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SADHU SINGH (DECEASED) & ORS.

v.

UNION OF INDIA & ORS.

September 2, 1978

[JASWANT SINGH, R. S. PATHAK AND A. P. SEN, JJ.]

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Displaced Persons (Compensation and Rehabilitation Act 1954—S. 19—Land allotted to displaced person—Allotment cancelled without complying with provisions of the Act—Validity of.

The respondent, who was a displaced person from West Pakistan, was allotted certain land in India and was given its possession. At the time of consolidation of holdings in 1960 the Consolidation Officer included a part of this land comprising 13-odd acres in the area of the Custodian. The respondent's representations protesting against the action of the Consolidation Officer having failed at the different levels, the respondent moved the High Court under Art. 226 of the Constitution. The High Court set aside the impugned orders of the Consolidation Officer on the ground that they were wholly without jurisdiction and that the concerned officer was not authorised to allot to the appellant the land which was already comprised in a subsisting valid allotment made to the respondent.

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On the question whether the land in dispute which had already stood allotted in favour of the respondent could be allotted in favour of others without notice to the respondent and without affording an opportunity of being heard.

HELD : The respondent had succeeded in establishing that permanent proprietary allotment of the land in dispute was validly made in his favour. Therefore the respondent had enforceable right in respect of the land and it could not be allotted in favour of others. [1292F-G]

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Although in certain contingencies it would be open to the Managing Officer or the Managing Corporation to cancel the allotment under s. 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 read with Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules 1955, it cannot be done unless the allottee is given a reasonable opportunity of being heard. [1293F]

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In the instant case no action for cancellation of allotment was taken under the provisions of the Act and the Rules. The action of the Naib Tehsildar-cum-Managing Officer in allotting to the appellant the land which had already stood in the name of the respondent without complying with the relevant provisions of the Act was in flagrant violation of the provisions of the law. Therefore, the impugned orders were manifestly illegal, arbitrary and unjust and could not be sustained. [1293H]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2419 of 1968.

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From the Judgment and Order dated 25-9-67 of the Punjab and Haryana High Court in Civil Writ No. 1630/62.

A *S. K. Mehta, P. N. Puri, K. R. Nagaraja* and *G. Lal* for the Appellants.

K. L. Narula, District Attorney, Haryana, *R. B. Datar* and *Girish Chandra* for Respondent No 1.

B *E. C. Agarwala* for Respondent No. 14

(Rest of the Respondents *Ex-parte*)

The Judgment of the Court was delivered by

JASWANT SINGH, J.—The litigation culminating in the present appeal (by certificate under Article 133(1)(b) of the Constitution) which C is directed against the judgment and order dated September 25, 1967, of the Punjab and Haryana High Court in C.W.N. 1630 of 1962 setting aside the allotment dated May 23, 1960 made by Naib Tehsildar-cum-Managing Officer, Fatehabad, District Hissar in favour of Madan Mohan and others, and orders dated April 18, 1962 and July 21, 1962 of the Assistant Settlement Commissioner and Chief D Settlement Commissioner respectively on the finding that "no part of the holding which formed part of the land allotted to respondent No. 14, Mehta Lal Chand, (hereinafter referred to as 'the respondent') could, during the subsistence of such allotment and without its cancellation, be allotted to any one else" has had a very chequered career extending over well nigh two decades. It appears that the E respondent who is a displaced person from Pakistan was found entitled to an allotment of 113 standard acres and 3 units of land in lieu of 120 acres of land held by him as owner in Bhawalpur (Pakistan). Against the aforesaid entitlement, the respondent was allotted 90 standard acres and 6 units of evacuee land between 1953 and 1958 in different villages of Tehsil Fatehabad, District Hissar includ- F ing two areas measuring (1) 13 standard acres and 3½ units and (2) 13 standard acres and 13½ units in village Bahmniwala allotment of which was made on March 1, 1957 and October 10, 1958 respectively. Pursuant to the above allotment of 13 standard acres and 3½ units made in his favour in village Bahmniwala vide Sanad dated G March 6, 1957 (Annexure 'C' to the writ petition), the respondent was given possession of the plots of land comprised in khasra Nos. 1411 min, 1412 min, 1472 min, 1241 min, 1242, 1243, 1244, 1245, 1246, 1247, 1621, 1622 to 1635 (14 khasras), 1642, 1644, 1645 on June 17, 1957. The respondent continued to remain in possession of the aforesaid plots of land till Rabi 1960 when consolidation H of holdings were undertaken in village Bahmniwala. Without caring to look into the revenue record, the Consolidation Officer instead of showing the aforesaid allotted area in Bahmniwala in the name

