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it is an enabling word which gives discretion, came up for decision before a Division Bench, consisting of Gajendragadkar, J., (as he then was), and Chainani, J., of Bombay High Court, in *Kurban Hussen* v. *Ratikant* (5), and it was observed that taking into consideration the scheme of the section it must be held that the said word introduces an element of obligation or compulsion and in effect means "must" or "shall". Taking into consideration the scheme of section 14 of the Delhi Rent Control Act 59 of 1958, I am of the view that though the word used in the proviso to sub-section (1) of section 14 is "may", in effect it means "must" or "shall". A number of restrictions have been placed on the right of a landlord to eject a tenant and it is only in a defined set of circumstances that ejectment is allowed. Once a landlord proves the requirements of law and brings his case within the ambit of the prescribed circumstances, the Court is bound to order ejectment. The appeal, accordingly, fails and is dismissed. Considering all facts, I leave the parties to bear their own costs of the appeal.

R.S.

FULL BENCH

Before Harbans Singh, Daya Krishan Mahajan and Prem CHAND PANDIT, *JJ.*

BALWANT KAUR,—*Petitioner.*

v.

CHIEF SETTLEMENT COMMISSIONER (LANDS),—*Respondent.*

Civil Writ No. 267 of 1961.

1963

August, 2nd

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 10, 19, 20, 24 and 33—Chief Settlement Commissioner—Whether can cancel allotment and transfer of proprietary rights after sanad *is granted.*

(5) A.I.R. 1959 Bom. 401.

Held, by majority (D. K. Mahajan and P. C. Pandit, JJ., Harbans Singh, J., Contra)—That *Bara Singh* v. *Joginder Singh* (1) lays down the correct propositions of law which are:—

(1) The Chief Settlement Commissioner can at any time reverse the order of the Managing Officer authorising the grant of proprietary rights even after the *sanads* have been granted to the claimant. The *sanad* or its grant being founded solely on the decision to transfer permanent ownership, that *sanad* must necessarily fall with the reversal of the decision on which it was based.

(2) Where a Managing Officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in exercise of his power of revision, correct the error; and similarly where a Managing Officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse the order and annul the transfer.

Held, per Harbans Singh, J.,—

(i) The quasi-permanent allotments made under the notifications referred to in section 10 can be cancelled by the Managing Officer only on the grounds given in sub-rule (6) of rule 14 and not otherwise. The powers of the Settlement Commissioner, in appeal, or those of the Chief Settlement Commissioner, in revision, are no wider;

(ii) Once proprietary rights have been conferred on such an allottee by execution of a *sanad* in his favour (provided this action of the officer granting the *sanad* does not amount to an act beyond his jurisdiction), the property goes out of the compensation pool, and the Chief Settlement Commissioner becomes *functus officio*, and cannot interfere with the

(1) I.L.R. 1959 Punjab 557.

property in any manner and the only way in which the property so transferred can be resumed is by the Central Government in accordance with the terms of the *sanad;*

(iii) So far as the other allotments are concerned, the Chief Settlement Commissioner, in the exercise of revisional powers, can cancel or modify the same and this power is circumscribed only by the fact that the orders passed by him must be in accordance with the provisions of the Act and the rules made thereunder and should conform to the principles of natural justice;

(iv) A sale by public auction, by tender or transfer on valuation results in a binding contract between the parties on the bid being confirmed or the tender, or the offer of transfer made to the occupier, being accepted, and should not lightly be interfered with, but the Chief Settlement Commissioner has power, in a proper case, in the exercise of his revisional powers, to cancel or modify any order of his subordinates passed in relation to any such sale or transfer, so long as a sale certificate or conveyance deed has not been executed;

(v) After a sale certificate, in case of sale by public auction, or conveyance deed, in case of sale by tender or by transfer on valuation, of urban property, is granted (provided this action of the officer granting the certificate or the conveyance deed does not amount to an act beyond his jurisdiction), the property goes out of the compensation pool and the transferee becomes its absolute owner. Thereafter the Chief Settlement Commissioner and other officers under the Act are *functus officio* and cannot cancel the sale or resume the property. The parties to the conveyance deed are only left to their remedies under the ordinary law of the land;

(vi) However, the Chief Settlement Commissioner has authority under section 24(2) to recover, as arrears of land revenue, any amount found to have been paid in excess of the compensation due to the displaced person, which had been adjusted against the purchase price;

(vii) Any unpaid part of the purchase price can also be recovered as arrears of land revenue and would further be a first charge on the property even in the hands of a transferee from the purchaser from the Central Government. [Section 20(3)].

Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 21st September, 1962 to a Division Bench for decision owing to the importance of the question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, and Hon'ble Mr. Justice Prem Chand Pandit, again referred the case to a Full Bench on 29th January, 1963, in view of the importance of the question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Harbans Singh, Hon'ble Mr. Justice D. K. Mahajan, and Hon'ble Mr. Justice Prem Chand Pandit returned the case to the Single Judge after deciding the question referred to them on 2nd August, 1963.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the order of the Chief Settlement Commissioner on 21st February, 1961.

H. S. WASU, S. K. JAIN, AND H. L. SARIN, ADVOCATES for the petitioner.

N. L. SALOOJA, ADVOCATE AND H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

HARBANS SINGH, J.—Civil Writ No. 267 of 1961 (*Balwant Kaur* v. *Chief Settlement Commissioner*) came up for hearing in the first instance before Harbas Singh, J.

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Mahajan, J., on 21st of September, 1962, when the learned Judge referred the matter to a Division Bench in view of the fact that the value of the property exceeded Rs. 70,000 and the third party rights had come into being. A Division Bench consisting of my learned brothers, Mahajan and Pandit, JJ., on 29th of January, 1963, in view of the conflict between a Bench decision of this Court in *Bara Singh* v. *Joginder Singh* (1), and the Full Bench decision of the Rajasthan High Court in *Partumal* v. *Managing Officer* (2), on the question of powers of the Chief Settlement Commissioner to cancel the grant of proprietary rights to a displaced person, directed that the matter may be laid before my Lord the Chief Justice for constituting a Full Bench. It is in these circumstances that this Full Bench was constituted.

Meanwhile a number of other civil writs involving similar or allied points were also directed by different learned Judges to be heard with this writ. Specific questions have not been formulated for decision by this Bench. In the various petitions that have been placed before us facts give rise to a number of points and we shall not deal with the merits of any of these and would confine ourselves to the common questions of law that have some bearing, in the disposal of these writ petitions. Facts alleged in the petitions would, therefore, be referred to only to the extent they are necessary for the limited matter before us.

Broadly speaking, the writs before us fall into three categories; first, those which relate to the allotment of rural agricultural land. In these, the common factor is that the allottees of the land had been

(1) I.L.R. 1959 Punjab. 557=(1959) 61 P.L.R. 127 =A.I.R. 1957 Punj. 370
(2) A.I.R. 1962 Raj. 112

granted proprietary rights and *sanads* had been executed in their favour on behalf of the Central Government and thereafter proprietary rights in respect of whole or portion of the land so granted had been cancelled by the Chief Settlement Commissioner; secondly, cases relating to the transfer of urban property to persons who had paid the full price either by adjustment of their verified claims or by payment in cash by them or partly by one and partly by the other mode and deeds of conveyance had been executed in their favour before action was taken by the Chief Settlement Commissioner cancelling or varying the transfer; and thirdly cases where urban property had been offered to the displaced persons at a fixed price and that offer had been accepted or the property had been sold by auction or tender and the bid made at the auction or the amount offered by tender had been accepted by the authority concerned and sale price had been paid either in whole or in part in terms of the agreement but no sale deed had been executed on behalf of the Central Government before the Chief Settlement Commissioner took action and cancelled or varied the sale. As the provisions of the law are different in a number of material points in the case of allotment and disposal of rural agricultural land and the urban property. I will deal with these two matters separately though to the extent that some of the provisions are common they will be dealt with while discussing the cases covered by the first category.

In Civil Writ No. 267 of 1961 (*Balwant Kaur* v. *Chief Settlement Commissioner*) the facts briefly are that Balwant Kaur owned some agricultural land in village known as Chak No. 232 RB in district Lyallpur (now in West Pakistan). Some six acres of this land was under garden. In lieu of the entire land left by the petitioner, she was allotted rural agricultural land in some villages in East Punjab in accordance

