

A POHLA SINGH @ POHLA RAM (D) BY LRS. AND ORS.
v.
STATE OF PUNJAB AND ORS.

MAY 5, 2004

B [S. RAJENDRA BABU, CJ. AND G.P. MATHUR, J.]

Tenancy and Land Laws:

C *Pepsu Tenancy and Agricultural Lands Act, 1955:*

Section 51-A (inserted by Act No. 11 of 1968)—Lands granted for gallantry—Exemption from being taken into account for computing surplus area—Applicability of—Held: The specific land which had been granted for gallantry must be in possession of the person concerned for application of S. 51-A—Hence, exemption in respect of land allotted under Displaced Persons (Compensation and Rehabilitation) Act, 1954 is not available under S. 51-A.

Displaced Persons (Compensation and Rehabilitation) Act, 1954:

E *Objects of—Explained.*

Constitution of India, 1950:

F *Article 142—Relief—Petitioner did not challenge a part of the order of a Single Judge of the High Court by filing any Letters Patent Appeal—However, Supreme Court took the view that the order of the Single Judge was not proper—Held: To avoid any scope for further litigation and to do complete justice between the parties, the said part of the order set aside.*

G *Article 226—Petitioners filed a writ petition for recalling the order passed in an earlier writ petition in which they were not impleaded as parties—Decision in earlier writ petition adversely affected the interest of the petitioners—Maintainability of—Held: In such circumstances, second writ petition was maintainable—High Court also rightly allowed the*
H *second writ petition.*

Words & Phrases:

A

"Compensation"—Meaning of.

The father of respondent No. 4 had been allotted land by way of a military grant in Sind (Pakistan). On partition of the country he migrated to India and was given land under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. However, under the Pepsu Tenancy and Agricultural Lands Act, 1955 a certain area of the said land was declared as surplus by the Collector. Under the Utilisation of Surplus Area Scheme the land declared as surplus was allotted to the appellants. The compensation amount with regard to the surplus land was deposited by the appellants and was received by respondent No. 4. After a long time, respondent No. 4 filed a revision petition against the Collector's order before the Financial Commissioner (Revenue), which was dismissed on the grounds of limitation.

Thereafter, the Pepsu Act was amended by Act No. 11 of 1968 whereby Section 51-A was introduced therein, by which land allotted for gallantry was exempted from being taken into account in computing surplus area under the Pepsu Act. Thereupon, respondent No. 4 filed a writ petition challenging the order of the Financial Commissioner as well as the order of the Collector. The High Court, relying on Section 51-A, allowed the writ petition. Since the appellants were not impleaded as parties to the said writ petition, they filed a writ petition before the High Court claiming several reliefs including a writ of mandamus directing the respondents not to dispossess them from the land allotted to them. The High Court allowed this second writ petition and further held that the appellants were not bound by the decision rendered in the earlier writ petition.

Respondent No. 4 preferred a Letters Patent Appeal against the aforesaid decision, which was allowed. The High Court further held that respondent No. 4 was entitled to the protection available under Section 51-A of the Pepsu Act and consequently the declaration of surplus area was wrong and its allotment to the appellants was illegal. Hence the appeal.

A On behalf of respondent No. 4, it was contended that once the order of a Single Judge of the High Court, having not been challenged by the appellants by preferring an appeal, became final, it was not open to another Single Judge to entertain another writ petition at the instance of the appellants and to make a declaration that the appellants

B were not bound by the decision rendered in the earlier writ petition filed by respondent No. 4 and also that the appellants could not be dispossessed from the land in dispute in compliance thereof.

