that a mandamus do issue directing the respondent to allow the petitioners to carry on the business of forward contracts or as commission agents for forward contracts unrestricted by the provisions of the said Punjab Forward Contracts Tax Act No. VII of 1951 and the rules thereunder and not to enforce the provisions of this Act and the rules.

The appellants will get their costs in this Court as also in the court below.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand and Prem Chand Pandit, JJ.

BISHAN SINGH,—*Petitioner*

versus

THE CENTRAL GOVERNMENT AND OTHERS,—*Respondents.*

Civil Writ No. 1307 of 1959.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 8, 14 and 40—Urban agricultural land—Rules with regard to its allotment or sale—Whether necessary to be framed—Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rules 22 and 23—Whether relates to urban agricultural land—Press notes and memorandum issued by the Central Government and the Chief Settlement Commissioner—Whether can take the place of Rules—S. 16 and Rule 87—Scope of—Interpretation of Statutes—Rules as to—"May" and "shall"—Interpretation of.

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Sept. 14th.

Held, that the reading together of sections 8, 14, and 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, makes it quite plain that for the purpose of payment of compensation to different classes of displaced persons under the Act, the Central Government had to

make rules regarding the various categories of evacuee property. As a matter of fact Rules have been framed with regard to all categories except urban agricultural land and this seems to be an accidental omission on the part of the Central Government and that is why in order to fill in this lacuna they have taken recourse to these press notes and memorandum which they are not, under the law, entitled to do. It was necessary for the Central Government under the Act to frame rules for this class of displaced persons also. These Rules are necessary in order that the objects of the Act may be attained. The Act really imposes a duty on the Central Government to make rules to carry out the purposes of the Act. The compensation pool has to be utilized in accordance with the provisions of the Act and the Rules made thereunder. Power given under this Act is to be used in a certain particular way. Displaced persons, for whose benefit these Rules have to be made, are entitled to get them framed and the conditions for the same are given in sections 8 and 40 of the Act. No rules have been framed by the Central Government with regard to payment of compensation to occupants of urban agricultural land. No provision has been made for dealing with this category of evacuee property which forms part of the compensation pool.

Held, that the words "all acquired evacuee properties" in Rule 23 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, refer only to those properties which are enumerated in Rule 22 and which are not allotable under the same rule, that is to say, any residential property the value of which exceeds Rs. 10,000, any shop the value of which exceeds Rs. 10,000 and any industrial concern the value of which exceeds Rs. 50.000. These three properties shall, according to Rule 23, ordinarily be sold. Rule 23 does not deal with urban agricultural land.

Held, that the press notes and memorandum issued by the Central Government and the Chief Settlement Commissioner are not valid and no action can be taken thereto and the Central Government cannot sell evacuee urban agricultural land without framing relevant rules. These press notes and the memorandum have not the force of law; they are merely executive instructions for executive action which is authorized by the Act and the Rules framed thereunder. Executive or departmental instructions have no statutory force and cannot override or curtail or enlarge the scope of

the provisions of the Act or the Rules nor can they take the place of the rules as contemplated by the Act.

Held, that section 16 of the Act has to be read along with section 8 of the Act, and section 16 only provides a procedural machinery for the custody, management and disposal of the compensation pool. Right of disposal of the compensation pool is there but it is subject to the provisions of the Act, and the Act says that the rules shall be framed under sections 8 and 40. The Central Government cannot override and by-pass section 8(2) and section 40(2)(c) and (j) of the Act. It cannot take recourse to section 16 of the Act for prescribing a mode for payment of compensation to displaced persons of this class by the issuing of these press notes and without framing relevant rules for the purpose, especially when section 8(2) of the Act specifically mentions that rules should be made for providing the form and the manner in which compensation may be paid to different classes of displaced persons.

Held, that Rule 87 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, deals with the procedure and mode of sale and does not deal with power to sell. If the Act and the Rules confer a power to sell some evacuee property, then rule 87 comes into play, because it mentions the procedure and the mode of sale thereof. It does not authorize the Chief Settlement Commissioner to either explain or interpret the press notes issued by the Central Government. It merely empowers him to choose any of the modes mentioned in this rule for the sale of the property forming part of the compensation pool.

Held, per Tek Chand, J.—that in matters of interpretation, the Courts should construe the statute in a manner so as to ensure that the legislative intention is effectuated rather than eluded. The Courts in construing statutes keep in the forefront the intentions of the Legislature and try to discover and then give effect to the real intention of the statute. If it is possible, the words of an Act of Parliament must be construed so as to give a sensible meaning to them and avoid all risk of ambiguity. If the language of a statute leans itself to more than one interpretation, that meaning should be chosen which is in accord with the intentions of the Legislature.

Held, that as a general rule the word "may" is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word "shall", which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words "may", "shall", "must" are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the Legislature should be looked into along with the pertinent circumstances. If it appears to be the settled intention of the Legislature to convey the sense of compulsion, as where an obligation is created, the use of the word "may" will not prevent the Court from giving it the effect of compulsion or obligation. Conversely, the use of the term "shall" may indicate the use in optional or permissive sense. Though in general sense "may" is enabling or discretional and "shall" is obligatory, the connotation is not inelastic and inviolate. The ultimate rule in construing auxiliary verbs like "may" and "shall" is to discover the legislative intent; and the use of words "may" and "shall" is not decisive of discretion or mandate. The use of the words "may" and "shall" may help the Courts in ascertaining the legislative intent without giving to either, a controlling or a determining effect. The Courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed.