of the respondent included the same in the kurrah (area) of the Custodian. On coming to know about this irregularity, the respondent filed objections before the Consolidation Officer and requested him to rectify the mistake. The Consolidation Officer by his order dated March 23, 1960 consigned the objection petition of the respondent to the record room observing that in the absence of the relevant record which, as per the report of the Wasal Baqi Nawis has been despatched to Jullundur for checking purposes, the factum of allotment cannot be verified and as it is necessary to take proceedings under section 21(2) of the Consolidation of Holdings Act in village Bahmniwala in this very month, the record cannot be awaited any further. The Consolidation Officer further observed that since it appeared from a perusal of the copy of the Sanad (allotment) that the entire kurrah consisted of almost evacuee land bearing khasra numbers mentioned in the Sanad of allotment, the respondent could, on the receipt of the record, get the area at the place where, according to him, the evacuee land mentioned by him in his application was situate. By his order dated May 23, 1960, the Naib Tehsildar-cum-Managing Officer, Fatehabad, however, made the following allotments out of an area of 58 standard acres and 7 units situate in Bahmniwala which included the khasra numbers already allotted to the respondent but which according to the Fard Fazla (statement of surplus area) prepared by the concerned Patwari appeared to be available for allotment :—

In favour of Bagga Singh, S/o Pokhar Singh :	5½ units
,, ,, ,, Inder Singh, S/o Mit Singh :	7 Standard acres 1½ unit
,, ,, ,, Madan Mohan Singh, S/o Puran Singh,	
,, ,, ,, Odin Singh and Hardumon Singh Sons of Madan Mohan Singh, Predecessor-in-interest of the appellants	20 Standerd acres 2 units

Aggrieved by this order of the Naib-Tehsildar-cum-Managing Officer which adversely affected the allotment already made in his favour, the respondent preferred an appeal to the Assistant Settlement Commissioner (with powers of Settlement Commissioner), Punjab, Jullundur contending that 13 standard acres and 3½ units of land in Bahmniwala allotted to him in 1957 had been erroneously included in the 'kurrah' of the Custodian at the time of the Consolidation operations and that the same had now been erroneously allotted without his knowledge to Bagga Singh, Inder Singh, Madan

A Mohan Singh and his sons. Curiously enough, the Assistant Settlement Commissioner (with powers of Settlement Commissioner) while conceding that the aforesaid 13 standard acres and 3½ units and 13 standard acres and 13½ units in village Bahmniwala were allotted in favour of the respondent on June 17, 1957 and October 10, 1958 respectively and that there was no cancellation order in respect B thereof and that the consolidation authorities should not have withdrawn the area from the name of the respondent who had through no fault of his been put to a lot of difficulty and that it was just and proper that the matter of allotment to which he was entitled be settled once for all in such a way that whole of the area is given to him C permanently in one village, rejected the appeal by his order dated April 18, 1962 observing that there was no good ground for interfering with the allotment of the appellants and that it would be open to the respondent to apply to the Naib Tehsildar-cum-Managing Officer to make up the shortfall in his area by allotment of some other land which may be available in that village. Dissatisfied with D the order of the Assistant Settlement Commissioner, the respondent took the matter in revision to the Deputy Secretary (Rehabilitation) exercising the powers of the Chief Settlement Commissioner who also after paying lip sympathy dismissed the revision on the ground that it was time barred. Aggrieved by these orders, the respondent moved the High Court of Punjab and Haryana by means of the afore- E said petition under Articles 226 and 227 of the Constitution. The High Court by its judgment and order dated September 25, 1962 set aside the aforesaid three impugned orders holding that they were wholly without jurisdiction and the Tehsildar-cum-Managing Officer was not authorised to allot to the appellants the land which was already comprised in a subsisting valid allotment of the respondent. It F is against this judgment and order of the High Court that the present appeal is directed.