Allowing the appeal, the Court

C HELD: 1. Section 51-A of the Pepsu Tenancy and Agricultural Lands Act, 1955 can come into operation only if the specific land which had been granted for gallantry is in possession of the person concerned and not otherwise. [374-C]

D 2.1. In the present case, the land, which had been granted to respondent No. 4 by way of gallantry award was situate in Sind which he abandoned when he came to India on account of partition of the country. Thereafter, respondent No. 4 was given land under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The said Act was enacted to provide for payment of compensation and rehabilitation grants to those persons who had been displaced from the area now falling in Pakistan on account of their migration to India. The relevant provisions of the said Act clearly show that a displaced person on account of his migration to India after partition did not get the same property, which he had in the area which became Pakistan, but he got monetary

E compensation though it was possible that some property out of compensation pool could be sold or transferred to him out of the said compensation amount. Therefore, the land in possession of respondent

F No. 4 was an altogether different land and not "such land" which may have been given to him by way of gallantry and consequently Section 51-

G A of the Pepsu Act can have no application at all. [374-D-F]

Piarey Lal v. Hori Lal, AIR (1977) SC 1226 and *Sailen Krishna Majumdar v. Malik Labhu Masih*, [1989] Supp. 1 SCC 302, relied on.

H 2.2. The contention that the land would not lose its character and for all intent and purposes should be treated as land given for gallantry

as the same was given to respondent No. 4 in lieu of the land which he had in Sind (Pakistan), is not sustainable. [374-G; 375-A] A

Gurbachan Singh v. Puran Singh, AIR (1961) SC 1263, held inapplicable.

3.1. If a decision rendered in a writ petition adversely affects the interest of a third person who was not impleaded as a party in the writ petition, it is always open to him to ask for recall of the judgment which has been rendered without affording any opportunity of hearing to him. [377-A] B

3.2. The recourse taken to the second writ petition by the appellants, therefore, cannot be said to be illegal as their basic grievance was that though they were in possession of the land for nearly 18 years, but the order declaring the land as surplus had been set aside in a writ petition, wherein they were not impleaded as parties. In these circumstances, the writ petition filed by the appellants was rightly allowed by the Single Judge. [377-E-F] C D

4. The High Court while allowing the writ petition of the appellants has also observed in the order that if permissible the question as to whether the land could be declared surplus or not may be determined in any proceedings that may be competent under law and also whether on account of retrospective operation of Section 51-A of the Pepsu Act respondent No. 4 was entitled to ask for setting aside of the orders declaring his land as surplus where the question as to whether the appellants had acquired an indefeasible right which cannot be taken away even by retrospective amendment of the Pepsu Act shall also be gone into. The appellants did not challenge this part of the order by filing any Letters Patent Appeal. However, having regard to the view taken by this Court and to avoid any scope for further litigation and to do complete justice between the parties the said direction of the Single Judge and also the judgment and order passed in the writ petition filed by respondent No. 4 are set aside. [377-G-H; 378-A-D] E F G

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6741 of 1999. H

A From the Judgment and Order dated 4.6.1999 of the Punjab and Haryana High Court in L.P.A. No. 1199 of 1992.

P.P. Rao, Anant Vijay Palli, Mrs. Rekha Palli, Arindam Ghose, Vimal Chandra, S. Dave, Mrs. Neelam Kalsi, K.K. Mohan, Kuldip Singh, R.K.

B Pandey and R.S. Suri for the appearing parties.

The Judgment of the Court was delivered by

C **G.P. MATHUR, J. :** 1. This appeal by special leave has been preferred against the judgment and order dated 4.6.1999 of a Full Bench of High Court of Punjab & Haryana whereby Letters Patent Appeal preferred by respondent no. 4 Gurcharan Singh was allowed, the judgment and order dated 13.8.1992 of the learned Single Judge allowing the writ petition filed by the appellants Pohla Singh and others was set aside and
D the writ petition was dismissed.

