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Act of 1956 which came into force while this appeal was pending in this Court declares that a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time and to live separately from him if he has another wife living. It is undoubtedly an established rule of law that a case should be decided in accordance with the law as it exists at the time of the decision by the appellate Court, but this rule is applicable only where the statute changing the law is intended to be retrospective and to apply to pending litigation or is retrospective in its effect. If neither of these two conditions concur or if it appears that the Legislature did not intend that the rights which were acquired before the enactment of the new law should be taken away, the case cannot be regulated by the law which has intervened during the pendency of the appeal but by the law which was in force when the original judgment was delivered. There is nothing in the Act of 1956 to indicate that it was intended to operate retrospectively or to deprive husbands of the rights which had been acquired by them before its enactment. It provides merely that after this Act comes into force a Hindu wife shall be entitled to separate residence and maintenance in certain circumstances and that she will forfeit her right to separate residence and maintenance in certain other circumstances.

I am of the opinion that Hindu wife is not entitled to claim residence and maintenance under the Hindu Married Woman's Right to Separate Residence and Maintenance Act, 1946, on the ground that her husband had married a second wife when the second marriage took place before the passing of the Act.

Let an appropriate answer be returned to the Division Bench.

Chopra, J.

CHOPRA, J.—I agree.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

SUPREME COURT.

Before B. Jagannadhadas, Bhuvaneshwar Prasad Sinha and P. B. Gajendragadkar, JJ.

MESSRS. ASSOCIATED TUBE-WELLS, LIMITED,—*Petitioner.*

versus

R. B. GUJARMAL MODI,—*Respondent.*

Civil Miscellaneous Petition No. 600 of 1957.

1957

May, 23rd

Constitution of India (1950)—Article 136—Petition for special leave—Dismissal of—Whether Court bound to give reasons for dismissal—Application for review on grounds of expressions of opinion by the Judges during the course of hearing—Propriety of.

Held, that it is not the practice of the Supreme Court to give reasons for the dismissal of an application for special leave under Article 136 of the Constitution of India.

Held further, that it is wholly improper for a counsel to make an application for review basing it on what the Judges said and expressed in the course of arguments. A judge is not infallible and it is possible that a view which ultimately appeals to him in coming to a conclusion is erroneous but that by itself can afford no ground for review. It is also highly improper to assume and assert as to what a Judge's view is in making a particular order when the order pronounced does not set it out and to make references to what Judges say in course of arguments and make that a ground for rehearing.

Petition for Special Leave to Appeal No. 218 of 1957.

Under Article 136(1) of the Constitution of India for Special Leave to Appeal from the Judgement and Order, dated the 13th February, 1957, of the Punjab High Court (Circuit Bench), Delhi, in First Appeal from Order No. 13-D of 1957, was dismissed on the 18th April, 1957.

For the Petitioner.—Diwan Chiranjit Lal, Advocate.

For the Respondent.—Mr. Rang Behari Lal, Senior Advocate (Mr. Jai Prasad Agarwal, Advocate, with him).

ORDER.

Jagannadhadas, J.

JAGANNADHADAS, J.—We have heard the matter again at some length because the review application has been made to us on the ground that the Advocate was not fully heard and was denied adequate opportunity for saying what he wanted to say. After rehearing on the points on which the Advocate thought he was not fully heard, we are not persuaded that we ought to have granted leave in this matter.

It is not the practice of this Court to give reasons for the dismissal of an application for special leave and we do not want to depart from that practice and give our reasons here why we originally refused leave and why we still think that there are no grounds for our modifying that order.

This application is accordingly dismissed with costs.

We cannot, however, part from this matter without placing on record our very strong disapproval of the course that the Advocate—a very senior counsel of this court—has adopted in making this application. In the review application he has referred in detail as to what, according to him, happened in Court on the prior occasion and what each Judge said in the course of the arguments. The review application sets out at length what the presiding Judge said and expressed in the course of the arguments and what his views were and what the other Judges of the Bench said and expressed and what the view of each was. These statements are followed by a confident assertion how and why the application was dismissed.