Petition under Articles 226 and 227 of the Constitution of Indin praying that writ, direction or order be issued quashing the Press Notes, dated 31st May, 1957, 15th October, 1958 and 27th November, 1958, respectively.

H. S. WASU & B. S. WASU, ADVOCATES, *for the Petitioners.*

S. M. SIKRI, ADVOCATE-GENERAL & MR. A. M. SURI, ADVOCATE, *for the Respondents.*

ORDER

Pandit, J.

PANDIT, J.—These are two writ petitions (Nos. 1307 and 1313 of 1959), under Articles 226 and 227 of the Constitution of India challenging the validity of two press notes issued by the Central

Government and one Memorandum issued by the Chief Settlement Commissioner, Ministry of Rehabilitation, New Delhi. This judgment will dispose of both the writ petitions as the learned counsel for the parties agree that though the facts in writ petition No. 1313 of 1959 are somewhat different from writ petition No. 1307 of 1959 but the questions for determination are the same and both of them can be disposed of by this judgment.

The petitioner in this case (Civil Writ No. 1307 of 1959) is a displaced person from West Punjab and has now settled at Jullundur. In lieu of his agricultural land within the corporation area of Lahore, the petitioner after his migration to India was given on lease 46 kanals of evacuee agricultural land within the municipal area of Jullundur City. His lease was renewed from year to year and he has been in possession of this land ever since. In 1954 the Displaced Persons (Compensation and Rehabilitation) Act, No. 45 of 1954, was enacted to provide for the payment of compensation and rehabilitation grants to displaced persons and the Central Government acquired all the evacuee property, including the land in dispute which is urban agricultural land, and put it in the compensation pool. On the 4th June, 1957, the Central Government issued the following press note in which it was mentioned as to how these urban agricultural lands would be permanently transferred :—

> "Evacuee urban agricultural lands in the Punjab and in the erstwhile PEPSU Union had been given temporarily on lease to displaced persons who had

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left such lands in West Pakistan. The leases were renewed from time to time. There has been a demand from displaced persons to whom these lands had been leased out that they should be transferred to them permanently. These demands have been made both by the original lessees and by displaced persons who are sub-lessees and who have been in actual cultivating possession. Government has carefully considered this question and in order to avoid hardship to displaced persons who are in occupation of these lands, has decided to treat them in the same manner as other urban evacuee property in the matter of allotment.

(2) In accordance with this decision urban agricultural plots which do not exceed Rs. 10,000 in value will be transferred at the reserve price on the following conditions:—

(i) Where the lessee is a displaced person and is in actual occupation of such land he will be entitled to have the land transferred to him. Where the lessee is a displaced person and is not in occupation of land because he has sublet it, he is entitled to have the land transferred to him provided that he had been in actual possession of this land within a period of one year before 1st January, 1957.

(ii) Where the land has been sublet and the sublessee is a displaced person,

such sublessee can have the land transferred in his name provided that he has been in possession of the land for a period of not less than one year on January 1, 1957.

(iii) Where the land is in the possession of a lessee or sub-lessee who is not a displaced person, it will be sold by auction. Where the land is in the possession of a sub-lessee who has been in possession for a period of less than one year on January 1, 1957, and where the lessee is not entitled to allotment, the land will be sold by open auction.

(iv) For the purpose of this allotment each holding of urban agricultural land will be taken as a unit and will not be allowed to be treated as divisible for bringing it within allotable limit.

(3) The price of lands allotted to occupants will be recoverable in accordance with the provisions of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and instructions issued from time to time. After these evacuee urban agricultural lands have been valued notices will be served on the lessees or sub-lessees, as the case may be, calling upon them to prove their eligibility for allotment. These notices will be served through the offices of the Regional Settlement Commissioner, Jullundur, and the

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(4) All urban agricultural plots valued at more than Rs. 10,000 will be sold by auction."

On the 15th October, 1958, another press note was issued by the Central Government, announcing some concessions in addition to those already mentioned in the previous press note. It is in the following words:—

"Evacuee urban agricultural land, in the Punjab and in the erstwhile Pepsu Union had been given temporarily on lease to displaced persons who had left such lands in West Pakistan. The leases were renewed from time to time. In order to avoid hardship to the displaced persons who were in occupation of these lands, the Ministry of Rehabilitation had decided to treat those lands in the same manner as other urban evacuee properties in the matter of allotment, subject to certain conditions.

(2) In accordance with this decision, urban agricultural plots, the value of which did not exceed Rs. 10,000 were made transferable at the reserve price to the lessees or sub-lessees in occupation under certain conditions. The details of these conditions were explained in a press note issued by the Ministry of Rehabilitation in June, 1957.