On the appeal coming up before us on July 19, 1978, we heard counsel for the parties at considerable length and felt it necessary for clarification of certain points which had been left vague G in the courts below to have before us the entire record relating to the allotment made in favour of the respondent. Accordingly, with the consent of counsel for the parties, we adjourned the hearing of the case and directed the Union of Indian to instruct the Chief settlement Commissioner, State of Haryana, either to appear himself before us with all the relevant record relating not only to the allotment H originally made in favour of the respondent vide Sanad No. HS4/1957/11202 dated March 1, 1957 but also with the record pertaining to all the subsequent allotments made in his favour upto date or

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cause the appearance of a responsible officer with the aforesaid record. To obviate delay in disposal of the case, we also directed the Chief Settlement Commissioner to have in readiness a factual statement showing the net area in terms of standard acres to which the respondent was entitled as a displaced person, the particulars of the field initially allotted in his favour including the survey numbers and the extent of the area thereof, particulars of the survey numbers of the fields taken out of the respondent's allotment vide Naib Tehsildar-cum-Managing Officer, Tehsil Fatehabad's order dated May 23, 1960 and particulars of all the subsequent allotments made upto date in the respondent's favour in different villages of District Hissar including village Bahmniwala as also the extent of the allotted area which is at present held by him. Accordingly, the Chief Settlement Commissioner has caused the attendance of K. L. Narula, Deputy District Attorney, Rehabilitation Department, Haryana, Chandigarh who has also filed an affidavit relating to the points on which information was required by us. We have perused the entire material and have again heard counsel for all the sides.

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Two questions arise for determination in this case—(1) whether the respondent acquired any enforceable right as a result of the allotment made in his favour on March 1, 1957 and delivery in pursuance thereof to him of possession of the aforesaid khasra numbers on June 17, 1957 and (2) whether the parcels of land which already stood allotted in favour of the respondent vide allotment order dated March 1, 1957 could be allotted by the Naib Tehsildar-cum-Managing Officer, Fatehabad in favour of Madan Mohan Singh and others without notice to the respondent and without affording him in opportunity of being heard.

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The first question has to be considered in the light of the judgment of this Court in *Amar Singh* v. *Custodian Evacuee Property, Punjab*(1) where the whole history of the legislative measures devised from time to time in the erstwhile State of Punjab to combat the gigantic problems created as a result of the mass migration of non-Muslim land holders to East Punjab is traced. A perusal of the judgment reveals that in exercise of the rule making power vested in it under clauses (f) and (ff) of sub-section (2) of section 22 of the East Punjab Evacuees' (Administration of Property) Act, 1947 (E. P. Act No. XIV of 1947) as amended in 1948, the Punjab Government issued Notification Nos. 4891-S and 4892-S on July 8, 1949

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1) [1957] S. C. . . .

A setting out the conditions regulating allotment by the Custodian of the land which vested in him. The first incident of allotment deducible from the notification is hereditability of the rights of the allottee which constitute quasi-permanent allotment. The statement of conditions published under Notification Nos. 4891-S and 4892-S of July 8, 1949 was continued in force as the Administration of Evacuee B Property (Rural) Rules framed by the Provincial Government under sub-section (2) of section 53 of the Central Ordinance No. XXVII of 1949 under delegation from the Central Government under Notification No. 3094-A/Cus/49 dated December 2, 1949 subject to certain modifications and amendments. On repeal of the Central Ordinance by C Central Act XXXI of 1950, the aforesaid rules were continued by virtue of section 58 of the Act as though made under that Act. Later in exercise of the delegated rule making power vested in the Provincial Government under section 55 of the Central Act, the Punjab Government framed rules dated August 29, 1951 entitled "Instructions for review and revision of land allotment" which affected the rules of July 8, 1949 only D to the extent that they were inconsistent with the earlier rules. A reference to the earlier and subsequent rules would show that the later rules do not concern any of the matters provided by the earlier rules of 1949 (and 1950) excepting as regards resumption which virtually is cancellation of allotment. The position that emerges from the foregoing is that the rules of July, 1949 continued in force except to the extent of in- E consistency. (The next set of rules are those made under Central Act XXXI of 1950). Then came the rules dated August 29, 1951 made by the Punjab Government in exercise of the powers delegated to it by the Central Government under section 55(1) of the Central Act XXXI of 1950. It will be seen that the rules of August 29, 1951 F are substantially the same as those enumerated in clause (6) of July 8, 1949 notification as regards resumption and only supplement the notification of July 8, 1949 as regards eviction in certain contingencies. The rights and incidents enjoyed by the allottees under the quasi-permanent scheme introduced by the aforesaid notification of July 8, 1949 are catalouged at page 823 of the aforesaid judgment of this Court in *Amar* G *Singh* v. *Custodian, Evacuee Property, Punjab* (supra). They are :