We cannot help saying that this was wholly improper. We are not saying that a Judge is infallible. It is possible that a view which ultimately appeals to a Judge in coming to his conclusion is erroneous. That by itself can afford no ground for review. But what is improper is to assume and assert as to what a

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Judge's view is in making a particular order when the order pronounced does not set it out and to make references to what Judges say in course of arguments and make that a ground for rehearing.

Judges of this Court cannot be dragged into a controversy as to whether the statements ascribed to them are correct, or express correctly and fully what they had in view. What may have been said or expressed may often enough be in the course of tentative loud-thinking and may reflect only very partially what the Judges had in view. What ultimately weighs with the Judges in pronouncing the order, when doing so without giving reasons, may often be not reflected in what is tentatively and openly expressed. Judges cannot be drawn into controversy over such matters. It is not consistent with the dignity of the Court and the decorum of the Bar that any course should be permitted which may lead to controversy as to what a Judge stated in Court and what view he held. Such matters are to be determined only by what is stated in the record of the Court. That which is not so recorded cannot be allowed to be relied upon giving scope to controversy. To permit the atmosphere of the Court to be vitiated by such controversy would be detrimental to the very foundation of the administration of justice.

It is regrettable that the learned Advocate in spite of a hint from one of the members of the Court at the early stages of this hearing did not see the impropriety of the course he has adopted and has persisted in it before us.

We have permitted ourselves to make the above remarks since we felt that we would be failing in our duty otherwise.

We think it right also to say that what we have said above has not in any manner weighed with us in our consideration of this review application, which we have dismissed as above stated.

SUPREME COURT.

Before Sudhi Ranjan Das, C.J., Syed Jafar Imam P. B. Gajendragadhkar, and A. K. Sarkar, JJ.

PREM SINGH AND OTHERS,—*Appellants.*

versus

DEPUTY CUSTODIAN-GENERAL, EVACUEE PROPERTY AND OTHERS,—*Respondents.*

Civil Appeal No. 327 of 1957.

1957

May, 24th

Constitution of India (1950)—Article 226—Writ of Certiorari—*Whether can issue to correct mere errors of law—Departmental instructions regarding allotments—Whether inflexible and must be adhered to.*

Held, that where the errors pointed out in an order are mostly errors of fact or where they are nothing more than mere errors of law, which may be corrected by a court of appeal, but which do not render the order a "speaking order" showing a clear ignorance or disregard of the provisions of the law, the order cannot be said to be amenable to correction by a writ of *certiorari*.

Held, that the departmental instructions in regard to allotment of land to the displaced persons are not inflexible and need not be rigidly adhered to. They are merely in the nature of procedure and the rehabilitation authorities have full authority and complete powers to make allotment without adhering rigidly to the departmental instructions, e.g., the scheme of sub-allocation. These departmental instructions cannot be termed as law and if they are not rigidly adhered to, it cannot be held that there is an error of law apparent on the face of the judgment. Such a judgment is not amenable to correction by a writ of *certiorari*.

(*On Appeal from the Judgment and Order, dated the 18th October, 1955, of the Punjab High Court in Civil Writ Petition No. 269 of 1953*).

For the Appellant: Mr. Harnam Singh, Senior Advocate (Mr. Harbans Singh, Advocate, with him.)

For Respondent No. 1: Mr. B. Sen, Senior Advocate (Mr. R. H. Dhebar, Advocate, with him).

For Respondent No. 2: Mr. Achhru Ram, Senior Advocate (Mr. G. C. Mathur, Advocate, with him).

For Respondents Nos. 3 and 4: Mr. Sohan Lal Pandhi Advocate.

JUDGMENT.

The Judgment of the Court was delivered by.

