Custodian-General is uncontrolled by any time factor, but only by the scope of the Act within which he functions.

In *Chahat Khan and others* v. *The State of Punjab and others* (6), a Full Bench of five Judges of this Court (Khanna, J. dissenting) held in connection with the import and scope of the expression "at any time" used in section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, that absolute indefiniteness in point of time for exercising the power under the section could not reasonably have been intended by the Legislature to be available to the authorities under the Act. My learned brother, Dua, J., who was a party to the majority judgment in *Chahat Khan's case,* observed in this connection as follows:—

> "I was otherwise firmly of the view that the expression 'at any time' as used in section 36 called for some limitation in point of time, the widest amplitude of the expression notwithstanding. I expressed myself in unequivocal terms that "to concede to the Settlement Officer the power of varying or revoking the scheme 'at any time' without any limitation seems to me to be more objectionable, and such a construction may perhaps expose this provision to a more serious constitutional challenge, for it would clearly expose the title to the holding to a permanent uncertainty, a result not in accord with the fundamentals of our Republican jurisprudence and, therefore, not readily agreeable to our instincts." I added that the expression "at any time" used in section 36 calls for a construction in the light of the constitutional guarantees and not on bold literalness. Nothing has been urged at the bar on the present occasion which has persuaded me to change my approach to the problem and the alignment of my judicial vision in the search for the legislative intent."

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(6) I.L.R. (1966)1 Punj. 514.

The perspective in which an expression of this type should be interpreted has been best put by my learned brother in *Chahat Khan's case* in the following words:—

> "Aim, object and scope of the statute read in its entirety and in the background of our constitutional set-up, must always be kept in view in construing the words requiring interpretation, because indisputably they get colour and content from these factors. The constitutional policy may, in my opinion, appropriately provide a very valuable aid in fixing legitimate boundaries of statutory meaning. To quote from Maxwell on Interpretation of Statutes (Eleventh Edition, pp. 16-17. 'It is an elementary rule that a thing which is within the letter of a statute will, generally, be construed as not within the statute unless it be also within the real intention of the legislature, and the words, if sufficiently flexible, must be construed in the sense which, if less correct grammatically, is more in harmony with that intention.' The use of the expression 'at any time" in section 36 of the Act, therefore, cannot be considered to be conclusive on its bald literalness."

Coming to the scope, objects and scheme of the Displaced Persons (Compensation and Rehabilitation) Act it is obvious that the purpose of that legislation was to provide for the payment of compensation, etc., to the displaced persons and for matters connected therewith. According to the scheme of the Act acquired evacuee property in the compensation pool has to be disposed of either by transfer to certain class of displaced persons or by sale. A transferee of such property from the Central Government becomes its absolute owner. It could not possibly be intended by the Parliament that the title of such an owner of immovable property should be constantly in jeopardy for an indefinite time particularly when no fault of any kind is ascribed to him in obtaining the property in question. It is no doubt true that power is vested in the Chief Settlement Commissioner by section 24(1) of the Act—to set aside or vary any order passed by any of the authorities named in that sub-section at any time if the Chief Settlement Commissioner is not satisfied about the legality or

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propriety of such order. What has been changed in the instant case is the value of the house in dispute, which had been fixed by the first committee. It is neither shown nor stated by anyone that the original value had been fixed by any of the authorities named in section 24(1) of the Act. The order of the Managing Officer transferring the house in dispute to the petitioner was a mere consequential order based on the original valuation. Admittedly no illegality or impropriety has been found in the order of the Managing Officer transferring the property to the petitioner. It is the valuation on which the order was based which has been interfered with. That could not be done under section 24(1). Nor has the valuation been changed by the Chief Settlement Commissioner. No other authority can interfere under the above-said provision of law. Coming back, however, to the question of the meaning of the expression "at any time" in section 24(1) of the Act I am firmly of the view that the phrase does not authorise the Chief Settlement Commissioner to interfere with a completed deal after any length of time implying absolute indefiniteness. "At any time" in this section certainly means:—

(i) at any time so long as the property in respect of which the order is sought to be passed continues to be in the compensation pool;

(ii) at any time thereafter if the person sought to be affected by the revised order is found to have been a party to the original order which would not have been the same if the party in question had not acted in a certain way; and

(iii) at any time in other suitable cases provided it is within a resonable time which would depend on the peculiar facts and circumstances of each case.

I am further of the view that if the Chief Settlement Commissioner exercises his jurisdiction under section 24(1) of the Act after a long time or after undue delay, he must deal in his order with the question of delay so as to make it obvious that the delay is not undue and could not be avoided in the circumstances of the case and also to show that it is necessary in the interest of justice that interference should be made in the previous order even after lapse of so much time. Any order under section 24(1) of the Act passed after undue delay or after the lapse of

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several years of the passing of the property (in respect of which the order is passed) out of the compensation pool may possibly be liable to be struck down on the ground that it is opposed to the rule of law to the effect that quasi-judicial orders should not be lightly interfered with after they have once achieved finality merely because the Chief Settlement Commissioner thinks that the original order was not as good as it should have been. The fact that according to the opinion of a particular officer the value of certain property was fixed too low or too high before the property was transferred would not normally be a matter to be interfered with long after the absolute transfer of the property under section 24(1) of the Act because mere wrong valuation not based on any fraud or misrepresentation of the party benefited by the error is not intended to amount to illegality or impropriety within the meaning ascribed to those terms in that section.

On the facts of this case the interference with the original valuation after 9 or 10 years does not appear to be justified and appears to be outside the scope of section 24(1) of the Act.

I have, therefore, no hesitation in accepting this writ petition and in setting aside the impugned orders of the Chief Settlement Commissioner and of the Central Government setting aside the transfer of the house in dispute to the petitioner or claiming any amount whatever from him in respect of the house in dispute on the basis of the revised valuation. As the petitioner has been harassed and vexed by the respondents without any fault of his and against the spirit and intention of the relevant provisions of the Act after the absolute transfer of the title of the property in question to him, the respondent shall pay his costs of this case.

Dua, J.

INDER DEV DUA, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

SHER SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2046 of 1963

1966

January 28th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 21, 42 and 46—Petition under S. 42—Whether competent if remedies provided in S. 21(2), (3) and (4) not followed—East Punjab Holdings (Consolidation and Prevention of