that is in favour of the assessee and against the revenue. What was received by the assessee on partition was part of the ancestral property which did not cease to be HUF property and on the birth of a daughter subsequently, the assessee constituted a HUF qua the property received in partition. Qua this property his status reverted back to that of HUF and the income received from this property could not be assessed in his hands as an individual but the same was to be assessed in the status of HUF consisting of himself and his daughter. In the light of the above observations, the assessee's income from divided, interest from banks and annuity refunds could not be subjected to tax as individual in his hands. Question No. 2 is also answered in the affirmative that is in favour of the assessee and against the revenue. No costs.

S.C.K.

Before G.S. Singhvi and M.L. Singhal, JJ

UTTAM SINGH AND OTHERS,—*Appellants*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

LRA No. 85 OF 1989

19th August, 1997

Land Acquisition Act, 1894-S.11—Award by agreement—collector can pass award in terms of agreement only if signed by all parties who appeared before him and agree in writing—Settlement signed by Principal Secretary to C.M. and five others cannot be treated to be agreement signed by all persons interested in the land.

Held, that, the argument advanced by the learned counsel for the appellants in the context of Section 11(2) of the Land Acquisition Act is clearly misconceived. That section begins with non-obstante clause qua s.11(1) and lays down that if the collector is satisfied that all the persons interested in the land, who appear before him have agreed in writing on the matters to be included in the award of the collector in the form prescribed, then the Collector may make an award in accordance with the terms of such agreement without making further enquiry. On a plain reading of Section 11(2), it becomes clear that the Collector can pass an award in terms of the agreement only if all the parties, who had appear before him agree in writing on the matters to be included in the award. The so-called settlement which has been signed by the Principal Secretary to the Chief Minister and five other persons cannot be treated as an agreement entered into by all the persons interested in the land.

(Para 17)

Constitution of India, 1950-Arts.166(2)(3)-Rules of Business-Principal Secretary not authorised to act on behalf of Government of Punjab-Settlement not approved from the Council of Ministers-No sanctity in the eyes of law-Settled principle that any decision by Chief Minister cannot be treated as decision of Government unless it is translated into order in accordance with

rules of business in the name of the Governor.

Held, that the Rules of Business shows that no authority has been given to the Principal Secretary to the Chief Minister to sign any order or instrument which is required to be issued in the name of the Governor of Punjab. Thus, the Principal Secretary to the Chief Minister was not authorised to act on behalf of the government of Punjab. Therefore, even if the then Chief Minister had directed him to append his signatures on the so-called settlement dated 27th April, 1986, the Court cannot treat it as an authorisation on behalf of the Govenor of Punjab. Above all, the so-called settlement was not got approved from the Council of Ministers. Therefore, the same has no sanctity in the eye of law and in our opinion, the learned single Judge did not commit any legal error when he refused to recognise such settlement for granting relief to the appellants under article 226 of the Constitution of India.

(Para 8)

Further held, that it must, therefore, be treated as a settled principle of law that a decision taken by the Chief Minister/Minister-incharge of the Secretary concerned or any other authority cannot be treated a decision of the Government unless the same is translated into an order in accordance with the Rules of Business drawn in the name of the Governor.

(Para 12)

R.L. Sharma and Shri Rajesh Garg, Advocates, *for the appellants.*

G.S. Grewal, Advocate General and Rupinder Khosla, Deputy Advocate General Punjab, *for the respondents.*

JUDGMENT

G. S. Singhvi, J.

(1) The only and the all important question which requires adjudication in these appeals is whether an agreement arrived at between a group of persons and the Chief Minister of a State can be enforced by issuance of a writ under Article 226 of the Constitution of India.

(2) Shortly stated, the facts necessary for deciding the above mentioned question are that in the year 1982 the Government of Punjab acquired land falling in different districts including District Ropar for construction of SYL Canal Project (Punjab). The land belonging to the appellants is covered by that acquisition. After the passing of award by the Land Acquisition Collector, the possession of the land was taken by the respondents. The appellants filed reference applications under Section 18 of the Land Acquisition Act, 1894 (for short, 'the Act'). While deciding such applications, the District Judge, Ropar enhanced the amount of compensation. Feeling dis-satisfied with the enhancement ordered by the District Judge, the appellants or atleast some of them filed Regular First Appeals, which were pending on the date of the filing of the writ petitions under Article 226 of the Constitution.

(3) Even though their appeals for further enhancement of the

compensation were pending before the learned Single Judge, the appellants filed writ petitions for directing the respondents to implement the alleged settlement arrived at beween the State Government and Action Committee of Satluj Yamuna Link Canal on 27th April, 1986. A learned Single Judge dismissed 15 such petitions by a common order dated 6th October, 1988.