DAS, C.J.—The appellants have filed this appeal on a certificate of fitness granted on May, 25, 1956, by the High Court of Punjab under Article 133 of the Constitution. The appeal is directed against the judgment and order of the said High Court pronounced on October 18, 1955. By that order the said High Court dismissed the application made by the appellants to the said High Court under Article, 226 praying for a writ in the nature of a writ of *certiorari* to call for the records and to quash the order of the Deputy Custodian-General passed on August 18, 1953, whereby he cancelled the allotment of land in the village of Ratauli, Tehsil Jagadhari, District Ambala, made to the appellants on June 7, 1950. Das, C. J.

The events which led up to the present appeal may now be briefly stated. The appellants are refugees from Rawalpindi. On the partition of the country the appellants migrated to India abandoning 273 acres 6 kanals of first grade land irrigated by perennial canals situate in Chak No. 205/R.B., Tehsil Jaranwala, District Lyallpur. In 1947, he appellants were given two units of lands in two villages, Todarpur and Naharpur, in Tehsil Jagadhari, District Ambala, on a temporary basis. At the time of quasi permanent allotment in Novembed, 1949, the appellant were given 133 acres 15¼ units of land in two villages Khandua and Naharpur, which lands were of the second grade. On February, 20, 1950, the appellants' allotment in Khandua was cancelled and the whole of 133 acres 15¼ units of

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land was allotted to them in village Naharpur. In order to accommodate a group of people known as Brij Lal group in village Naharpur the allotment made to the appellants was cancelled on June 6, 1950, and the appellants were directed by the Director-General, Relief and Rehabilitation (Additional Custodian), hereinafter referred to as the Director-General, to be shifted from village Naharpur to the villages of Jaurian and Kottarkhans in tehsil Jagadhari in the district of Ambala, where the lands were of the first grade. It appears that on June 7, 1950, the appellants went post haste to the headquarters of the Relief and Rehabilitation department protesting against their eviction from Naharpur in view of the improvements alleged to have been made by them in that village and prayed that they should be retained there. In this application the appellants did not pray for an allotment of land in village Ratauli. The Director-General directed the Revenue Assistant to make a report on that application. On the same date the Revenue Assistant promptly reported that the appellants were sitting allottees of village Naharpur, which was a village of second grade, that the appellants were entitled to first grade lands and that consequently they had been ordered to be shifted from the second grade village to the first grade villages of Jaurian and Kotarkhana in Tehsil Jagadhari. With these remarks he concluded the report with the word "submitted". In the margin of this report, however, the following words were endorsed: "Area also is reserved for Railway Workshop in village Ratauli. If approved Prem Singh and Narain Singh may be allotted land in the village." It is not easily understandable how, if the land in village Ratauli was reserved for Railway Workshop, such reserved land could be recommended for allotment to the appellants. There is an endorsement by the Director-General of the word "Approved" on the same date. The extreme expedition with which

the order of June 6, 1950, was cancelled and a fresh allotment was made in favour of the appellants in village Ratauli, which they did not ask for, evidently created some doubts in the mind of the Deputy Custodian-General as to the regularity of the procedure when he made his order on August, 18, 1953. Be that as it may, he did not decide the matter on the strength of such doubts. After the Director-General had "approved" the report a sanad was issued on July 13, 1950, in favour of the appellants in respect of 133 acres 15¼ units of land in village Ratauli and the appellants claim to have been put in possession of this land on July 15, 1950.