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with the scheme of quasi-permanent allotment, to which a reference will be made presently. In respect of the displaced persons, like Balwant Kaur, who had left gardens in the rural areas now in West Pakistan, option was given to get allotment of certain gardens in East Punjab known as "Provincial gardens". A list of displaced persons, who were so qualified for the allotment of gardens, was drawn up in order of merit and they were permitted to choose in that order from the list of provincial gardens, prepared by the Rehabilitation Department. A garden measuring 4 standard acres and 2 units, situated in village Shahzada Nangal, district Gurdaspur was so selected by the petitioner and was allotted to her on 8th of June, 1950, and in lieu of this garden, she surrendered some of the agricultural land that had been allotted to her in accordance with the scheme. On 24th of March, 1955, by a notification No. SRO 697, all the agricultural property allotted in East Punjab to various displaced persons, was acquired by the Central Government and became vested in it. In accordance with the provisions of section 10 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the rules made thereunder, on 23rd of December, 1955, the petitioner was granted the proprietary rights in the garden above-mentioned by the issue of a *sanad* executed in her favour on behalf of the Central Government. Later, it appears that the Rehabilitation Department transferred some evacuee land to the Market Committee of Gurdaspur. The petitioner alleged that a portion of the land so transferred belonging to her, being part of the garden above-mentioned, and she brought a suit to challenge this transfer by the Central Government. In a written statement filed on behalf of the Central Government on 27th of April, 1957, the Central Government admitted that the particular portion, which was the subject-matter of the suit, had been transferred to the

Market Committee by mistake and that the grant in favour of the Market Committee was being corrected to that extent. That suit was consequently decided accordingly. Later, the petitioner developed the land into building plots and sold the same to a large number of persons, some of whom actually constructed the houses on the plots so purchased. On 21st of Febuary, 1961, on a reference being made by the Managing Officer to Mr. Tandon, exercising the delegated powers of the Chief Settlement Commissioner at Jullundur, the latter held that the area covered by the above-mentioned garden in village Shahzada Nangal happened to be within the urban limits of the Gurdaspur town and that, consequently, could not have been allotted as a provincial garden, and finding that the same had been allotted by mistake, cancelled the proprietary rights and sent the papers back to the Managing Officer for taking further action. The petitioner has come up to this Court challenging the above-mentioned order, which is annexure 'E' to the petition. The facts involved in this case relate to the allotment of a garden but, for the purposes of decision of the point before us, that would not make any difference. Any points peculiar to this as well as other writs shall have to be considered on merits by the learned Judges ultimately deciding these cases.

Before dealing with the provisions of the Act and the discussion of the Division Bench decision of this Court in *Bara Singh's case*, which held the field till the view taken therein was dissented from by the Rajasthan Full Bench, it will be useful to refer briefly to the history of the legislation relating to the allotment of agricultural lands of the evacuees to the displaced land-holders and the circumstances in which such allotments were made. As a result of the declaration of independence and division of the country into two Dominions on 15th of August, 1947, there was a mass

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migration of non-Muslims from the area which is now in West Pakistan to the area at that time known as East Punjab and Patiala and East Punjab States Union, later on known as Pepsu, the two territories now having been merged into what is the present State of Punjab. The largest number of migrants belonged to the rural areas and in order to settle them on the land left by the Muslims, who had migrated from the East Punjab and Punjab States to West Pakistan, land was allotted to the displaced persons, soon after their migration without any reference to the fact whether they had left any land in West Punjab or not. This was done to keep up the production of foodgrains as well as to provide some immediate means of occupation and livelihood to the displaced agricultural population. This was, however, not a satisfactory method of rehabilitation and on 7th of February, 1948, a communique was issued by the Punjab Government, *inter alia* declaring to the following effect:—

> "The East Punjab Government propose to replace the present system of temporary allotments of evacuee lands by a new system of allotments which will take account of the holdings of evacuees in West Punjab. The new allotments will not confer rights of ownership or permanent occupancy but the possession of allottees will be maintained. Claims of allottees will be dealt with in accordance with decisions reached eventually regarding the treatment of evacuee property."

It has to be borne in mind that the idea till 1954 was to treat the evacuee property left by the Muslims here as the property belonging to those Muslims and