(4) Shri R.L. Sharma and Shri Rajesh Garg argued that the order of the learned Single Judge is erroneous in law because various points urged on behalf of the appellants have not been dealt with and also because the learned Single Judge failed to appreciate the appellants' case that a valuable right came to vest in them by virtue of the settlement dated 27th April, 1986 arrived at between the Chief Minister of the State and the members of the SYL Action Committee. They argued that the settlement which was signed by the Principal Secretary to the Chief Minister representing the Government of Punjab must be treated as an agreement within the meaning of Section 11(2) of 'the Act' and the same can be enforced by issuance of an appropriate writ. Shri Sharma further submitted that the settlement dated 27th April, 1986 has already been acted upon by the Land Acquisition Collector while passing awards in favour of other land owners and there does not exist any reason why similar benefits should not be given to the appellants. Shri Sharma submitted that a welfare State cannot discriminate between similarly situated persons while awarding compensation in land acquisition proceedings. He relied on the following decisions:—

(1) The Union of India and others *v.* M/s Anglo Afghan Agencies etc. (1).

(2) Bhag Singh *v.* Union Territory of Chandigarh (2)

(3) Ram Mehar *v.* Union of India (3)

Shri Sharma further argued that giving of award under the Act is an Administrative Act and, therefore, the Land Acquisition Collector could review/revise the award given in favour of the appellants. According to the learned counsel, the failure of the Land Acquisition Collector to revise the awards passed in the cases of the appellants is also discriminatory because in the cases of similarly situated other land owners, the awards were revised and higher compensation was granted. Learned Advocate General controverted the arguments cannot seek enforcement of the so-called settlement/agreement because the same can neither be treated an order passed by the Governor nor can it be treated as an agreement for the purpose of Section 11(2) of the Act. Shri Grewal pointed out that the possession of the land belonging to the appellants had been taken prior to the signing of the so-called settlement. He submitted that the appellants cannot derive any benefit fromthe so-called setlement because the government had not taken

(1) AIR 1968 SC 718
(2) AIR 1985 SC 1576
(3) AIR 1987 Delhi 130

any decision to give effect to the same. Learned Advocate General also opposed the appellants' plea regarding discrimination and urged that they are not entitled to claim parity with other land owners qua whom the awards had not been announced till 27th April, 1986. In the last, Shri Grewal argued that the writ jurisdiction should not be exercised in favour of the appellants because the appeals filed by them for enhancement of the compensation are pending before this Court.

(5) A bare perusal of Annexure P2 which has been described as Memorandum of Settlement reached between the Punjab Government and the SYL Action Morcha Committee shows that it has been singed by the Principal Secretary to the Chief Minister and five persons, who described themselves as Chairman and members of the Action Committee. The relevant extracts of the settlement are reproduced below for reference purposes:—

"The following understanding was arrived at in order to resolve the controversy over the construction of SYL canal:—

1. Irrigated land to be acquired at not less than Rs. one lac per acre.
2. Services to be given for one person each affected family or a Mini Bus Route or gainful employment.
3. Full compensation will be given for the houses, trees, underground pipelines on the acquired land.
4. The land that falls within the two canals would also be acquired if the owner so desired.
5. Full compensation for standing crops of to be given.
6. 20 plots at Mohali will be given at reserve price to the affected persons in consultation with the Action Committee. Plots available at Morinda Grain Market will be offered to the affected families on priority basis.
7. Electricity connections on priority basis will be given to the affected persons.
8. Payment of compensation to be made in one instalment.

The Committee agrees to undertake that no obstruction will be made in the construction of the SYL Canal."

(6) There is no dispute between the parties that the so-called settlement has not been signed either by the Chief Minister or by the Ministers in-Charge and/or by the Secretaries of the concerned departments. It has also not been shown that the settlement has been accepted and approved by the Council of Ministers nor any other order has been issued in accordance with Rule 8 of the Rules of Business. It has also not been shown that the Principal Secretary to the Chief Minister was authorised to act on behalf of the Government. Therefore, it is not possible to accept the submission of the learned counsel that a valuable right has been created in favour of the appellants and such

right can be enforced by issuing a writ under Article 226 of the Constitution.