The respondent No. 2 (N. R. Batra) is the grandson of one Rai Sahib Maya Bhan Batra (since deceased) who had migrated from Phularwan, Tehsil Bhalwal in the District of Shahapur leaving behind about 543 acres of first class land irrigated by canal in the district of Sargodha. On December 15, 1947, 36 acres of land were allotted to Rai Sahib Maya Bhan Batra in village Ratauli on a temporary basis. This temporary allotment of 36 acres was, however, reduced to an allotment of 12 acres, for at that time no single allotment was being made for more than 12 acres. The Rehabilitation Department having, later on, issued instructions that persons who had left large holdings in Pakistan, could be allotted more than 12 acres, Rai Sahib Maya Bhan Batra on June 5, 1948, applied to the Director-General for the allotment in the same village of Ratauli of the balance of the lands to which he was entitled. Rai Sahib Maya Bhan Batra died on June 29, 1948, leaving certain heirs of whom the respondent No. 2 N. R. Batra, is one. Before any allotment could be made in favour of the heirs of Rai Sahib Maya Bhan Batra, a notification was issued on September 9, 1949, at the instance of the Northern Railway reserving the lands in certain villages including the village

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of Ratauli for the purpose of construction of a Railway Workshop. In view of the fact that there was no land available in the village of Ratauli, in consequence of the reservation of the lands for the Railways, an area of 112.7 acres was, on November 11, 1949, allotted in the name of Rai Sahib Maya Bhan Batra in the village of Mussambal Mussalmanan. In February, 1950, there was a rumour that the Rehabilitation Department had decided that no single allottee would be allowed to have more than 60 acres of land. In view of this rumour the heirs of Rai Sahib Maya Bhan Batra became apprehensive that the allotment of 112.7 acres in the single name of Rai Sahib might be reduced and so B. L. Batra, a son of the Rai Sahib, made a representation on behalf of all the heirs of the Rai Sahib to the Director-General that as they were three brothers and the share of each in 112.7 acres was only about 37 acres, their allotment of 112.7 acres should not be cancelled, and that if the allotment for any reason was cancelled they should be accommodated in village Rataoli. In February, or March, 1950, the heirs of Rai Sahib Maya Bhan Batra were allotted lands in three villages, Mussambal Mussalmanan (64 acres $14\frac{3}{4}$ units), Kotarkhana (44 acres $10\frac{3}{4}$ units) and Chahju Nangla (2 acres $13\frac{1}{2}$ units).

Respondents No. 3 and 4—Hargobind and Jai Kishan—are the sons of L. Devan Chand Suri, who are also refugees from Rawalpindi. They were entitled to an allotment of 175 acres in lieu of the lands they had left behind in Pakistan. They applied for allotment in the District of Karnal as unsatisfied claimants. After allotting 133 acres $15\frac{1}{4}$ units of land in village Ratauli there remained a balance of 93 acres still available in that village for allotment. On August 31, 1950, the Director-General allotted those 93 acres of land to respondents Nos. 3 and 4 and the balance of 82 acres were allotted

to them in two other villages Mahalanwali and Habibpur.

It appears that after the Railways had abandoned the project of building a workshop on the lands reserved for them, the Officer on Special Duty (AMBALA) wrote to the Director-General, Relief and Rehabilitation, asking him to resrve the lands released by the Railways for accommodating those who had been ousted from Chandigarh, the new capital of Punjab. On October 28, 1950, the Director-General replied stating that the allotment that had been made in favour of the appellants should stand and that he had no objection if the allotment made in favour of other persons were cancelled. Accordingly, the allotment of 93 acres to respondents 3 and 4 in village Ratauli was cancelled. The above cancellation, however, was rescinded and the land was restored to them.

It appears from a letter, dated April 28, 1950, from the Chief Administrative Officer (Engineering) E. P. Railway, Delhi, to the Chief Engineer (Development), Punjab, P.W.D., Buildings and Roads Branch, Simla, that owing to the stringency of funds the project for construction of the Railway Workshop had been abandoned and that the notification for acquisition of the lands might not be published in the *Punjab Government Gazette*. It is not clear at all that this information was passed on to the Relief and Rehabilitation Department at any time prior to September, 1950. It appears that the application made by B. L. Batra on February 20, 1950, for allotment of land to them in village Ratauli, where they originally had temporary allotments, was followed up by another application by the heirs of Rai Sahib Maya Bhan Batra on March 23, 1951. The fact of this application is admitted by the Additional Custodian in his written