similarly property left in West Pakistan by the non-Muslim displaced persons, as beloning to the respective non-Muslims and the Custodians of both the Dominions managed the respective properties, technically, on behalf of the real owners. By virtue of a number of legislative measures, starting with East Punjab Evacuee (Administration of Property) Ordinance, 1947, and ending with East Punjab Evacuee Property (Administration) Ordinance, 1949, which was later replaced by the Central Ordinance, Administration of Evacuee Property Ordinance, 1949, later on replaced by a legislative measure by the Parliament, an effort was made for the proper custody, management and utilization of the property of the evacuees. Generally speaking, the result of this legislation was that all evacuee property vested in the Custodian, but the evacuee did not lose its ownership and was entitled, in theory, to its return if he came back and also on account of the management thereof. At the same time, as was made clear in the press communique of the East Punjab Government, referred to above, until the return of this property, by the Custodian to the original owner, it was desired that he should manage the property by granting allotments in favour of displaced persons. In terms of the press communique East Punjab Refugees (Registration of Land Claims) Ordinance, 1948, was passed, later replaced by an Act, by which the displaced persons were directed to give fairly detailed information in respect of the rural agricultural land abandoned by them in West Pakistan. Two notifications Nos. 4892/S and 4291/S dated 8th of July, 1949, were issued by the Punjab Government and similar notifications Nos. 8-R and 9-R were issued by the erstwhile Pepsu Union, giving the terms and conditions, in the exercise of the rule-making power under the Evacuee Administration Acts in force in the two States, on which the allotment of the agricultural land was to be made to the displaced persons who had

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abandoned agricultural land in West Pakistan. Under condition No. 6 (later being sub-rule(6) of rule 14), the Rehabilitation Authority was entitled to resume, amend, withdraw or cancel the allotment on a number of grounds which can broadly be categorised under the following heads:—

(i) If the allotment is against the administrative instructions of the Rehabilitation Department, etc.;

(ii) If, in fact, the allottee is not entitled to allotment of any land and he has obtained it by some sort of misrepresentation, etc., or if he failed to get possession within six months; and

(iii) If the land allotted is found to belong to some other persons.

It may be stated here that a number of detailed instructions were issued from time to time, most of which are incorporated in the Land Resettlement Manual by Tarlok Singh, the idea of which was to ensure an orderly and fair settlement of displaced persons. For example, displaced persons, who had left land in particular district(s) or even particular tehsil(s) or portion of tehsil(s) in West Punjab were assigned for the settlement in specified district(s) or tehsil(s) in East Punjab. Again, villages in East Punjab or particular type of land in some of the villages, in West Pakistan were classified into first grade, second grade or third grade and the displaced persons from those villages, who had abandoned land of particular class were to get allotment in the specified areas in the Tehsils or Districts of East Punjab, etc., which were correspondingly categorised as first grade, second grade, or third grade. However, in order to achieve as much uniformity as possible, the land abandoned by the displaced persons was evaluated in terms of

standard acres; 'standard acre' being defined as an acre of land which produced 10 maunds of wheat or equivalent produce and the maturity was not less than 9 per cent and the value of other land was reduced or increased correspondingly. Similarly, land in East Punjab was also evaluated in terms of standard acres and units—a standard acre being treated worth one rupee and the units being expressed in annas. Thus a displaced person who had abandoned the land in a first grade village in a particular Tehsil or District in West Pakistan was to be allotted land in the corresponding grade village or Tehsil, in East Punjab or Pepsu assigned to his village or Tehsil of migration, yet even if he was not allotted land accordingly and was given land in another place of a lower grade yet he was to get land of the value in terms of standard acres equivalent to the land left by him in Pakistan. Thus category (i) of sub-rule (6) given above for the cancellation of allotment referred to such and other similar instructions which related merely to the procedure laid down for the facility of adjustment amongst the displaced persons. The category (ii) for cancellation viz., land having been obtained by fraud or misrepresentation, went to the root of the whole matter and affected the entitlement of the displaced persons. The third category only related to cases where a person, who may have been treated wrongly as an evacuee or who has returned and was entitled, in accordance with the law to the return of his property which had been meantime allotted as evacuee property, could take back the land and the allotment in respect of that land made to a displaced person was to fail. Though these three categories were of different types yet the Rehabilitation Department was entitled to cancel or amend the allotment for any one of these reasons. Most of these allotments, which were known as quasi-permanent allotments, were completed by 1949-1950, and such

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cancellations and amendments in these allotments as were necessary had been made by the middle or end of 1952, and the displaced persons got properly settled on the lands allotted to them. It appears that the wide powers granted to the Rehabilitation Authorities to cancel the allotment were considerably curtailed by notification No. SRO 1290, dated 22nd of July, 1952. Sub-rule (6) of rule 14 relating to the resumption and cancellation of the allotment stood amended as follows:—

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

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

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

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

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

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

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

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

* * * *".