(3) It has been represented to the Government of India that the concessions in

regard to the transfer of agricultural plots, announced in the earlier press note did not adequately meet the demands of the lessees and sub-lessees of of these plots. These representations have been carefully considered and in order to mitigate hardship, the following concessions have been made in addition to those announced in June, 1957:—

(i) Where a lessee was allotted a holding of urban agricultural land consisting of several disjointed plots, whether in one place or in several places in the same town, he will be permitted to choose one of those plots for allotment at the reserve price provided:—

(a) No sub-lessee under the existing rules is entitled to the allotment of the plot; and

(b) The value of the plot is less than Rs. 10,000.

(ii) Where the lessee has sublet a plot valued at Rs. 10,000 or less and the sub-lessee is not entitled to the allotment, either because he has not been in possession for one year prior to January, 1957, or because he is a non-displaced person, the allotment will be made in favour of the original lessee;

(iii) Where either a single plot or a holding consisting of several plots has

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been leased out to more than one person, then, provided that the single plot or each of the several plots is valued at Rs. 10,000 or less, the allotment will be made as follows:—

(a) In the case of a single plot, portions of the plot will be allotted to the various allottees in equal shares;

(b) Where there are several plots, each allottee who is a co-sharer will be given one of such plots;

(iv) In cases in which after allotment is made in the above manner and one or more plots remain unallotted these plots will be sold. In such cases, also, allotments will be subject to the rights of the sub-lessee, if any, under the existing rules;

(v) No sub-lessee will be permitted to hold more than one plot, even if he has taken several plots on lease from one or more persons."

On the 27th November, 1958, the Chief Settlement Commissioner, Delhi, issued the undermentioned memorandum interpretting certain terms used in the press notes issued by the Central Government:—

"Certain clarifications have been asked for by Regional Settlement Commissioners in regard to the distinction between 'plot' and 'holding' which has arisen out

of a comparison of the order relating to the transfer of urban agricultural land, in June and in September. In the original instructions it was made clear that the unit of disposal was a holding, i.e., several plots or khasra numbers. If such a holding was valued at Rs. 10,000 or less, the lessee or the sub-lessee, as the case may be, was entitled to allotment. If the value of the holding as such was more than Rs. 10,000, no allotment was to be made.

(2) In the September instructions, further, concessions were envisaged. Under these concessions, even if the holding, i.e., several plots or khasra numbers taken together were valued at more than Rs. 10,000, the lessee or the sub-lessee, was entitled to choose one single plot or khasra number for allotment, provided that this plot or khasra number was valued at Rs. 10,000 or less. According to the present instructions the basic unit is a plot or khasra number and not a holding except that where a holding consisting of several plots is valued at less than Rs. 10,000, the holding as such is allotted. I must emphasize that wherever the word 'plot' has been used in the latest instructions this is synonymous with khasra number."

In contravention of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter called the Act, and without framing any rules with regard to this class

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of displaced persons, the Central Government, according to the petitioner, on the basis of the above-mentioned press notes, decided that 'evacuee urban agricultural land' would be treated in the same manner as other urban evacuee property, and that urban agricultural plots which did not exceed Rs. 10,000 in value would be transferred to the lessees at the reserved price with certain conditions. The Chief Settlement Commissioner had, by the memorandum quoted above, interpreted the term 'plot' mentioned in the press notes as synonymous with khasra number. The petitioner whose total area under lease with him was said to be worth more than Rs. 10,000, was informed by respondent No. 3, the Assistant Settlement Commissioner, Jullundur,—*vide* his letter, dated the 13th May, 1959, that only one khasra number valued at less than Rs. 10,000 could be transferred to him.

According to the petitioner, the provisions of the press notes and the memorandum have neither been incorporated in the Act nor in the Rules and therefore, they merely amount to executive instructions which have no statutory force, that the petitioner was entitled to get the whole of the area under lease with him or at least that much area whose value did not exceed Rs. 10,000 by setting off its valuation against the compensation payable to him, but by virtue of these press notes and memorandum he was being deprived of the same. He has, consequently, filed the present writ petition.

The petition is being contested by the respondents on a number of pleas *inter alia* that there is no provision in the Act or in the Displaced Persons (Compensation and Rehabilitation) Rules,

1955, hereinafter called the Rules, regarding the permanent transfer by allotment of evacuee urban agricultural lands in the Punjab and such lands were, therefore, to be sold by public auction under the provisions of rule 87, but as a result of representations received from some of the lessees it was decided to give certain concessions which were incorporated in the press notes, that the press note issued on the 15th October, 1958, was clarifed by the Chief Settlement Commissioner in his memorandum, dated the 27th November, 1958, that the press notes had been issued by the Government of India, Ministry of Rehabilitation, in exercise of the powers vested in them under sub-section (1) of section 16 of the Act and were quite legal, that no illegality had been committed by granting certain concessions to displaced persons, that the total value of the petitioner's holding exceeded Rs. 10,000 and the same was saleable under the press notes, that the memorandum had been issued by the Chief Settlement Commissioner in exercise of the powers vested in him by virtue of the provisions of rule 87, that the respondents were fully competent to issue executive orders regarding the manner, terms and conditions on which the acquired evacuee urban agricultural lands in the Punjab should be disposed of, and that the press notes and instructions issued by them were, consequently, legal.