"1. The allottee is entitled to right of use and occupation of the property until such time as the property remains vested in the Custodian. [Clause 3(1).]

2. The benefit of such right will ensure to his heirs and successors. (Definition of 'allottee').

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3. His enjoyment of the property is on the basis of paying land-revenue thereupon and ceases for the time being.

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Additional rent may be fixed thereupon by the Custodian. If and when he does so, the allottee is bound to pay the same. [Clause 3(3).]

4. He is entitled to quiet and undisturbed enjoyment of the property during that period. (Clause 8).

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5. He is entitled to make improvements on the land with the assent of the Custodian and is entitled to compensation in the manner provided in the Punjab Tenancy Act. (Clause 7).

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6. He is entiled to exchange the whole or any part of the land for other evacuee land with the consent of the Custodian. (Clause 5).

7. He is entitled to lease the land for a period not exceeding three years without the permission of the Custodian and for longer period with his consent. But he is not entitled to transfer his rights by way of sale, gift, will, mortgage or other private contract. [Clause 4(c).]

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8. His rights in the allotment are subject to the fairly extensive powers of cancellation under the Act and rules as then in force prior to July 22, 1952, on varied administrative considerations and actions such as the following (Clause 6 and subsequent rules of 1951) :—

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(a) That the allotment is contrary to the orders of the Punjab Government or the instructions of the Financial Commissioner, Relief and Rehabilitation, or of the Custodian, Evacuee Property, Punjab;

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

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(c) That it is necessary or expedient to cancel or vary the terms of an allotment for the implementation of resettlement schemes and/or rules framed by the State Government; or for such distribution amongst displaced persons as appears to the Custodian to be equitable and proper;

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A (d) That it is necessary or expedient to cancel or vary the terms of an allotment for the preservation, or the proper administration, or the management of such property or in the interests of proper rehabilitation of displaced persons.

B Then came the two Notifications Nos. SRO 129 dt. July 22, 1952 and SRO 351 dated Feb. 13, 1953 amending and recasting sub-rule (6) of Rule 14 of the Central Rules of 1950 as under :

"(6) Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in each of the States of C Punjab and Patiala and East Punjab States Union shall not exercise the power of cancelling any allotment of rural Evacuee property on a quasi-permanent basis, or varying the terms of any such allotment, except in the following circumstances :

(i) where the allotment was made although the allottee D owned no agricultural land in Pakistan;

(ii) where the allottee has obtained land in excess of the area to which he was entitled under the scheme of allotment of land prevailing at the time of allotment;

(iii) where the allotment is to be cancelled or varied—

E (a) in accordance with an order made by a competent authority under section 8 of the East Punjab Refugees (Registration of Land Claims) Act, 1948;

(b) on account of the failure of the allottee to take possession of the allotted evacuee property within six months F of the date of allotment;

(c) in consequence of a voluntary surrender of the allotted evacuee property, or a voluntary exchange with other available rural evacuee property, or a mutual exchange with such other available property;

G (d) in accordance with any general or special order of the Central Government;

Provided that where an allotment is cancelled or varied under clause (ii), the allottee shall be entitled to retain such portion of the land to which he would have been entitled under the scheme of quasi-permanent allotment of land;

H Provided further that nothing in this sub-rule shall apply to any application for revision, made under section 26 or

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section 27 of the Act, within the prescribed time, against an order passed by a lower authority on or before 22nd July, 1952."

Thus the power of resumption or cancellation of quasi-permanent allotment was restricted and reduced.