By two subsequent notifications dated 13th February, 1953 and 25th August, 1953, provisions were added permitting decisions of pending appeals or revisions before the Custodian or Custodian General according to the old principles, but we are not concerned with them. Clauses (i), (ii) and (iii) (a) relate to the misrepresentation made by the allottee himself. Sub-clauses (b) and (c) of clause (iii) refer to the voluntary act of the allottee and sub-clause (d) of clause (iii) gave power only to the Central Government, by general or special order, to provide for cancellation under other circumstances. In *Prem Singh and others* v. *The Deputy Custodian General Evacuee Property and others* (3), a Full Bench of this Court observed regarding the effect of the amendments, as follows:—

"The effect of the introduction of this rule broadly speaking was to put an end to the cancellation of allotments simply on ground arising out of the consideration of the merits of the claims of rival claimants to any particular land, and to permit the cancellation of allotments only on grounds

(3) I.L.R. 1955 Punj. 1159=1955 P.L.R. 270,

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arising between the State and the person concerned."

It will be thus seen that after 1952 quasi-permanent allottees of the agricultural land had a very substantive right to continue in possession of the property allotted to them which was also heritable. This right however fell short of the right of property or ownership, the reason obviously being that, at least theoretically speaking, the property still belonged to the evacuees and till then efforts were being continued to arrive at a settlement of this problem on an inter-dominion basis. However, no progress was made in this respect, and a final decision had to be taken to compensate the displaced persons by giving the whatever compensation could be given by allotting them the property left by the evacuees or by other grants to be made by the Central Government. Section 12 of Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter referred to as the Act, provided for the acquisition of the evacuee property by the Central Government for the purpose of the rehabilitation of the displaced persons. The relevant portion of sub-section (1) of section 12 is as follows:—

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

It was further provided that on publication of such notification, the property will vest absolutely in

the Central Government free from all encumbrances. By notification No. SRO 697, dated 24th March, 1955 published under this section, the entire evacuee property in the State of Punjab was acquired by the Central Government including the rural agricultural property, which had been allotted under the notifications referred to above.

Now, it may be useful, briefly, to refer to some of the provisions of the Act. The definition of "displaced person" given in section 2 of the Act is similar to that given in the previous Central and State Acts and according to this definition a displaced person means any person who, as a result of the partition of the country or fear of disturbances, left West Pakistan or who, even while residing in the territory now forming part of the Indian Union, is unable to manage his property left in West Pakistan. "Verified claim", as defined in clause (e) means in effect, a claim in respect of property other than rural agricultural property regarding which the allotment of land has been made under the Punjab and Pepsu notifications referred to above, either in full or part satisfaction of his claim. Section 3 provides that the Central Government may appoint an hierachy of officers with Chief Settlement Commissioner at the highest rung and the Managing Officer at the lowest with the Settlement Commissioners and Settlement Officers in between, for performing functions assigned to them by or under this Act, under the general superintendence and control of the Chief Settlement Commissioner. Section 4 provides the procedure for applications being filed by the displaced persons for payment of compensation in respect of the "verified claims". Section 7 provides for determining the amount of compensation due to a particular displaced person, who has submitted the application, after taking into account the public dues recoverable from the applicant. Section 8 provides that any

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compensation, determined under section 7, may be paid either in cash or by sale of property from the compensation pool and setting off the purchase money against the compensation payable to him or by any other mode of transfer of such property or in such other forms as may be prescribed. Under sub-section (2) of section 8, rules have to be made by the Central Government for the scale and method of payment of compensation. Section 9 relates to disputes relating to the compensation of claims. I may stop here to say that sections 4 to 9 deal with only the displaced persons having verified claims. In other words, these sections do not deal with the land which has been alloted on quasi-permanent basis prior to the acquisition of the land by the Central Government.

Section 10 lays down the special procedure for the payment of compensation to those of the displaced persons who had been allotted immovable property by the Custodian under the conditions published in the notification of the Punjab Government No. 4891-S, or 4892-S, dated the 8th July, 1949, notifications of the Patiala and East Punjab States Union No. 8-R and 9-R, dated the 23rd July, 1949, published in the official gazette of that State on the 7th August, 1949. It may be mentioned here that notifications Nos. 4891-S and 8-R relate to the conditions for the grant of leases and Nos. 4892-S and 9-R to allotments of land known as quasi-permanent allotments. For the purposes of this case, reference to leases would be omitted as it does not concern us. It is provided by section 10 that even after the acquisition of such property under section 12 "the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before

the date of acquisition" and that "the Central Government may, for the purpose of payment of compensation to such displaced person, transfer to him such property on such terms and conditions as may be prescribed". It would thus be noticed that even after the acquisition of the property, quasi-permanent allottee was to continue in possession of the property on the same terms and conditions as he was holding before the acquisition and the Central Government was authorised to transfer the land in question by way of compensation to be paid. At this stage, reference may be made to section 40 enabling the Central Government to make rules to carry out the purposes of the Act. Sub-section (1) of section 40 is general. Sub-section (2) of section 40 provides as follows:—