E 2. Dhanna Singh (father of Gurcharan Singh respondent no. 4) had been allotted land by way of a military grant in Sind (Pakistan). On partition of the country he migrated to India. He was initially allotted 79.39 standard acres of land in Village Budhlada, Tehsil Mansa, District Bhatinda which on account of report of Patwari in some Revenue Proceedings was reduced to 68.68 standard acres. In the year 1955, The Pepsu Tenancy and Agricultural Lands Act was promulgated and section 3 thereof provides that the permissible limit shall mean "thirty standard acres of land".
F Accordingly proceedings for determination of the surplus area were initiated and by an order passed on 28.3.1961, which was *ex-parte*, 28.68 acres of land were declared as surplus. Dhanna Singh then filed an application for setting aside the *ex parte* order wherein he also indicated his choice for the plots to be declared as surplus. The Collector (Agrarian Reforms) Bhatinda, by his order dated 9.6.1961, set aside the *ex-parte*
G order and the plots, choice of which was given by Dhanna Singh, equivalent to 28.68 standard acres, were declared as surplus. Under the Utilization of Surplus Area Scheme the land declared as surplus was allotted to the appellants on 5.3.1962, Sannads as prescribed in Form-V were issued to them and they were put in possession of the land. The
H compensation with regard to surplus area was determined at Rs.13,882.53

which was deposited by the appellants and was received by Dhanna Singh. A
Thereafter consolidation proceedings took place and mutation was ordered
in favour of the appellants. D

3. After a long time Dhanna Singh filed a revision on 19.11.1966
against the order dated 9.6.1961 of the Collector, declaring his land as B
surplus, but the same was dismissed by the Financial Commissioner,
Revenue on 2.3.1967 on the ground of limitation as the same was beyond
time by 1882 days. Thereafter he filed CWP No. 3213 of 1968 challenging
the order of the Financial Commission and also the order of Collector dated C
9.6.1961. The Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter
referred to as 'the Act') had been amended by Act No. 11 of 1968 whereby
section 51A was introduced therein which provides that where any land
is granted for gallantry at any time before 26th day of January, 1950 such
land or portion, as the case may be, shall not be taken into account in
computing the surplus area under the Act. Relying upon the said provision D
the learned Single Judge allowed the writ petition by the judgment and
order dated 9.1.1980 and set aside the order declaring 28.68 standard acres
as surplus. It is important to note that in this petition (i) State of Punjab;
(ii) Financial Commissioner; and (iii) Collector, (Agrarian R.A. II),
Bhatinda were impleaded as respondents. Though the surplus land had E
been allotted in favour of appellants on 5.3.1962 and they had been put
in possession over the same, but they were not impleaded as parties to the
writ petition nor any notice was issued to them. E

4. The appellants then filed CWP 1287 of 1980 wherein they claimed F
several reliefs including a writ of mandamus directing the respondents not
to dispossess them from the land allotted to them. In this petition besides
the above mentioned official respondents, Gurcharan Singh son of Dhanna
Singh was also impleaded as respondent no.4 as he had been substituted
on account of death of his father during the pendency of CWP no. 3213
of 1968. The writ petition was contested by Gurcharan Singh alone. G
The learned Single Judge held that no doubt section 51A of the Act had been
introduced with retrospective affect i.e. from the date of the enforcement
of the Act of 1955 itself, but the question whether it could be applied to
transactions or sales which had already been completed and confirmed by
the authorities was a significant question and before divesting the persons H

A of the rights which had accrued in their favour the least which was required to be done was to afford them an opportunity of hearing. In view of the fact that Dhanna Singh in his writ petition did not implead the appellant Pohla Singh and others, who had been allotted the surplus land under the provisions of Utilisation of Surplus Area Scheme and further he had

B accepted the compensation amount for the land declared as surplus and had deliberately concealed the said fact, the writ petition was liable to be allowed. On these findings the writ petition was allowed on 13.8.1992 and it was held that the appellants were not bound by the decision rendered in CWP no.3213 of 1968 decided on 9.1.1980 and further that they shall

C not be dispossessed from the land in dispute in compliance with the aforesaid order. Gurcharan Singh then preferred a Letters Patent Appeal which has been allowed by a Full Bench of the High Court by the judgment and order dated 4.6.1999 and it has been held that he was entitled to the protection available under section 51A of the Act and consequently the declaration of surplus area was wrong and its allotment to the appellants

D was illegal. He was also held entitled to restoration of the possession. A further direction was issued that the competent authority shall consider the claim of the appellants herein for allotment of alternative land in accordance with law.