(7) For smooth transaction of business in various government departments, the Governor of Punjab has enacted the Rules of Business from time to time. Before the commencement of the Constitution of India such rules were enacted in 1947 under the Government of India Act, 1935. After 26th January, 1950 i.e. the date of enforcement of the Constitituion, Rules of Business have been framed in the years 1953, 1969, 1985, 1990 and 1992 under Article 166(2) and (3). As far as these appeals are concerned, the rules framed in the year 1985 are relevant. Rule 8 of these rules requires that all orders or instruments made or executed by or on behalf of the Government of the State of Punjab shall be expressed to be made or executed in the name of the Governor. Rule 9 lays down that every order or instrument of the Government of the State of Punjab shall be signed either by the Secretary or the Additional Secretary; a Joint Secretary, Deputy Secretary or an Under Secretary or such other officer as may be specially empowered by the Governor in that behalf and the signature so made shall deemed to be the proper authentication of such order or instrument. All documents relating to a reference to an arbitration or arbitration award are required to be authenticated on behalf of the Governor of Punjab by any of the officers specified in the notification dated 17th July, 1964. Rule 4 declares that the Council of Ministers shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with the rules whether such orders are authorised by an individual Minister on a matter pertaining to his port-folio or as a result of discussion at a meeting of the Council or howsoever otherwise. Rule 11 requires that all cases referred to in the Schedule shall be submitted to the Chief Minister after consideration by the Minister-in-charge. Rule 5 lays down that all cases referred to in the Schedule shall be brought before the Council in accordance with the provision of the rules contained in Part II of the rules. This is subject to the orders of the Chief Minister which he may make under Rule II. The matters in which the Finance Department is required to be consulted under Rule 7 can be discussed in the Council of Ministers only after the Finance Minister has an opportunity to consider the same. This rule can be deviated in exceptional circumstances and under the direction of the Chief Minister. Rule 6 declares that the Minister-in-charge of a department shall be primarily responsible for the disposal of the business pertaining to the department. Rule 7 requires the previous consultation with the Finance Department before any order of the nature specified in clauses (a) and (b) of Rule 7(1) can be issued. Rules 10 to 20 lay down the procedure of the Council. Rule 18 lays down that the cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge, who can issue Standing Orders for disposal of the cases. Rule 28 specifies the matters which are to be submitted to the Chief Minister before the issue of orders. Rule 31 requires that the Departmet of Finance shall be consulted on all proposals which affect the finance of the State and by virtue of Rule 32, the views of the Finance Department are required to be brought on the permanent record of the

department to which the case belongs and the same shall form part of the case.

(8) The aforestated survey of the Rules of Business shows that no authority has been given to the Principal Secretary to the Chief Minister to sign any order or instrument which is required to be issued in the name of the Governor of Punjab. Thus, the Principal Secretary to the Chief Minister was not authorised to act on behalf of the Government of Punjab. Therefore, even if the then Chief Minister had directed him to append his signatures on the so-called settlement dated 27th April, 1986, the court cannot treat it as an authorisation on behalf of the Governor of Punjab. Above all, the so-called settlement was not got approved from the council of Ministers. Therefore, the same has no sanctity in the eye of law and in our opinion, the learned Single Judge did not commit any legal error when he refused to recognise such settlement for granting relief to the petitioners/ appellants under Article 226 of the Constitution of India.

(9) *In Bachittar Singh versus State of Punjab* (4), one of the question which came to be decided by the Supreme Court was whether the order passed on the file by the Minister can be treated as an order of the Government. While dealing with the question, the Supreme Court made reference to the provisions of the Rules of Business and observed:—

"What we have now to consider is the effect of the note recorded by the Revenue Minister of Pepsu upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary.

xx xx xx xx xx

The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by cl(1) of Art. 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide, that the action must by taken by the

(4) AIR 1963 SC 395

authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be a regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advise is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the 'order' of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned."

(10) *In Kedar Nath Behl versus State of Punjab,* (5) the Apex Court was called upon to decide whether the order passed by the Chief Minister on the file could be treated as an order of the Government for expunging adverse remarks and for treating the appelant as confirmed. it was submitted by the appellant that on 13th February, 1958, the Chief Minister had expunged the adverse remarks and had also directed that he be confirmed in service. Their Lordships noticed that the order recorded on the file was not issued and on a re-consideration the Chief Minister agreed with the views of the Revenue Minister that the appellant may be reverted back to his parent department and observed:—

> "At any rate, the earlier order of the Chief Minister dated 13th October, 1988 cannot give rise to any right in favour of the appellant. It was not expressed in the name of the Governor as required by Article 166 of the Constitution and was not communicated to the appellant."

(11) *In Gulab Rao/Keshav Rao Patil and others versus State of Gujarat,* (6) a two-Judges Bench of the Supreme Court dealt with a case under the Land Acquisition Act, 1894. The contention arged on behalf of the appellant was that the letter written by the Sectional Officer of the Revenue Department on 12th July, 1993 should be treated as a decision of the Government not to proceed with the acquisition. While repelling the contention, the Supreme Court analysed the various precedents including the judgment referred herein above and then held:—

> "It would, thus, be clear that before an order or action can bind the Government, it must be drawn in the name of the Govenor as envisaged under Article 166(1) and (2) read with the Business

(5) AIR 1979 SC 220
(6) JT 1995(9) SC 12

Rules and must be communicated to be affected persons Until then, the action of the Government is not final."