Learned counsel for the petitioner has argued that both the press notes issued by the Central Government and the memorandum issued by the Chief Settlement Commissioner are merely departmental or executive instructions and cannot have the statutory force of the Rules framed under the Act and consequently any action taken or intended to be taken on the basis of these press

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notes and memorandum is of no legal effect. He further submits that no rules have been framed by the Central Government under sections 8 and 40 of the Act with regard to this class of displaced persons who owned urban agricultural lands in Pakistan and no action can be taken by the respondents with regard to evacuee urban agricultural lands and payment of compensation to this class of displaced persons, without first framing relevant rules on the subject as have been framed with regard to other classes of displaced persons.

Learned counsel for the respondents, on the other hand, has submitted that the respondents are entitled to auction the urban agricultural lands because the press notes and the memorandum are quite valid since they have been issued under sub-section (1) of section 16 of the Act and rule 87. He further submits that there is no duty cast on the Central Government to make rules under section 8(2) of the Act but they may do so in their discretion and at any rate, appropriate and relevant rules have been framed by the Central Government.

As I look at this matter, three questions will arise for the decision of this case:—

(1) Was it necessary for the Central Government under this Act to frame rules for this class of displaced persons?

(2) If so, has the Government framed such rules?

and (3) What is, in law, the value of these press notes and the memorandum ? Could the respondents, validly take any action on their basis?

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With regard to question No. 1, it is common ground that in order to determine this question we have only to examine and interpret the relevant provisions of the Act. Before doing so, I may mention that urban agricultural land is that land which was included within the limits of a corporation, municipal committee, notified area committee, town area, small town committee and cantonment. The general scheme of land resettlement did not deal with urban agricultural land which was considered to belong to a separate category and was leased or allotted as such only to those persons who held similar lands in Pakistan. Displaced persons of this type are considered to be a separate and a distinct class. Reference in this connection may be made to the Land Resettlement Manual by Shri Tarlok Singh, page 100, where he states—

> "By an agreement between the two Dominions, agricultural property has been defined as 'land not included within the limits of a Corporation, Municipal Committee, Notified Area Committee, Town Area, Small Town Committee and Cantonment, as these limits stood on the 15th August, 1947'. Land situated within urban area is, like other property in urban areas, subject to sale or exchange. For this reason the general scheme of land resettlement comprises only those evacuee lands which are not by definition urban lands. From the area abandoned by a displaced person, therefore, land held by him in an urban area has been placed in a separate category and only the balance of his land, described as

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agricultural property, is subject to valuation and cut with a view to allotment of agricultural land in East Punjab and Pepsu."

Moreover, in Appendix I to the Rules, in the application form for compensation in column 10(b) "urban agricultural lands" is entered as a distinct and separate class of evacuee property. I may mention here that the learned counsel for the respondents did not seriously dispute the fact that this was a separate category of evacuee property and the displaced persons in possession of such property were considered to be a separate class by themselves.

Coming to the relevant provisions of the Act, Section 4 of the Act requires all displaced persons having a verified claim to make applications for payment of compensation. Section 8 deals with the form and manner of payment of compensation out of the compensation pool which is constituted under section 14 and consists of all evacuee property acquired under section 12 of the Act. Section 8 of the Act runs as under:—

(His Lordship then read Sections 8, 14(2) and 40 of the Act and continued:)

In exercise of the powers conferred by section 40 of the Act, detailed rules have been framed by the Central Government and they are called the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and are divided into various chapters. It is significant to note that Rules have been framed for payment of compensation out of various categories of evacuee property except urban agricultural land.

If one were to read sections 8, 14 and 40 of the Act together it is quite plain that for the purpose of payment of compensation to different classes of displaced persons under the Act, the Central Government had to make rules regarding the various categories of evacuee property. As a matter of fact Rules have been framed with regard to all categories except urban agricultural land and this seems to be an accidental omission on the part of the Central Government and that is why in order to fill in this lacuna they have taken recourse to these press notes and memorandum which they are not, under the law, entitled to do.

Learned counsel for the petitioner has argued that the word 'may' in sections 8 and 40 should be read as 'must' or 'shall'. Reliance was placed by him on the well-known case of *Julius* v. *Lord Bishop of Oxford* (1), where Lord Cairns at page 225 observed:—

> "Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised."

Lord Blackburn at page 244 said:—

> "The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right."

(1) (1880) 5 Appeal cases 214.

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He has also relied upon a Full Bench decision in *Lachmi Chand Suchanti* v. *Ram Pratap Chaudhury* (1), wherein it was held:—

> "In construing Acts of public utility where the framing of the rules and making of the appointments is necessary in order that the objects of the Act may be attained, such words as 'It shall be lawful' which might otherwise be considered permissive, are really mandatory. The permissive form is a mere courteous convention. The Act really imposes a duty on the executive and it is implied that a public body will carry out the duties indicated by the legislature in order that the purpose of the legislature may not be frustrated. The case is quite otherwise when a public body or officer is invested with authority to exercise a judicial discretion. Even in such a case the body or officer must receive any application made to it and exercise the jurisdiction conferred, either by granting or withholding the relief claimed."