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The next legislative measure is the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act No. XLIV of 1954), important provisions whereof which may be useful in dealing with the first question may be noticed. Section 4 provides for the time, the manner and the form of making an application for payment of compensation.

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Section 10 of the Act *inter alia* lays down that where any immovable property has been leased or allotted to a displaced person by the Custodian under conditions published by the Notification of the Government of Punjab No. 4891-S or 4892-S dated July 8, 1949 and such property is acquired under the provisions of the Act and forms part of the compensation pool, the displaced person shall so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition. It further provides that the Central Government may for the purpose of payment of compensation to such displaced persons transfer to him such property on such forms and conditions as may be prescribed.

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Section 12 provides :—

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"12.(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the official gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

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(2) On the publication of a notification under subsection (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee pro-

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perty shall vest absolutely in the Central Government free from all encumbrances.

(3) . . . ."

It may be noted that by virtue of Central Government Notification No. S.R.O. 697 dated March 24, 1955, under sub-section (1) of this section 12, all evacuee property allotted under the Punjab Government Notification dated July 8, 1949 was acquired by the Central Government excepting certain specified categories in respect of which proceedings were pending.

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Section 13 which deals with compensation for evacuee property acquired says :

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"13. There shall be paid to an evacuee compensation in respect of his property acquired under section 12 in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakistan."

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Section 14 which provides for the constitution of compensation pool runs thus :

"14. (1) For the purpose of payment of compensation and rehabilitation grants to displaced persons, there shall be constituted a compensation pool which shall consist of :

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(a) all evacuee property acquired under section 12, including the sale proceeds of any such property and all profits and income accruing from such property;

(b) such cash balances lying with the Custodian as may, by order of the Central Government, be transferred to the compensation pool;

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(c) such contributions, in any form whatsoever, as may be made to the compensation pool by the Central Government or any State Government;

(d) such other assets as may be prescribed.

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(2) The compensation pool shall vest in the Central Government free from all encumbrances and shall be utilised in accordance with the provisions of this Act and the rules made thereunder."

Section 16 authorised the Central Government to appoint Managing Officers or constitute Managing Corporations for the custody, management and disposal of compensation pool so that it may be effectively used in accordance with the provisions of the Act.

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Section 40 enables the Central Government by notification in the official gazette to make rules. Whereas sub-section (1) of the section confers general power on the Central Government to make rules to carry out the purposes of the Act, sub-section (2) of the Section particularises the subjects on which rules may be made by the Central Government without prejudice to the general power contained in sub-section (1). In exercise of this power, the Central Government made rules called the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 and published the same vide Notification dated May 21, 1955.

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Rule 3 lays down that an application for compensation may be made by a displaced person having a verified claim or if such displaced person is dead, by his successor-in-interest.

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Rule 4 prescribes the form of application for compensation.

Rule 16 says that compensation shall be payable in accordance with the scale specified in Appendices VIII or IX as the case may be.

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Rule 49 as originally made ran thus :

> "49. Compensation normally to be paid in the form of land.
>
> Except as otherwise provided in this chapter, a displaced person having verified claim in respect of agricultural land shall, as far as possible, be paid compensation by allotment of agricultural land. Provided that where any such person wishes to have his claim satisfied against property other than agricultural land, he may purchase such property by bidding for it at an open auction or by tendering for it and in such a case the purchase price of the property shall be adjusted against the compensation due on this verified claim for agricultural land which shall be converted into cash at the rate specified in Rule 56."

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In 1960, the following explanation was added to the above rule :

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> "Explanation :—In this rule and in the other rules of this chapter, the expression 'agricultural land' shall mean the agricultural land situated in a rural area."

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Rule 51 lays down that the scale for the allotment of land as compensation in respect of a verified claim for agricultural land shall be

A the same as in the quasi-permanent land Allotment Scheme in the States of Punjab and Patiala and the East Punjab States Union as set out in Appendix XIV.