E 5. For convenience sake we will refer to Dhanna Singh or his son Gurcharan Singh as land holder and the appellants Pohla Singh and others (some of whom have also died) as allottees.

F 6. Learned counsel for the appellants (allottees) has submitted that after 28.68 standard acres of the land had been finally declared surplus, the same was allotted to them on 5.3.1962 and they were put in possession of the land. Mutation of their name was done and revenue entries were corrected. The compensation amount determined for the surplus area declared was paid by the allottees and was accepted by Dhanna Singh which he continued to retain. The entire land was barren, had tibbas and

G deep ditches. The allottees toiled hard, made the land cultivable, invested money in installing tubewells and planted trees and made the land fertile and of high yielding variety. Dhanna Singh had initially not challenged the order dated 9.6.1961 of the Collector declaring his land as surplus and was satisfied with the same. However, it was only after he came to know that

H the Act is going to be amended that he filed the revision which was beyond

time by 1882 days. Paragraph 4 of the revision petition and the prayer made read as under: A

Para 4: That the State of Punjab is presently enacting that the lands which have been granted as Military grants should be excluded from the operation of the Pepsu Tenancy and Agricultural Lands Act. The Bill is shortly to be introduced in the Punjab Legislative Assembly which is going to have retrospective effect." B

Prayer: It is therefore humbly prayed that since the proposed Act is being introduced for excepting such land from the operation of the Pepsu Tenancy and Agricultural Lands Act, the petition may be kept to be pending and be decided after the passing of the proposed Act exempting the land in question from being declared surplus." C

7. Learned counsel has further submitted that after the revision was dismissed on the ground of limitation he preferred the writ petition no. 3213 of 1968 wherein he deliberately did not implead the allottees as respondents though they were in possession for more than six years of the surplus area declared. It has also been submitted that the amended provision section 51A of the Act could not in any manner affect the transactions which had attained finality and therefore the allottees cannot be dispossessed in pursuance of the order passed in the writ petition preferred by the land holder especially when the order therein has been passed without affording an opportunity of hearing to them. D E

8. Shri PP Rao, learned senior counsel appearing for the land holder (respondent no. 4) in this appeal, has submitted that Dhanna Singh had been given land for gallantry by way of military grant in Sind (Pakistan). After partition of the country he migrated to India and was allotted 79.39 standard acres of land in lieu of the land held by him in Sind. Act no.11 of 1968 specifically provided that section 51A shall be deemed always to have been inserted in the principal Act and in view of the language used in the said provision, the land granted for gallantry could not be taken into account in computing the surplus area. The provisions of section 51A had to be given affect to and consequently no land of Dhanna Singh could be declared as surplus. He has also submitted that where a land holder is F G H

A challenging the declaration of his land as surplus, he is required to implead the State authorities only as respondents who are taking the action and there is no requirement to implead the allottees of the surplus land as parties to the proceedings. It has thus been contended that the view taken by the learned Single Judge in the writ petition filed by the land holder wherein

B he set aside the declaration of surplus land was perfectly correct and the Full Bench of the High Court rightly set aside the order dated 13.8.1992 passed by the learned Single Judge wherein a writ of mandamus had been issued not to dispossess the allottees as such an order could not be passed once it is held that the declaration of surplus area of the land holder itself

C of 1980 preferred by the allottees was not maintainable as a petition under Article 226 of the Constitution cannot be filed for quashing or setting aside of the order passed in an earlier writ petition.