Learned counsel for the respondents, commenting on the case of *Julius* v. *Lord Bishop of Oxford*, submitted that the persons, for whose benefit a power is deposited for the purpose of being used, must be specifically mentioned, but the same had not been done in the present case. I do not agree with this submission, because the class of people for whose benefit the Rules have to be framed have been specifically pointed out in in section 2(b) of the Act, and Section 8(2) of the the Act and they are displaced persons as defined

(1) A.I.R. 1934 Pat. 670 (2).

Act defines the conditions upon which they are entitled to call for the exercise of that power.

Learned counsel for he respondents then referred to the case of *Nichols* v. *Baker* (1), wherein also reliance was placed on the case of *Julius* v. *Lord Bishop of Oxford.* Besides, at page 273, Lopes, L.J., observed:—

> "Now the word used in sub-section (4) is 'may', and the word 'may' is beyond all question potential, it implies a power; but, if it is coupled with a duty on the Court or the person to whom it is given to use that power in a certain particular way, it then no doubt becomes imperative."

After examining the relevant provisions of the Act, I am of the view that it was necessary for the Central Government under the Act to frame rules for this class of displaced persons also. These Rules are necessary in order that the objects of the Act may be attained. The Act really imposes a duty on the Central Government to make rules to carry out the purposes of the Act. The compensation pool has to be utilised in accordance with the provisions of the Act and the Rules made thereunder. Power given under this Act is to be used in a certain particular way. Displaced persons, for whose benefit these Rules have to be made, are entitled to get them framed and the conditions for the same are given in sections 8 and 40 of the Act.

As regards question No. 2, learned counsel for the respondents concedes that no special rules have been framed by the Central Government for

(1) (1890) 44 Chancery Division 262.

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this class of displaced persons, as have been framed for other classes of displaced persons. But he contends that rules may be deemed to have been framed by the process of interpretation. His submission is that since Rules framed specially provide for allotable property, therefore, by the process of elimination the balance of the evacuee property by implication becomes saleable. He has in this connection invited our attention to rules 22 and 23 which are reproduced below:—

22. "(1) The following classes of acquired evacuee property shall ordinarily be allotted, namely—

(a) any residential property in the occupation of a displaced person, the value of which does not exceed ten thousand rupees;

(b) any shop in the occupation of a displaced person, the value of which does not exceed ten thousand rupees;

(c) any industrial concern in the occupation of a displaced person, the value of which does not exceed fifty thousand rupees.

(2) A portion of a building of an acquired evacuee property which has no independent access shall not, unless Central Government otherwise directs, be allotable."

23. "All acquired evacuee properties which are not allotable under rule 22 shall ordinarily be sold."

He submits that rule 22 deals with allotable property and all the acquired evacuee properties which are not allotable under rule 22 shall, according to rule 23, ordinarily be sold. I am afraid I cannot agree to this submission because in rule 23 the words "all acquired evacuee properties" refer only to those properties which are enumerated in rule 22 and which are not allotable under the same rule, that is to say, any residential property the value of which exceeds Rs. 10,000, any shop the value of which exceeds Rs. 10,000 and any industrial concern the value of which exceeds Rs. 50,000. These three properties shall, according to rule 23, ordinarily be sold. Rule 23 immediately follows rule 22 and, therefore, they should be read together and reading them together, my view is that the words "all acquired evacuee properties" do not cover all types of evacuee properties, as contended by the learned counsel for the respondents, but refer only to those three types of evacuee properties mentioned in rule 22 and which are not allotable under that rule because of the value of those properties being above their prescribed limits mentioned in rule 22. This is also clear from the words "which are not allotable under rule 22" in rule 23 which immediately follow the words "all acquired evacue properties" in the same rule. If one were to accept the contention of the learned counsel for the respondents that the list of allotable evacuee properties is given in rule 22 and the rest is all saleable under rule 23, then even agricultural lands in rural areas, groves and gardens, rural houses and shops will also become saleable, which is not the case. By rule 44 certain houses and shops in rural areas have been made allotable. By virtue of rule 49, agicultural land in rural areas is also allotable

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and by virtue of rule 70(2) groves and gardens not mentioned in sub-clause (1) are allotable. Therefore, this interpretation would come into conflict with the other Rules made by the Central Government with regard to several other categories of evacuee property. In my opinion, therefore, rule 23 does not deal with urban agricultural land.

Reliance was then placed by the learned counsel for the respondents on the second proviso to rule 95(5). I am afraid this rule is of no assistance to the respondents, because it does not deal with the manner in which compensation is to be paid to the holders of urban agricultural land. It only says that no rehabilitation grant shall be payable in respect of any property other than agricultural land in any urban area which the applicant had failed to include in a claim filed in respect of other properties under the Displaced Persons (Claims) Act No. 44 of 1950.

In my opinion, therefore, no rules have been framed by the Central Government with regard to payment of compensation to occupants of urban agricultural land. No provision has been made for dealing with this category of evacuee property which forms part of the compensation pool.

As regards question No. 3, the learned Advocate-General, appearing for the respondents, concedes that the press notes and the memorandum have not the force of law, and that they are merely executive instructions for executive action which is authorised by the Act and the Rules framed thereunder.