Rule 67A provides :

B "67A. Compensation to displaced persons from West Punjab, etc., in respect of agricultural land. Notwithstanding anything contained in this Chapter, a displaced person from West Punjab or a displaced person who was originally domiciled in the undivided Punjab, but who before the partition of India had settled in North-West Frontier Province, Baluchistan, Bhawalpur or Sind, whose verified claim in respect C of agricultural land has not been satisfied or has been satisfied only partially by the allotment of evacuee land under the relevant notification specified in section 10 of the Act shall not be paid compensation in any form other than the transfer of acquired evacuee agricultural land and rural houses and D sites in the State of Punjab or Patiala and East Punjab States Union in accordance with the scales specified in the quasi-permanent allotment scheme operating in those States:

Provided that if any person has been allotted land in a State other than Punjab and his land claim has not been E satisfied fully, he may, for the remaining claim, either be allotted land due to him in that State or issued a Statement of Account which he may utilise for purchase of property forming part of the compensation pool or for adjustment of public dues."

F Rule 68 is to the following effect :—

"68. Grant of Sanad for transfer of agricultural land— Where any agricultural land is transferred to any person under these rules, the transferee shall be granted a Sanad in the form specified in Appendix XV (with such modifications as may be necessary in the circumstances of any parti- G cular case), or the transfer may be effected in any other manner in conformity with the provisions of any local or special law relating to transfer of agricultural land in force in the area where such agricultural land is situated."

H Rule 71 casts an obligation on every person to whom any immoveable property has been allotted by the Custodian under any of the notifications specified in section 10 of the Act to file a declara-

tion in the form specified in Appendix XVI in the office of the Settlement Officer or before the authorised officer in the village concerned on the date and place notified under sub-rule (4).

Rule 72(1) provides for an enquiry where the allottee has no verified claim.

Rule 72(2) lays down that if the Settlement Officer is satisfied that the allotment is in accordance with the quasi-permanent scheme, he may pass an order transferring the land allotted to the allottee in permanent ownership as compensation and shall also issue to him a sand in the form specified in Appendix XVII or XVIII, as the case may be with such modifications as may be necessary in the circumstances of any particular case **granting him such right.**

After the foregoing conspectus of the various legislative and delegated legislative measures, let us see whether the respondent had any right the enforcement of which he could have sought by means of the above mentioned writ petitionn. From the material on the record it is abundantly clear that the respondent migrated to India from West Punjab in the wake of the partition of the Sub Continent in 1947 and that the settlement and rehabilitation authorities satisfied themselves that he was entitled to an allotment of 113 Standard acres and 3 units of land in lieu of the land left behind by him in Bhawalpur. Since the respondent migrated from Bhawalpur where he had indisputably settled before the partition of the Sub Continent and his verified claim in respect of agricultural land had been only partially satisfied, he could not according to Rule 67A of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, be paid compensation in any form other than by transfer of acquired evacuee agricultural land in accordance with the scale specified in the quasi permanent allotment scheme. Consequently, it was the duty of the Settlement Officer under Rule 72(2) of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 to pass an order transferring the land allotted to the respondent in permanent ownership as compensation and had to issue him a Sanad in the prescribed form. It also appears that by virtue of Notification No. 697 dated March 24, 1955 issued under sub-section (1) of section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, all evacuee property allotted under the Punjab Government Notification dated July 8, 1947 (excepting certain specified categories in respect of which proceedings were pending) was acquired by the Central Government. It is in view of this unchallengable position that we

A find from the record particularly the copy of Dharam Chand Patwari's statement dated April 6, 1962 made before the Assistant Settlement Commissioner (Annexure 'A' to the petition at pages 24 and 25 of the printed Paper Book) that allotment on permanent proprietary basis of 13 standard acres and 3½ units of land situate in village Babmniwala was made in favour of the respondent on March 1, B 1957; that Sanad evidencing allotment of the aforesaid 28 kila numbers was issued in favour of the respondent on the same date; that possession of the aforesaid area of 13 standard acres and 3½ units was handed over to the respondent on June 17, 1957; that entry regarding delivery of possession of the aforesaid 28 kila numbers was C made by the Patwari in the Roznamcha Waqaati on June 17, 1957; that entries exist in khasra girdawaries of village Bahmniwala regarding the respondent's possession of the aforesaid fields from June 17, 1957 upto Rabi 1960 when due to carelessness on the part of the Consolidation Officer, Ratia, Rectangle No. 133 (kila Nos. 4min, 5min, 6min, 7min, 14min, 15, 16, 17min, 24 and 25) and Rectangle D No. 134 (kila Nos. 8min, 9min, 18min, 19min, 20, 21min and 22min) which were allotted in exchange of the aforesaid 28 kila numbers were entered not in the name of the respondent but in the kurrah of the Custodian and subsequently due to the carelessness on the part of the Naib Tehsildar-cum-Managing Officer were allotted to Madan Mohan Singh and others.