(12) It must, therefore, be treated as settled principle of law that a decision taken by the Chief Minister/Minister-Incharge or the Secretary concerned or any other authority cannot be treated a decision of the Government unless the same is translated into an order in accordance with the Rules of Business drawn in the name of the Governor.

(13) In the present case, no order was issued in accordance with the Rule of Business for giving effect to the so-called settlement/agreement. Therefore, the same can neither be treated as binding on the Government nor can it be enforced by a Court of law.

(14) The matter can also be looked from another angle. Article 299 of the Constitution relates to the contracts made in the exercise of the executive power of the State. It lays down that all contracts made in the exercise of the executive power of the State shall be expressed to be made by the Governor of the State and all such contracts and assurances of property made in exercise of that power shall be executed on behalf of the Governor and by such person and in such manner as he may direct or authorise. Annexure P2 is not shown to have been made in the name of the governor nor has it been executed on behalf of the Governor by a person authorised by him. Therefore, we are unable to agree with the learned counsel for the appellant that the learned Single Judge has erred in declining their request for grant of relief under Article 226 of the Constittution.

(15) To us it appears that in order to difuse the situation created by the agitation of the land owner, the then Chief Minister held talks with the representatives of the Action Committee. Some agreement may have been arrived at between them which was reduced into writing in the form of Annexure P2 and which has been described as a settlement. However, it cannot be trated as a decision of the government having the sanction of law and, therefore, we cannot issued a writ directing the Government to act upon the same by granting compensation to the appellants at the rate of Rs. one lac per acre.

(16) There is one more reason why a direction for implementing Annexure P2 cannot be given at the instance of the appellants. Admittedly, in their case the acquisition proceedings were completed before the so-called settlement was signed by the Principal Secretary to the Chief Minister and the Chairman and the members of the Joint Action Committee, whereby it was decided that Rs. one lac per acre will be paid for the irrigated land to be acquired. Therefore, the appellants cannot derive any benefit from that settlement. Moreover, they were not the members of the Action Committee. The reason for this appears to be that the possession of the land belonging to the appellants had already been taken by the respondents. Above all, on the basis of the so-called settlement, the rights of other parties could not be determined. In a given case, the claimants may not feel satisfied with the award of compensation at the rate of Rs. one lac per acre. If we were to

declare that the terms of the so-called settlement are to be enforced *qua* all because the same are binding on the Government, then the rights of the third parties are likely to be prejudicially affected. That, in our opinion, cannot be done by the Court by issuing a writ under Article 226 of the Constitution.

(17) The argument advanced by the learned counsel for the appellants in the context of Section 11(2) of the Act is clearly misconceived. That Section begins with non-obstante Clause *qua* Section 11(1) and lays down that if the Collector is satisfied that all the persons interested in the land, who appear before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed, then the Collector may make an award in accordance with the terms of such agreement without making further enquiry. On a plain reading of Section 11(2), it becomes clear that the Collector can pass an award in terms of the agreement only if all the parties, who had appear before him agree in writing on the matters to be included in the award. The called settlement which has been signed by the Principal Secretary to the Chief Minister and five other persons cannot be treated as an agreement entered into by all the persons interested in the land. Moreover, only those matters can be included in the award which are relevant to the provision of the Act. Matters, like employment or one person from each affected family or grant of mini bus route permit or gainful employment of allotment of plots at Mohali are not the matters which can form part of an award. Therefore, it is not possible to accept the submission of Shri Sharma that Annexure P2 should be acted upon as an award of the Collector.

(18) The argument of the learned counsel regarding discrimination appears quite attractive in the first blush, but we are unable to agree with the learned counsel for the appellants that Land Acquisition Collector has discriminated their clients by not granting compensation at the rate of Rs. one lac per acre. The burden to *prima facie* establish the charge of discrimination or arbitrary exercise of power was on the appellants. It was for them to produce relevant material to show that in respect of identically situated lands, compensation at different rates has been awarded. this the appellants have failed to do. What to say of producing adequate material to discharge the burden which lay upon them the appellants have failed to produce the award passed in their own cases. Moreover, the award in their caes had been passed prior to the signing of the so-called settlement. Thus, we are unable to hold that the appellants have been discriminated. In any case, the appellants, if they are so advised are entitled to raise this plea in the appeals which they have filed for enhancement of compensation and which, according to the learned counsel for the appellants, are pending before this Court.

(19) For the reasons mentioned above, the appeals are dismissed. However, we make it clear that the dismissal of the appeals shall not in any manner prejudice the right of the appellants in the appeals which they have filed for enhancement of the compensation.

J.S.T