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statement but stated that it was not forthcoming, presumably meaning that it had been mislaid in the office. A reminder appears to have been sent on August 1, 1951. Not having received any response from the office of the Director-General, the respondent No. 2, N. R. Batra, one of the heirs of Rai Sahib Maya Bhan Batra, on December 10, 1951, made a like representation to the Financial Commissioner, Relief and Rehabilitation, hereinafter referred to as the Financial Commissioner, who was the Custodian, On July 17, 1952, the Financial Commissioner as Custodian rejected the application of respondent No. 2. The respondent No. 2 thereupon went in revision under section 27 of the Administration of Evacuee Property Act (Act XXXI of 1950) hereinafter referred to as the Act. This application was dealt with and disposed of by the Deputy Custodian-General who held that under the circumstances the allotment in favour of the appellants in village Ratauli could not be allowed to stand. He also rejected the contention of the appellants that if anybody were to be evicted from village Ratauli in order to accommodate the heirs of Rai Sahib Maya Bhan Batra, it should be respondents Nos. 3 and 4, Hargobind and Jai Kishan; who had obtained their allotment in that village during the pendency of the dispute. The Deputy Custodian-General made the following order on August 18, 1953:

> "The allotment of respondents 4 to 6 (Prem Singh, etc.) to the extent of 112 S.A. 7 units in village Ratauli is cancelled and the area so made available shall be allotted to the petitioners and petitioners' allotment in villages Kotarkhana, and Chhaju Nangal and Mussambal Mussalmanan shall stand cancelled. The area thus rendered available may be allotted to respondents 4

to 6 unless they desire an allotment elsewhere and area is available. Parties to be informed."

The applicants thereupon moved the Punjab High Court under Article 226 of the Constitution praying for a writ quashing the above order of the Deputy Custodian-General. The application came up before a Single Judge, who by his order, dated September 3, 1954, referred the matter to a Division Bench and the Division Bench in its turn on September 28, 1954, referred the following two questions to a Full Bench for a decision:

"(1) Whether rule 14(6) of the Administration of Evacuee Property Rules made under section 56 of the Administration of Evacuee Property Act is *ultra vires* because it goes beyond the rule-making power or because it is inconsistent with the other provisions if the Evacuee Property Act?"

"(2) Whether rule 14(6), even if *intra vires*, is applicable to the orders cancelling the allotments if such orders have been made before the date on which the amendments were made?"

The Full Bench answered the first question in the negative and in answer to the second question held that "orders passed by either the Custodian or Custodian-General in exercise of their powers under section 26 or 27 cancelling allotments in pending cases regarding orders passed before the 22nd July, 1952, were valid, even if passed by the Custodian before the 13th February, 1952, and by the Custodian-General before the 25th August, 1953. The matter then went back to the Division Bench which, in the light of the answers given by the Full Bench, found no ground for interference and dismissed the appellants' writ pe-

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tition. The High Court, however, gave a certificate of fitness for appeal to this Court with which the present appeal has been filed.

Mr. Harnam Singh appearing in support of this appeal has not questioned the correctness of the answers given to either of the questions by the Full Bench. He concedes that the Deputy Custodion-General, while disposing of the revision petition on August 18, 1953, could exercise the same powers which the Financial Commissioner as the Custodian had on July 17, 1952, when he rejected the application of respondent No. 2. It will be recalled that the order of allotment in favour of the appellants in village Ratauli was made on June 7, 1950. The application by respondent No. 2 to the Financial Commissioner for allotment of lands in village Ratacli was made on December 10, 1951. This application was rejected by the Financial Commissioner on July 17, 1952. At that time there was no sub-rule (6) to rule 14. Indeed sub-rule (6) was added to rule 14 on July 22, 1952. The second proviso was added to rule 14 on February 13, 1953, that is to say, after the respondent No. 2 had filed his application for revision under section 27 to the Custodian-General on September 9, 1952. The second proviso was again amended by the addition of the words "or section 27" after the figure 26 and before the words "of the Act" on August 25, 1953, that is to say, seven days after the Deputy Custodian-General made his order in revision under section 27. Rule 14(6) being thus acknowledged by learned counsel to be out of the way, it is not necessary at all for us to express any opinion on the correctness or otherwise of the answers given by the Full Bench to the questions referred to it. Accepting, wthout deciding, that the Deputy Custodian-General's powers in revision under section 27 of the Act were strictly limited to the powers of the Custodian to