D 9. In our opinion a question which goes to the root of the matter has escaped the attention of the High Court and has not been considered at all. There is no dispute that Dhanna Singh had been allotted land by way of military grant in Sind (Pakistan). After partition of the country, he came to India and he was given land in District Bhatinda under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and proceedings for

E declaration of surplus area have been applied to such land, namely, land in Bhatinda and not to the original land which had been allotted in Sind. The Pepsu Tenancy and Agricultural Lands Act, 1955 was amended by Act no.11 of 1968 by which section 51A was inserted therein and it was specifically mentioned that section 51A “shall be deemed always to have

F been inserted”. Section 51A of the Act reads as under:-

G *“Section 51A Exemption of lands granted for gallantry before 26th January, 1950— Notwithstanding anything contained in this Act, where any land is granted for gallantry at any time before the 26th day of January, 1950, to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then, so long as such land or any portion thereof, as the case may be, has not passed from the original grantee into more than three successive hands by inheritance or bequest and is held by the grantee or any of such hands, such land or portion, as the case*

H *may be, shall not be taken into account in computing the surplus*

area under this Act, nor shall any tenant of *such land or portion* A
have the right to purchase it under section 22:

Provided that where *such land or portion* has passed into more
than three such hands and the person holding such land or portion,
immediately before the 3rd of August, 1967, is a person to whom B
it has passed by inheritance or bequest, the exemption under this
section shall apply to such land or portion thereof, as the case may
be, during the life time of such person.”

(*Emphasis supplied*)

This provision, therefore, gives protection to such land which had C
been given for gallantry at any time before 26th day of January, 1950,
subject to fulfillment of certain other conditions.

10. The land which Dhanna Singh was holding in District Bhatinda D
had been given to him under the Displaced Persons (Compensation and
Rehabilitation Act, 1954) (for short ‘Rehabilitation Act’). The preamble of
the Act reads as under:

“An Act to provide for the payment of compensation and E
rehabilitation grants to displaced persons and for matters connected
therewith.”

The Statement of Objects and Reasons of the Act, *inter alia*, says that
the compensation to be paid to displaced persons will be confined to the
utilisation of the acquired evacuee property in India as well as any amount F
realised from Pakistan on account of the difference between the values of
evacuee properties in the two countries. The loans so far advanced to
displaced persons from West Pakistan, the properties built by the Government
for their rehabilitation and the provision made till May 1953 for their
rehabilitation for the future under the Five Year Plan or otherwise will be G
utilised for rehabilitation by giving grants. The Bill provides for the
payment of rehabilitation grants and also for appointment of a Chief
Settlement Commissioner, Settlement Commissioners and Settlement
Officers who will determine and pay the amount of compensation and
rehabilitation grant payable to persons having verified claims. Managing H

A officers and managing corporations will be entrusted with the custody, management and disposal of the assets in the pool.

B 11. Some provisions of the Rehabilitation Act which have a bearing on the controversy in hand need examination. Section 2(a) of this Act defines 'compensation pool' and it means the compensation pool constituted under section 14; Section 2(b) contains a long definition of a 'displaced person' and it basically means any person who, on account of the setting up of the Dominion of India and Pakistan or on account of civil disturbances etc. has after the first day of March 1947, left or been displaced from his place of residence and who has been subsequently
 C residing in India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan. Section 4(1) of this Act provides that the Central Government shall, from time to time, but not later than the thirtieth day of June, 1955, by notification in the official gazette, require all displaced
 D persons having a verified claim to make applications for the payment of compensation and any such notification may be issued with reference to displaced persons residing in any State or any one of a group of States. Section 7 (1) and (2) and Section 8 of this Act read as under:

E *Section 7. Determination of the amount of compensation — (1)*
 On receipt of an application for payment of compensation together with the record of the case forwarded under section 5, the Settlement Commissioner shall make an inquiry in such manner as may be prescribed and having due regard to the prescribed scales of compensation, the nature of the verified claim and other
 F circumstances of the case, shall ascertain the amount of compensation to which the applicant is entitled.

(2) On ascertaining the amount of compensation to which an applicant is entitled under sub-section (1), the Settlement Commissioner shall deduct therefrom the following dues recoverable from the applicant, in the order of priority mentioned
 G below:-

(a)(omitted as not relevant)

H (b)(omitted as not relevant)

(c)(omitted as not relevant) A

(3) After deducting the dues referred to in sub-section (2), the Settlement Commissioner shall make an order determining the net amount of compensation if any, payable to the applicant.