> "40. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.—
>
> * * * * * *
>
> (g) the terms and conditions subject to which property may be transferred to a displaced person under section 10;
>
> * * * * * *

By virtue of this power the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules) were promulgated *vide* notification No. SRO-1363, dated the 21st May, 1955, and Chapter X, which is headed "Payment of compensation under section 10 of the Act", deals with the procedure, terms and conditions for the transfer of property under section 10. Rule 71 requires every allottee to file a declaration before a Settlement Officer or other authorised person in the form specified in Appendix XIV within the period notified. In this form detailed information is to be given regarding the land and the

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rural houses abandoned and allotted, loans etc. taken from the Government and the verified claims (if any) relating to urban property etc. held by the allottee. Rule 72 provides for enquiry where the allottee has no verified claim and rule 73 where he has a verified claim. The procedure so far as it has any bearing on the point before us is essentially the same under these two rules and reference may only be made to the case where the allottee has no verified claim. Rule 72 is to the following effect:—

"72. (1) Where the allottee has no verified claim in respect of property other than agricultural land, the Settlement Officer shall, on receipt of a declaration under Rule 71, verify the particulars specified therein in the presence of the allottee or his authorised agent, and determine the public dues outstanding against such allottee.

(2) If the Settlement Officer is satisfied that the allotment is in accordance with the quasi-permanent allotment scheme, he may pass an order transferring the property allotted to the allottee in permanent ownership as compensation and shall also issue to him a sanad in the form specified in Appendix XVII or XVIII as the case may be with such modifications as may be necessary in circumstances of any particular case granting him such rights,

Provided * * * * *

Provided further * * * *

Explanation.— * * * *

(3) If the Settlement Officer finds from the enquiry referred to in sub-rule (1) that

the allottee has secured an allotment in excess of that due to him or that he was not entitled to any allotment or that the allotment was obtained by means of fraud, false representation or concealment of material facts, he shall, after due enquiry and after giving the allottee reasonable opportunity of meeting the objections, record his finding as to the correctness or otherwise of the allotment.

(4) A copy of the finding under sub-rule (3) shall be supplied free of cost to the allottee and the case along with the relevant record of evidence and documents shall then be sent with the recommendations of the Settlement Officer to the Settlement Commissioner who may pass such orders thereon as he may deem fit.

(5) * * * * * * "

Rule 74 prohibits the transfer of proprietary rights in property in respect of which a dispute is pending either in Civil Court or before the Custodian General. Rule 75 does not concern us as it relates to transfer in case of allottees of garden colonies. Rule 76 provides that where an allottee has died, the ownership rights shall be conferred on his heirs according to their shares as determined by a competent authority.

Reference may also be made here to the forms in which the *sanad* is given. The two forms given in Appendix XVII or XVIII are materially the same. After reciting the factum of allotment and further reciting that under section 10 of the said Act, the property may be transferred to the allottee concerned for the purpose of compensation payable to him, the form provides as a follows:—

"The President is hereby pleased to transfer the right, title and interest acquired by the

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Central Government in the said property to ... ...
(hereinafter referred to as the transferee) subject to the following terms and conditions:—

(1) It shall be lawful for the President to resume the whole or any part of the said property if the Central Government is at any time satisfied and records a decision in writing to that effect (the decision of the Central Government in this behalf being final) that the transferee or his predecessor-in-interest had obtained this grant or allotment of the said property or has obtained or obtains any other compensation in any form whatever under the said Act by fraud, false representation or concealment of any material fact. * * * * * * * *".

Other two conditions in this *sanad* only provide for a charge over the property for any sum that may have been found due from the transferee in respect of any public dues and loans etc.

Section 12 of the Act, as already indicated, gives power to the Central Government to acquire the evacuee property by a notification. Section 14 provides that compensation pool which is to be utilised for payment of compensation and rehabilitation grants to the displaced persons shall consist of—

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

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

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

(d) such other assets as may be prescribed.