cancel an allotment, what we have to do is to ascertain what powers of cancellation the Financial Commissioner, who was the Custodian, had on July 17, 1952, when he rejected the application, for according to learned counsel for the appellants the Deputy Custodian-General could only exercise similar powers of cancellation while disposing of the application for revision of the order of the Financial Commissioner as the Custodian.

The Administration of Evacuee Property Act, 1950 (Act XXXI of 1950), was passed on April 17, 1950. The Central Government on September 8, 1950, framed rules in exercise of the powers conferred on it by section 56 of the Act. On that date rule 14 consisted of five clauses, namely, the present sub-rule (1) to sub-rule (5) which, however, are not material for our present purpose. In exercise of powers delegated by the Central Government under subsection (1) of section 55 of the Act to make rules under clause (1) of subsection (2) of section 56 of the said Act, the Punjab Government on August 29, 1951, promulgated, amongst other things, the following rule, in substitution for the previous rules; with retrospective effect:—

1. The Custodian shall be competent to cancel or terminate any lease or allotment or vary the terms of any lease, allotment or agreement and evict the lessee/allotee in any one of the following circumstances:—

(a) that the lease/allotment is contrary to the orders of the Punjab Government or the instructions of the Financial Commissioner, Relief and Rehabilitation, or of the Custodian, Evacuees Property, Punjab;

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(b) that the lessee/allottee has infringed or intends infringing any of the terms of the lease/allotment;

(c) that the lease/allotment was obtained by false declaration or insufficient information;

(d) that the area leased/allotted to or occupied by the lessee/allottee is more or less than he was authorised to take on lease/allotment or occupy under the instructions issued by the Punjab Government or the Financial Commissenior, Relief and Rehabilitation, or the Custodian, Evacuee Property, Punjab;

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

(f) that the lessee/allottee has been convicted of an offence under the Act;

(g) that the lessee/allottee has failed to take possession of the land within the time allowed by the Custodian or the Rehabilitation authority or, after having taken possession has failed to cultivate the land or any part thereof;

(h) that it is necessary or expedient to cancel or vary the terms of a lease/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; or

(i) that it is necessary or expedient to cancel or vary the terms of a lease/allotment for the preservation, or the proper administration, or the management of such property or in the interests of proper rehabilitation of displaced persons:

It is contended that as the case did not fall within any of the above clauses the Custodian could not have cancelled the appellants' allotment and, therefore, the Deputy Custodian-General also could not in revisi n do so. It may be noted that at no previous stage did the appellants rely on this rule framed by the Punjab Government. Without prejudice to this general objection learned counsel for respondent No. 2 contends that the order made on August 18, 1953, by the Deputy Custodian-General cancelling the allotment made in favour of the appellants was valid because the Custodian on July 17, 1952, had the power to cancel it under the above Punjab Rule and he relies on clauses (a), (e), (h) and (i). His contention is that the allotment to the appellants in village Ratauli was against the orders of the Punjab Government or the instructions of the Financial Commissioner as contained in the Land Resettlement Manual in that the appellants not being colonists of Shahpur District in West Pakistan were not entitled to be settled in Tehsil Jagadhari and that the appellants held no temporary allotment in village Ratauli. The appellants' counsel repudiates this contention, because the allotment was not contrary to any instruction. Learned counsel for respondent No. 2 contends that the allotment to the appellants could be cancelled under clause (e), because the claims of respondent No. 2 had been established or accepted by the rehabilitation authorities. He also relies on clause (h) and clause (i). All these claims are refuted by the learned counsel for the