(4) The amount, if any, deducted under sub-section (2) shall be paid to the person entitled to it. B

Section 8. Form and manner of payment of compensation — (1) A displaced person shall be paid out of the compensation pool the amount of net compensation determined under sub-section (3) of section 7 as being payable to him, and subject to any rules that may be made under this Act, the Settlement Commissioner or any other officer or authority authorised by the Chief Settlement Commissioner in this behalf may make such payment in any one of the following forms or partly in one and partly in any other form, namely:- C
D

(a) in cash;

(b) in Government bond;

(c) by sale to the displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him; E

(d) by any other mode of transfer to the displaced person of any property from the compensation pool and setting off the valuation of the property against the compensation payable to him; F

(e) by transfer of shares or debentures in any company or corporation; G

(f) in such other form or may be prescribed.

12. The heading of Chapter III is — Compensation Pool For Purposes Of Payment Of Compensation And Rehabilitation Grants To Displaced H

- A Persons. Sub-section (1) of section 12 confers power on the Central Government to acquire 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 by notification in the official gazette. Sub-section (2) of section 12 provides that after publication
- B of a notification, the right, title and interest of any evacuee in the evacuee property specified in the notification shall be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances. Section 14 deals with compensation pool and it reads as under:
- C *Section 14. Compensation Pool* (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-
- D (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;
- E (b) such cash balances lying with the Custodian as may, by order of the Central Government, be transferred to the compensation pool;
- F (c) such contributions, in any form whatsoever, as may be made to the compensation pool by the Central Government or any State Government;
- G (d) such other assets as may be prescribed.
- (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.

H As the preamble shows that the Rehabilitation Act was enacted to provide for payment of compensation and rehabilitation grants to those persons who had been displaced from the area now falling in Pakistan on account of their migration to India.

13. The dictionary meaning of the word 'compensation' is as under : A

Black's Law Dictionary - money given to compensate loss or injury.

Webster's Third New International Dictionary - The act or action of making up, making good or counter balancing, rendering equal. B

Law Lexicon by P. Ramanatha Aiyer - something given or obtained as an equivalent, an equivalent given for property taken or for any injury done to another. C

14. Section 4 enjoins a displaced person having a verified claim to make application for payment of compensation. Under sub-section (1) of section 7 the Settlement Commissioner, after making an inquiry, has to ascertain the amount of compensation to which the applicant is entitled and under sub-section (3) of same section the Settlement Commissioner has to make an order determining the net amount of compensation payable to the applicant. Section 8 provides for payment of net compensation amount out of the compensation pool and this can be done in various ways viz. (a) in cash; (b) in government bond; (c) by sale to the displaced person of any property from compensation pool and setting off the purchase money against the compensation payable to him; (d) by any other mode of transfer of any property from the compensation pool and setting off the value thereof against the compensation payable to him. Therefore, the Scheme of the Act is that a displaced person, as defined in Section 2(b) of this Act, was entitled to compensation, which had to be determined by the Settlement Commissioner and such an amount had to be paid to him. Sub-section (3) of section 7 is very important and it specifically provides for payment of the compensation amount which had been determined by the Settlement Commissioner to the displaced person. However, instead of paying the compensation amount in cash, some property from the compensation pool could be sold or transferred to him and the purchase money had to be set off against the compensation payable. This clearly shows that a displaced person on account of his migration to India after partition did not get the same property which he had in the area which became Pakistan, but he got monetary compensation though it was possible that some property out of compensation pool could be sold or transferred to him out of the said D
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A compensation amount. The consequence is that the land which Dhanna Singh got in village Budhlada, in District Bhatinda is not the same land which he had got by way of military grant in Sind. It is an altogether different land purchased out of compensation amount which was payable to him or could have been transferred to him by setting off the valuation of the property against the compensation payable to him.