Section 16 authorises the Central Government to take such measures as may be necessary for the custody, disposal and management of the compensation pool and under sub-section (2) the Central Government can appoint such officers as it may deem fit (hereinafter referred to as managing officers). These managing officers under section 17 are to perform such functions as are assigned to them by the Chief Settlement Commissioner and under sub-section (2) of section 17, "subject to the provisions of this Act and the rules made thereunder, a managing officer or * * * may take such measures as he * * * considers necessary for the purpose of securing, administering, preserving, managing or disposing of any property in the compensation pool entrusted to him or * * *." The relevant portion of section 19 may be reproduced in extenso because a good deal of arguments were addressed on the effect thereof:—

"19. (1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer * * * * may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property

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acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act.

(2) Where any person,—

(a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under sub-section (1), or

(b) is otherwise in unauthorised possession of any evacuee property or any other immovable property forming part of the compensation pool;

he shall after he has been given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer * * * or by any other person duly authorised by such officer * * *

(3) * * * * *

(4) * * * * *

(5) * * * * *

Rule 102 which relates to the cancellation of allotments and leases may be noticed here.

"102. A managing officer * * * may in respect of the property in the compensation pool entrusted to him or to it, cancel an allotment or terminate a lease or vary the terms of any such lease or allotment if the allottee or lessee as the case may be—

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

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

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

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

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

Section 20 gives power, subject to any rules under the Act to the managing officer to transfer any property out of the compensation pool, *inter alia*, by sale, by lease or by allotment of any such property to a displaced person or to any other person. The sale may be by public auction or otherwise. Sub-section (3) of section 20 provides for the unpaid purchase money and is as follows:—

"20(3) Where the ownership of any property has passed to the buyer before the payment of the whole of the purchase money, the amount of the purchase money or any part thereof remaining unpaid * * * * notwithstanding anything to the contrary contained in any other law be a first charge upon the property in the hands of the buyer or any transferee from such buyer and may on a certificate issued by the Chief Settlement Commissioner be recovered in the same manner as an arrear of land revenue."

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Section 20-A only provides that where a property which was an evacuee property is ordered to be restored under the provisions of the Administration of Evacuee Property Act and "the Central Government is of opinion that it is not expedient or practicable to restore the whole or any part of such property to the applicant by reason of the property or part thereof being in occupation of a displaced person or otherwise", then the Central Government may transfer some other evacuee property or pay cash out of the compensation pool in lieu of the evacuee property which was to be restored. Section 20-B makes a more or less similar provision in respect of composite property. According to section 21, any sums due to the Government or the Custodian in respect of any property acquired by the Government for any period prior to the date of acquisition and also any sum that may become due in respect of the aforesaid property after the acquisition may be recovered as arrears of land revenue. This finishes the substantive provisions with regard to the management, etc., of the compensation pool.

Chapter IV deals with appeal, revision and powers of the officers under the Act. Section 22 provides for appeals to the Settlement Commissioner against all orders passed by the Managing Officers under the Act and similarly section 23 provides for appeals to the Chief Settlement Commissioner against the original orders of the Settlement Commissioner. Section 24 which deals with the powers of revision of the Chief Settlement Commissioner and with which we shall be concerned a great deal is as follows:—

> "24. (1) The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which a Settlement Officer and Assistant Settlement Officer(an Assistant Settlement Commissioner, Additional Settlement Commissioner, Settlement Commissioner,

a Managing Officer or * * * * has passed an order for the purposes of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit.

(2) Without prejudice to the generality of the foregoing power under sub-section (1) if the Chief Settlement Commissioner is satisfied that any order for payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by him by means of fraud, false representation or concealment of any material fact, then notwithstanding anything contained in this Act, the Chief Settlement Commissioner may pass an order directing that no compensation shall be paid to such a person or reducing the amount of compensation to be paid to him, or as the case may be, cancelling the lease or allotment granted to him and if it is found that a displaced person has been paid compensation which is not payable to him or which is in excess of the amount payable to him, such amount or excess as the case may be may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by any order made under sub-section (2) may within 30 days of the date of the order make an application for the revision of the order in such

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form and manner as may be prescribed to the Central Government and the Central Government may pass such order thereon as it thinks fit."