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appellants. It is not necessary for us to express any opinion on the contention in so far as they are founded on clauses (a) and (e) of the Punjab Rule (1) Suffice it to say that the allotment in favour of the appellants could well be cancelled by the Custodian under clauses (h) and (i). The Deputy Custodian-General has given cogent grounds for such cancellation, namely, that Tehsil Jagadhari was not within the area of sub-allocation scheme so far as the appellants are concerned, that, in the second place, the appellants never had any temporary allotment in village Ratauli and could not, therefore, be said to be sitting allottees of that village. Rai Sahib Maya Bhan Batra, on the other hand came from Shahpur and was entitled to be accommodated in Tehsil Jagadhari and, in point of fact, he had a temporary allotment of 36 acres, which was subsequently reduced to 12 acres, in village Ratauli. His allotment was changed only because the lands in certain villages including Ratauli were reserved for the Railway Workshop, As soon as the Railways had abandoned that scheme, the heirs of Rai Sahib Maya Bhan Batra asserted their claim to be accommodated in village Ratauli. Under these circumstances it was only equitable and proper that the heirs of Rai Sahib Maya Bhan Batra should be re-established in that village and the cancellation of the allotment in favour of the appellants was obviously equitable and in the interest of proper rehabilitation of displaced persons within the meaning of clauses (h) and (i).

Learned counsel for the appellants next contends that the order of the Deputy Custodian-General is obviously wrong and is liable to be quashed by a writ in the nature of *certiorari*, because of such glaring errors apparent on the face of the record. In *Hari Vishnu and others* v. *Syed Ahmed Ishaque and others* (1) a Full Bench of this Court, after referring to

(1) (1955) 1 S.C.R. 1104, 1121, 1123.

the various decisions of the English and Indian Courts, summarised the principles deducible therefrom in the following words:—

"On these authorities, the following propositions may be taken as established: (1) *Certiorari* will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) *Certiorari* will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of *certiorari* acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in *certiorari*. These propositions are well settled and are not in dispute.

(4) The further question on which there has been some controversy is whether a writ can be issued, when the decision of the

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inferior court or tribunal is erroneous in law."

Then after referring to the case of *Rex* v. *Northumberland Compensation Appeal Tribunal; Ex parte Shaw* (1), and other cases and quoting the following passage from the judgment of Mukherjea, J., in *T. C. Basappa* v. *T. Nagappa* (2):—

> "An error in the decision or determination itself may also be amenable to a writ of *certiorari* but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by '*certiorari*' but not a mere wrong decision."

this Court held on the fourth point as follows:

> "It may, therefore, be taken as settled that a writ of *certiorari* could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be a mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the

(1) (1951) 1 K.B. 711.
(2) (1955) S.C.R. 250.

strength of certain observations of Chagla, C.J., in *Batuk K. Vyas* v. *Surat Municipality* (4) that no error could be said to be apparent on the face of the record of it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

Such being the principles governing the power of the court to grant a writ of *certiorari* on the ground of error apparent on the face of the record, we now proceed to consider whether the contention that in the present case there are errors apparent on the face of the record is well-founded or not.

Learned counsel has enumerated the following errors, namely—

(1) that the Deputy Custodian-General in his judgment assumes that, in the application made on March 23, 1951, the case of respondent No. 2 was that he had a preferential claim to allotment in Ratauli and he wants us to refer to that application to see that there was in fact no such claim. This is obviously not an error of law.

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(2) that the order proceeds on the assumption that the allotment made to the appellants had not the approval of the Financial Commissioner. In point of fact the allotment to the appellants was made by the Director-General, who had the word "approved" endorsed on the report of the Revenue Assistant. The rejection of the application of the respondent No. 2 for allotment in village Ratauli cannot certainly be regarded as an approval by the Financial Commissioner of the allotment of land in favour of the appellants out of the area of the sub-allotment scheme. In any case this also cannot be said to be an error of law.