I have already held that the Central Government had to frame separate rules for this class of displaced persons and without framing such

rules, the urban agricultural land could not be sold. Section 40(3) provides that all rules made under this section shall be laid for not less than thirty days before both houses of Parliament, as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the said period of thirty days. It is, therefore, clear that these rules are subject to the control of the Parliament. The press notes and the memorandum were not subject to the scrutiny of the legislature and, therefore, they cannot take the place of the rules as contemplated by the Act.

The very fact that the Central Government was issuing these press notes, shows that they felt the necessity of making rules for this class of displaced persons and now they are trying to utilise them as a substitute for rules which they cannot do under the law, because executive or departmental instructions have no statutory force and cannot override or curtail or enlarge the scope of the provisions of the Act or the Rules.

Reliance was then placed by the learned counsel for the respondents on the provisions of section 16(1) of the Act and Rule 87 of the Rules, and it was submitted that the Central Government was fully authorised to take any measures as it considers necessary or expedient for the disposal of the compensation pool.

In my opinion, section 16 has to be read along with section 8 of the Act, and section 16 only provides a procedural machinery for the custody, management and disposal of the compensation pool. Right of disposal of the compensation pool is there but it is subject to the provisions of the Act, and the Act says that the rules shall be framed under sections 8 and 40. The Central Government cannot override and by pass section 8(2) and

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section 40(2) (c) and (j) of the Act. It cannot take recourse to section 16 of the Act for prescribing a mode for payment of compensation to displaced persons of this class by the issuing of these press notes and without framing relevant rules for the purpose, especially when section 8(2) of the Act specifically mentions that rules should be made for providing the form and the manner in which compensation may be paid to different classes of displaced persons.

Rule 87 deals with the procedure and mode of sale and does not deal with the power to sell. If the Act and the Rules confer a power to sell some evacuee property, then rule 87 comes into play, because it mentions the procedure and the mode of sale thereof. It does not authorise the Chief Settlement Commissioner to either explain or interpret the press notes issued by the Central Government. It merely empowers him to choose any of the modes mentioned in this rule for the sale of the property forming part of the compensation pool.

I am, therefore, of the opinion that the impugned press notes and the memorandum are not valid and no action can be taken thereon and the Central Government cannot sell evacuee urban agricultural land without framing relevant rules.

Our attention was invited by the learned counsel for the petitioner to a decision by Bishan Narain, J., in *Ram Nath* v. *Central Government*, 1960, P.L.R. 53, in which the learned Judge has also taken a similar view with regard to these press notes and the memorandum.

In view of what I have said above, I would allow these petitions and hold that any action taken or intended to be taken on the basis of the

press notes and the memorandum is of no legal effect, as they have not the force of law. In the circumstances of the case, however, the parties are left to bear their own costs in this Court.

TEK CHAND, J.—I find myself in complete agreement with the reasoning and the conclusion of my brother Pandit, J.. I, however, wish to examine in some more detail the argument of the Advocate-General resting on the inter-pretation of the word "may" occurring in sections 8 and 40 of the Displaced Persons (Compensation and Rehabilitation) Act, No. 44 of 1954. Section 8(2) which has been reproduced *in extenso* in the judgment of my brother and which deals with the form and manner of payment of compensation provides that for purposes of payment of compensation "the Central Government may, by rules, provide for all or or any of the following matters:—

(a) the classes of displaced persons to whom compensation may be paid;

(b) * * *

(c) * * *

(d) * * *."

Sub-section 1 of section 40 which deals with power to make rules, provides:—

"The Central Government may, by notification in the official Gazette make rules to carry out the purposes of this Act."

Sub-section 2, while saving the generality of the power as given in sub-section 1 particularises the matters which may be provided by rules and they include:—

(c) "the scales according to which, the form and manner in which, and the instal-

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ments by which, compensation may be paid to displaced persons; * * *

(j) the procedure for the transfer of property out of the compensation pool and the manner of realisation of the sale proceeds or the adjustment of the value of the property transferred against the amount of compensation."

As the extensive rule-making power, conferred upon the Central Government, is in the nature of subordinate legislation by the executive, sub-section 3 of section 40 provides a very desirable and essential legislative control. It reads:—

(3) "All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament, as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the said period of thirty days."

Thus the rules made by the Central Government under section 40(1) providing for matters mentioned in section 8(2) and section 40(2) of the Act, are liable to be modified by the Parliament; and it is for this reason that all rules made by the Central Government under section 40 have to be laid for not less than thirty days before both Houses of Parliament.