15. Section 51A of the Act lays down that “where any land is granted for gallantry such lands or portion..... shall not be taken into account in computing surplus area.....”. The language used in the Section shows in unequivocal terms that if the grantee holds any specific land or portion which had been granted for gallantry then subject to fulfillment of other conditions it shall not be taken into account for computing the surplus area. Therefore, Section 51A can come into operation only if the specific land which had been granted for gallantry is in possession of the person concerned and not otherwise. In the present case the land which had been granted to Dhanna Singh by way of gallantry award was situate in Sindh which he abandoned when he came to India on account of partition of country. Thereafter, on account of the loss suffered by him, he became entitled to compensation under Section 7 of the Rehabilitation Act, 1954. The land which he got in village Budhlada, District Bathinda, was either by way of sale by setting off the purchase money against the compensation payable to him in accordance with Clause (c) or by any other mode of transfer from the compensation pool and setting off the valuation of the property against the compensation payable to him in accordance with Clause (d) of Sub-section (1) of Section 8. Therefore, the land in possession of Dhanna Singh was an altogether different land and not “such land” which may have been given to him by way of gallantry and consequently Section 51A of the Pepsu Tenancy and Agricultural Lands Act can have no application at all.

16. Shri P.P. Rao, learned senior counsel for the land holder, has on the strength of *Gurbachan Singh v. Puran Singh*, AIR (1961) SC 1263 urged that the land in village Budhlada would not lose its character and for all intent and purposes should be treated as land given for gallantry as the same was given to Dhanna Singh in lieu of the land which he had in Sindh (Pakistan). In the authority cited it was held that where land has been consolidated and in lieu of ancestral land and non-ancestral land a

consolidated area is given to a proprietor, then such a portion of the consolidated area which corresponds to the area of land which was ancestral, will be ancestral land. The authority cited is clearly distinguishable on facts and further it does not relate to a case where land may have been given to a displaced person under the Rehabilitation Act. In *Piarey Lal v. Hori Lal*, AIR (1977) SC 1226 having regard to the provisions of the U.P. Consolidation of Holdings Act, it was held that where in a suit for specific performance of agreement for sale the defendant had been allotted new plots as a result of the consolidation of his holding under the said Act, the agreement for sale became void within the meaning of Section 56 of the Contract Act on account of defendant losing the plots for which the agreement was executed and getting new plots in lieu thereof and the plaintiff's suit for specific performance was liable to be dismissed.

17. A similar argument, as has been urged on behalf of the land holder in the present case, was raised in *Sailen Krishna Majumdar v. Malik Labhu Masih*, [1989] Supp. 1 SCC 302, wherein the controversy hinged on the interpretation of certain provisions of Punjab Security of Land Tenures Act. Herein land had been given by way of gallantry award to the appellant's father posthumously in Layallpur (Pakistan) and after partition, the appellant migrated to India and was given land in District Jalandhar. In Punjab Security of Land Tenures Act, 1953 Section 19-DD was inserted by Punjab Act 12 of 1968 and it is para materia with Section 51A of Pepsu Tenancy and Agricultural Lands Act, 1955. Repelling the contention it was held as under in para 8 of the Reports :

"8. We are referred to the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It is an Act to provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith. We have not been shown in it any provision to the effect that any land given as compensation to a displaced person for loss of gallantry award land may imbibe the covenant of exemption available under Section 19-DD of the Act. We are consequently of the view that there is no basis for holding that the exemption in respect of the gallantry award land will be available in respect of the land given under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 as compensation for the loss thereof.

A We find no infirmity in the High Court judgment on this count.”