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In view of the foregoing, we are of the opinion that the respondent has succeeded in establishing that permanent proprietary allotment of the aforesaid 28 kila numbers of village Bahmniwala was validily made in his favour vide aforesaid allotment order dated March 1, F 1957. Accordingly, we have no hesitation in holding that the respondent had an enforceable right in respect of the aforesaid 28 kila numbers of village Bahmniwala. In view of our aforesaid finding that permanent proprietary allotment of the aforesaid 28 kila numbers was validly made in favour of the respondent which conferred an enforceable right on him, the answer to the second question cannot G but be in the negative. The view that we have formed is reinforced by the provisions of section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 which provide as under :—

H "19. Powers to vary or cancel allotment of any property acquired under this Act.—(1) Notwithstanding anything contained in any contract or any other law for the

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time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or amend the terms of any allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment was granted before or after the commencement of this Act.........."

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"102. Cancellation of allotments : "A managing officer or a managing corporation may in respect of the property in the compensation pool entrusted to him or to it, cancel an allotment or vary the terms of any such allotment if the allottee—

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(a) has sublet or parted with the possession of the whole or any part of the property allotted to him without the permission of a competent authority, or

(b) has used or is using such property for a purpose other than that for which it was allotted to him without the permission of a competent authority, or

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(c) has committed any act which is destructive of or permanently injurious to the property, or

(d) for any other sufficient reason to be recorded in writing.

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Provided that no action shall be taken under this rule unless the allottee has been given a reasonable opportunity of being heard."

Though in view of the above quoted provisions, it may, in certain contingencies, be open to the Managing Officer or Managing Corporation to cancel the allotment under the aforesaid section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 read with Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, it cannot be done unless an allottee is given a reasonable opportunity of being heard. In the present case, it is clear from the record that no action for cancellation of allotment was taken under the aforesaid provisions of the Act and the Rules. It is not understood how without complying with the aforesaid provisions, the Naib Tehsildar-cum-Managing Officer allotted the aforesaid parcel of land which already stood allotted in the name of the respondent to the appellants. The action on the part of the Naib Tehsildar-cum-Managing Officer was evidently in flagrant violation of the clear and unequivocal provisions of law. Accordingly,

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A we agree with the High Court that the impugned orders are manifestly illegal, arbitrary, unjust and cannot be sustained. However, taking into consideration all the facts and circumstances of the case particularly the fact that the appellants appear to have purchased the area in question from Madan Mohan Singh for a huge sum of Rs. 40,000/- and invested a considerable amount on the construction of B a house, we think that it will be eminently just and fair if the appellants are allowed to retain Rectangle No. 134 comprising kila Nos. 8min, 9min, 10min, 11, 12, 13min, 18min, 19min, 20, 21min and 22min on which their house also stands and Rectangle No. 133 comprising kila Nos. 4min, 5min, 6min, 7min, 14min, 15, 16, 17min, 24 C and 25 is given over to the respondent. The learned counsel for the parties also agree to this course being adopted in the interest of justice.

The respondent shall be at liberty to approach the settlement authorities for allotment of some other suitable land in lieu of Rectangle No. 134 comprising kila Nos. 8min, 9min, 10min, 11, 12, D 13min, 18min, 19min, 20, 21min and 22min to make up the deficiency, if any, in the land to which he may be entitled and if the latter i.e. the settlement authorities find that the area already held by the respondent if added to the area now ordered to be given to him still falls short of his entitlement, they will be free to allot him an area which E will make up his unsatisfied claim provided he is found otherwise authorised to hold the said area on allotment or occupy the same under any other law in force in the State. The allotment of the area to which the respondent may be found entitled to shall, as far as possible, be made in the vicinity of the area already held by him. Subject this modification, the rest of the judgment and order of the F High Court will stand. The appeal is disposed of accordingly.

P.B.R.

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