The argument of the learned Advocate-General is, that both in sections 8(2) and 40, while referring to the rule-making power, the Legislature advisedly has used the word "may" so as to construe it in a permissive rather than in a mandatory sense; and

he, therefore, contends that it is optional for the Government to make rules or not to make rules. He goes further, and says, that where no rules are made, it is open to the Government, to give effect to the Act, by means of Press Notes. This argument when analysed comes to this, that the word "may", if discretional, is tantamount to "may not" and, therefore, the Government may not make any rules, if it does not wish to, and in that event, the purposes of rules can be served by means of Press Notes. This reasoning when subjected to syllogistic process will lead to extraordinary and unexpected results. In other words, by the use of the word *may* the Legislature tells the executive, that it may *not* make rules at all and through Press Notes it may effectuate the intention of the Act, according to its likes; and these Press Notes are not required to be subjected to the scrutiny of the Legislature. This interpretation of the learned Advocate-General, has the effect of circumventing rather than complying with the intention of the Legislature. Mr. Sikri read out to us certain observations of Cotton L.J. in re: *Baker, Nichols* v. *Baker* (1):—

> "I think that great misconception is caused by saying that in some cases "may" means "must". It never can mean "must", so long as the English Language retains its meaning; but it gives a power, and then it may be a question in what cases, where a Judge has a power given him by the word "may", it becomes his duty to exercise it. Nothing is said in the present Act as to the duty of the Judge to exercise the power given him by section 125, subsection 4; * * * *".

(1) 1890 L.R. 44 Chancery Division 262 at P. 270.

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The above words cannot be read in a detached manner, and in utter disregard of the context, in which, they were used. In that case, all that was held was, that the power given by the Bankruptcy Act, 1883, section 125, sub-section 4, to transfer the administration of an insolvent estate from the Chancery Division to the Court of Bankruptcy, is a discretionary power, and not a power which the Judge is bound to exercise whenever the estate is shown to be insolvent. It is an error to assume, that Cotton L.J., intended to convey, that under no circumstances the word *may* can be construed in mandatory sense. This is also clear from the observations at pages 268 and 271 of Cotton, L.J. During the course of the counsel's arguments, he remarked, "It is an inaccuracy of language to say that "may" can mean "must" or "shall". It simply confers a power. We must look at the object of the statute to see whether a duty to exercise the power is imposed." (*vide* page 268). During the course of the judgment, Cotton L.J. said: "In my opinion, there is given by the word "may" a power as to the exercise of which there is a discretion, and there is not here enough to show that it was the duty of the Judge to exercise that power." The same idea was expressed by Lopes, L.J. at page 273 in the following words:—

> "Now the word used in sub-section 4 is "may", and the word "may" is beyond all question potential, it implies a power; but if it is coupled with a duty on the Court or the person to whom it is given to use that power in a certain particular way, it then no doubt becomes imperative. In the present case I can see no such duty, and, in my

> opinion, therefore, the power conferred by this sub-section is discretionary."

The above decision does not, to my mind, advance the case of the learned Advocate-General. It is well known that the word "may" is often used to signify an obligation and not merely faculty or power. The word "may" has also been used to denote not merely permission but a command. In *Rex* versus *Barlow* (1), 2 Salkeld 609, a decision of 1693, it was observed:—

> "For where a state directs the doing of a thing for the sake of justice or the public good, the word "may" is the same as the word "shall"; thus 23 H. 6, says, the sheriff may take bail; this construed, he shall; for he is compellable so to do."

In *Reg,* v. *Tithe Commissioners* (2), Coleridge J., said:—

> "The words undoubtedly are only empowering; but it has been so often decided as to have become an axiom that in public statutes words only directory, permissory, or enabling, may have a compulsory force where the thing to be done is for the public benefit or in advancement of public justice."

After referring to the above observations, Lord Blackburn in *Julius* v. *Lord Bishop of Oxford* (3), said:—

> "The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right."

(1) 91 E.R. 516.
(2) 14 Q.B. 474.
(3) L.R. 1880 5 A.C. at P: 214.

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In the above case, Cairns L.C., in a similar strain at page 225, said:—

> "My Lords, the cases to which I have referred appear to decide nothing more than this; that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised."

The case of *Macdougall* v. *Paterson* (1), is an authority for the proposition, that where a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorised, to exercise the authority when the case arises, and its exercise is duly applied for by a party interested, and having the right to make the application. The question in that case related to the interpretation of the word "may" in the 13th section of the County-courts Extension Act, which provides, that, in certain cases, the court or a judge at chambers *may* by rule or order direct that the plaintiff shall recover his costs. Jervis, C.J., at page 679, said:—

> "..... we are of opinion, that the word "may" is not used to give a discretion, but to confer a power upon the court and judges; and that the exercise of such power depends, not upon the discretion of the court or judge, but upon the proof of the particular case out of which such power arises.

(1) (1851) 138 E.R. 672.

> But, if it be doubtful in which sense the word "may" is used, we should be justified, by the rule of construction to which we have referred, in considering whether absurdity or repugnance would not follow from holding that a discretion was given, and might accordingly modify the word so as to avoid that consequence."

What follows from the consideration of these authorities is, that as a general rule the word "may" is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word "shall", which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words "may", "shall", "must" are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the Legislature should be looked into along with the pertinent circumstances. If it appears to be the settled intention of the Legislature to convey the sense of compulsion, as where an obligation is created, the use of the word "may" will not prevent the Court from giving it the effect of compulsion or obligation. Conversely, the use of the term "shall" may indicate the use in optional or permissive sense. Though in general sense "may", is enabling or discretional and "shall" is obligatory, the connotation is not inelastic and inviolate. The ultimate rule in construing auxiliary verbs like "may" and "shall" is to discover the legislative intent; and the use of words "may' and "shall" is not decisive of discretion or mandate. The use of the words "may" and "shall" may help the Courts in ascertaining the legislative intent without giving to either, a

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controlling or a determining effect. The Courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed. The sense in which the word "may" has been used in sections 8 and 40 is to confer power on the Government to make rules to carry out the general and the enumerated purposes of the Act.