B 18. Shri P.P. Rao, learned senior counsel for the respondents (land holders) has also submitted that Civil Writ Petition No. 3213 of 1968 filed by Dhanna Singh had been allowed by the High Court by the judgment and order dated 9.1.1980 and the orders passed by the Collector on 9.6.1961 and that by the Financial Commissioner on 2.3.1967 were set aside. This order of the learned Single Judge of the High Court having not been challenged by the allottees by preferring an appeal, became final and consequently it was not open to another learned Single Judge to entertain another Writ Petition (Civil Writ Petition No. 1287 of 1980) at the instance of the allottees and to make a declaration that they (allottees) were not bound by the decision rendered on 9.1.1980 in CWP no.3213 of 1968 and also that they cannot be dispossessed from the land in dispute in compliance thereof. It may be mentioned here that the final order regarding declaration of surplus land of Dhanna Singh was passed by Collector on 9.6.1961 and thereafter the surplus land was allotted to the allottees on 5.3.1962 and a Sannad was issued in their favour and they were also put in possession thereof. The allottees had deposited the compensation amount of Rs.13,882.53, which was received by Dhanna Singh. However, in the Writ Petition filed by Dhanna Singh in 1968 which came to be decided on 9.1.1980, the allottees were not impleaded as parties. The decision in the writ petition clearly affected their rights. Civil Writ Petition No.1287 of 1980 was filed by the allottees under Articles 226 and 227 of the Constitution, wherein they claimed several reliefs and prayer nos. (ii) and (v) read as under :

F “(ii) that the decision contained in the judgment dated 9.1.1980 in CWP 3213 of 1968 be declared to be not binding on the petitioners as they had deliberately been omitted from impleaded as parties in the writ petition.

G (v) that the decision dated 9.1.1980 in CWP 3213 of 1968 be re-called and the case be re-decided after hearing the petitioners who are necessary parties to the said writ petition.”

H In this petition Gurcharan Singh son of Dhanna Singh was arrayed as Respondent No. 4 and the judgment shows that the petition was

contested only by the said respondent. If a decision rendered in a writ petition adversely affects the interest of a third person who was not impleaded as party in the writ petition, it is always open to him to ask for recall of the judgment which has been rendered without affording any opportunity of hearing to him. An identical question has been examined by a Constitution Bench in *Shivdeo Singh v. State of Punjab*, AIR (1963) SC 1909. Here in a writ petition filed by A for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of B, the High Court cancelled the order in favour of B though he was not a party to the writ proceedings. Subsequently, B filed a petition under Article 226 of the Constitution for impleading him as a party to A's writ petition and rehearing the whole matter. The High Court allowed the writ petition. It was held by this Court that the second writ petition filed by B was maintainable and the High Court had not acted without jurisdiction in reviewing its previous order at the instance of B, who was not a party to the previous proceedings. It was further held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave or palpable errors committed by it. In entertaining B's petition, the High Court thereby did what the principles of natural justice required it to do.

19. The recourse taken to the second writ petition by the allottees, therefore, cannot be said to be illegal as their basic grievance was that though they were in possession since 1962 i.e. for nearly 18 years, but the order declaring the land as surplus had been set aside in a writ petition, wherein they were not impleaded as parties. In these circumstances we are of the opinion that the writ petition filed by the allottees was rightly allowed by the learned Single Judge.

20. Against the aforesaid decision of the learned Single Judge, Gurbachan Singh son of Dhanna Singh preferred Letters Patent Appeal which was allowed by the Full Bench of the High Court and the said decision is subject matter of challenge in the present appeal. As discussed earlier, the view taken by the Full Bench is not correct. The learned Single Judge while allowing the writ petition of the allottees has also observed in the order that if permissible the question as to whether the land could be declared surplus or not may be determined in any proceedings that may

A be competent under law and also whether on account of retrospective operation of section 51A of the Act respondent no.4 was entitled to ask for setting aside of the orders declaring his land as surplus where the question as to whether the appellants had acquired an indefeasible right which cannot be taken away even by retrospective amendment of the Act shall also be gone into. The allottees did not challenge this part of the order by filing any Letters Patent Appeal. However, having regard to the view taken by us and to avoid any scope for further litigation and to do complete justice between the parties, we set aside the said direction of the learned Single Judge and also the judgment and order dated 9.1.1980 passed in the writ petition filed by Dhanna Singh.

C

21. The appeal is accordingly allowed with costs and the impugned judgment and order rendered by the Full Bench of the High Court on 4.6.1999 and also the judgment and order dated 9.1.1980 passed in Civil Misc. Writ Petition no. 3213 of 1968 are set aside.

D

V.S.S.

Appeal allowed.