(3) that on the 7th June, 1950, when allotment was made to the appellants the respondent No. 2 and his relations were not sitting allottees of village Ratauli, for on that date the respondent No. 2 and his relations were settled in three other villages and consequently they could not under the law recorded in the Manual claim any allotment in village Ratauli where they ceased to be sitting allottees and, therefore, there is an error of law apparent on the face of record. The fact is that Rai Sahib Maya Bhan Batra was originally allotted land in village Ratauli. He having come from Shahpur District Jagadhari was the proper Tehsil for re-settling him. The allotment to him was shifted only because the lands in Ratauli and other villages had been reserved for the Railway Workshop. These are matters which could properly be taken into consideration in applying the departmental instructions contained in the Land Resettlement Manual. There is nothing in

the departmental rules which militates against the allotment of lands in Ratauli to the heirs of Rai Sahib Maya Bhan Batra or which takes away the power of cancellation given to the Custodian to cancel the allotment of the appellants.

These departmental instructions, on the appellants own showing in sub-para, (viii) of para 12 of their petition under Article 226, were not inflexible and were not adhered to rigidly and were merely in the nature of procedure and that the rehabilitation authorities had full authority and complete powers to make allotment without adhering rigidly to the departmental instructions, e.g., the scheme of sub-allocation. It, therefore, does not lie in the mouth of the appellants to say that these departmental instructions are law and that in the context of these departmental instructions, it must be held that there is an error of law apparent on the face of the judgment. The errors pointed out, if they are errors at all, are mostly errors of fact and even if the errors may by any stretch of argument be said to constitute errors of law, they are nothing more than mere errors of law, which may be corrected by a court of appeal, but which do not render the order a "speaking order" showing a clear ignorance or disregard of the provisions of the law, so as to be amenable to correction by a writ of *certiorari*. There is, in our opinion, no substance in this contention.

The last point urged by learned counsel for the appellant is that if any body is to be ousted from village Ratauli for accommodating the respondent No. 2, there is no reason why the appellants should be ousted and not the respondents Nos. 3 and 4. Learned counsel for the respondents Nos. 3 and 4 urged with considerable force that there are good grounds for not disturbing his clients. In the first

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place, the appellants are bigger allottees, and if anybody were to be disturbed, it must be the bigger allottees and not the smaller. Reference is made to page 84 of the Land Resettlement Manual and it is claimed that this rule has laid down a rule of equity of general application. In the next place, the appellants and the respondents Nos. 3 and 4 both come from Rawalpindi and they can be re-settled in Ratauli only on sanction given by Financial Commissioner and reference is made to page 82, paragraph 7 of of Chapter (iv) which lays down the principles of allocation. It is pointed out that the allotment of land in Ratauli in favour of the appellants were made by the Director-General and were never sanctioned by the Financial Commissioner. Further the Rehabilitation authorities charged with the duty of making allotments have exercised their discretion and for cogent reasons stated in the Deputy Custodian General's order the allotment to respondents Nos. 3 and 4 were not disturbed. There is no reason to interfere with that decision on an application under Article 226. None of the prerequisities for the issue of a writ of *certiorari* exists and the claim of the appellants as against the respondents Nos. 3 and 4 was, therefore, rightly rejected. It was not a proper matter to be decided on a petition under Article 226.

For reasons stated above this appeal must be dismissed with costs.

REVISIONAL CRIMINAL.

Before Tek Chand, J.

FAQIR CHAND AND OTHERS,—*Petitioners*

versus

BHANA RAM, AND OTHERS,—*Respondents.*

Criminal Revision No. 342 of 1957.

1957

June, 19th

Code of Criminal Procedure (V of 1898)—Section 145—Inquiry under—Nature and scope of—"Satisfied"—Meaning of—Satisfaction—Nature of—Material forming basis of