It is not open to the Government to say that they can effectuate the intention of the Legislature through Press Notes and need not frame any rules, on the specious plea that the Government's duty to make rules is discretional or optional. To accept this contention will be tantamount to denuding the provisions of sub-section 3 of section 40 of their vital purpose, and to making the supervisory control of the Legislature illusory and to countenancing a circumvention whereby, these fundamental provisions can be over-looked by the simple method of being disregarded. This argument postulates a purposeful contrariety, which cannot be imputed to the Legislature, as that would lead to *reductio ad absurdum*.

The apparent intention of the statute as gathered from the context is that whenever it has to determine the mode of payment of compensation to the several classes of displaced persons or to effectuate the general and specified purposes of the Act, the Government must frame rules and it cannot proceed with those matters otherwise. The use of the word "may" in the above provisions though facultative, nevertheless, makes it obligatory on the Government, to make rules and then to proceed with the matter in accordance with them, and not to omit to make rules and give effect to the provisions through Press Notes and

thus by-pass the provisions of sub-section 3 of section 40 which requires legislative scrutiny of both Houses of Parliament in relation to the rules. The clear intention of the relevant provision is that if the Government desires to exercise certain powers in order to give effect to the Legislative intent, it has to do so by framing appropriate rules and in no other way. The statutory directions given to the Central Government that it may make rules to carry out the purposes of the Act mean, not otherwise than by rules.

In re: *Neath* v. *Brecon Railway Company* (1), when interpreting the expression "it shall be lawful" it was said that it means, in substance, "that it shall be unlawful to do otherwise". In the instant case, the Act was not granting mere discretion to the Government to frame or not to frame rules but it imposed duty which was both positive and absolute to proceed with matters referred to in the provisions, not otherwise than, by framing rules. The construction sought to be placed on behalf of the Government will lead to curious results. Instead of complying with the provisions of the Act, which requires the Government to frame the rules, and then, to place them before both Houses of Parliament, this construction will enable the Government to evade these provisions. It never was the intention of the framers of the Act that its purpose should be effectuated without the necessity of making rules and through Press Notes.

In matters of interpretation, the Courts should construe the statute in a manner so as to ensure that the legislative intention is effectuated rather than eluded. The Courts in construing statutes keep in the forefront the intentions of

(1) 1874 L.R. 9 Chancery Appeals 263.

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the Legislature and try to discover and then give effect to the real intention of the statute. If it is possible, the words of an Act of Parliament must be construed so as to give a sensible meaning to them and avoid all risk of ambiguity. If the language of a statute leans itself to more than one interpretation, that meaning should be chosen which is in accord with the intentions of the Legislature. As remarked by Pilcher, J., in re: *In the Goods of Harry Gilligan (Decd)*. (1):—

> "If these last words are ambiguous, it is right that consideration should be given to the whole purpose of the section and such interpretation given to the potentially ambiguous words as shall carry out the intentions of the legislature, if these can be ascertained;"

It was the undoubted intention of the Parliament that the purposes of the Act may be carried out through rules made and because of the use of the word "may" in the optional or discretional sense the clear intention of the Legislature cannot be treated as vain. The plain intention of the Legislature cannot be defeated by any slight inaptness or ambiguity in the language employed. That construction has to be preferred which carries out rather than defeats the object of the statute, according to the principle *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). Wherever possible, words ought to be made subservient, and not opposed to the intention of the framers of the Act. An interpretation which may result in thwarting the real intention of the legislature by resort to a disingenuous device to facilitate circumvention cannot but be discountenanced.

(1) 1950 P. 32 (38).

The holders of urban agricultural land form a separate class of displaced persons and even the Press Notes of the Government make this obvious and it was, therefore, necessary to frame rules for this class. I do not agree with the contention of the learned Advocate-General, that the existing provisions, both in the Act and in the rules, cover the case of this class of displaced persons. The argument that section 16 allows the Central Government to take such measures, as it considers necessary, or, expedient for the custody, management and disposal of the compensation pool in order that it may be effectively utilized in accordance with the provisions of this Act cannot be construed so widely as to dispense with the provisions of the rule-making provisions and in the guise of section 16, Government cannot override or bypass either section 8 or section 40. Section 16 does not, therefore, dispense with the rule-making duty of the Government. I find myself in agreement, also with the answer to the second question posed in the judgment of my brother Pandit, J., that no rule, to which reference has been made by the learned Advocate-General, applies to the occupants of urban agricultural land in respect to payment of compensation, and, no provision has been made for the holders of this class of evacuee property. I also, concur that where the provisions as to making of rules are mandatory, Press Notes or any other executive instructions are no substitutes for the statutory rules, and as such they have not the force of law and the petitioners, therefore, are not bound either by the Press Notes or the memorandum which are of no legal effect. I, therefore, subscribe to the order proposed.

B.R.T