Section 25 provides a limited right of review or amendment of orders. It is not necessary to advert to the remaining provisions which are all procedural, except section 34, sub-section (1) of which provides that "th Central Government may by notification in the official gazette direct that any power exercisable by it under this Act shall in such circumstances and under such conditions, if any, as may be specified in the direction, be exercisable, also by such officer or authority subordinate to the Central Government * * as may be specified in the notification." Sub-sections (2) and (3) of section 34 relate to the delegation of the powers by the Chief Settlement Commissioner or the Settlement Commissioner to other subordinate officers. Section 35 provides for penalty for any person who furnishes wrong information in an application for payment of compensation. Section 36 provides for bar of jurisdiction of Civil Courts "to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine * * *." In the impugned orders action is purported to have been taken by the Chief Settlement Commissioner in the exercise of the revisional powers under section 24.

Very elaborate arguments were addressed to us on behalf of the petitioners that sub-section (2) of section 24 should be treated to be a proviso to sub-section (1) of section 24 and that whereas under sub-section (1) the Chief Settlement Commissioner has wide powers to revise any orders passed by the officers subordinate to him *on any ground* that he deems fit yet

in view of the specific provisions made in sub-section (2) he cannot revise any order for payment of compensation to a displaced person, a lease or an allotment except when these are vitiated by fraud, false representation or concealment of any material fact by the displaced person concerned. On the other side, it was contended that in view of the opening words of sub-section (2) the same is only illustrative of the wide powers vested in the Chief Settlement Commissioner under sub-section (1). It is, however, not necessary to discuss this point so far as the quasi-permanent allotments are concerned. In view of the provisions of section 10 and rules 71 and 72 read with condition No. 1 in the form of *sanad*, detailed above, the position of the quasi-permanent allottee of the land, who, later on, is granted proprietary rights, in the absence of anything else, comes to this:—

1. Prior to the acquisition of the land by the Central Government, the allotment made to him could, (in view of the amended clause 6 of the conditions of allotment) for all practical purposes, be cancelled by the Custodian, *only* if he had been allotted excess of land or is guilty of fraud or misrepresentation etc.

2. Even after the acquisition of the land by the Central Government, the allottee was to hold the land on the same terms and conditions, which means that his allotment could be cancelled or varied only for the reasons specified in condition 6 referred to above.

3. Rule 72(1) casts a duty on the Settlement Officer, on receipt of information filed with him by the allottee in the form of declaration under rule 71, "to verify the particulars

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specified therein" and under sub-rule (2) the Settlement Officer is to satisfy himself that "the allotment is in accordance with the quasi-permanent allotment scheme". Thus the Settlement Officer is to verify and check that the allotment made was "in order" immediately before the acquisition by the Central Government. This will naturally mean that unless the allotment was vitiated by any of the matters which would have entitled the Custodian to cancel the allotment under condition 6, the Settlement Officer would have to come to the conclusion that the allotment was in order. He could not find fault with the allotment on a ground other than those referred to above. This conclusion is further reinforced from the wordings of sub-rule (3) according to which the Settlement Officer is required to refer the matter to the Settlement Commissioner only if he finds that "the allottee has secured an allotment in excess of that due to him or that he was not entitled to any allotment or that the allotment was obtained by means of fraud, false representation or concealment of material facts".

4. If it is finally found either by the Settlement Officer or the Settlement Commissioner that no excess allotment has been procured or that the allotment has not been secured by fraud or misrepresentation etc., the proprietary rights in the land already allotted to him are to be transferred to him by the execution of the *sanad*.

5. After such a transfer the allottee becomes the full owner of the property transferred subject only to the condition that his right of

ownership is liable to be defeated if in accordance with term No. 1 of the *sanad* the Central Government comes to the conclusion that he has obtained allotment by fraud, misrepresentation, etc.

On the other side, however, it is urged that section 19 ad with rule 102 gives unfettered powers to the Managing Officer to cancel an allotment or amend the terms of allotment "whether such allotment * * was granted before or after the commencement of this Act;" and that consequently in exercising the powers of revision and in examining the "legality or propriety" of any such order the Chief Settlement Commissioner also enjoys similar powers and his powers are not limited to the cancellation of the allotment on grounds of non-entitlement based on fraud etc. No doubt sub-section (1) of section 19 authorises a Managing Officer to cancel an allotment "notwithstanding anything contained in any contract or any other law for the time being in force", yet his powers are certainly, as is specifically provided in this section, subject to any rules that may be made under this Act. *A fortiori* there being no specific exclusion, his powers are also subject to the provisions of the Act. Thus section 19 is not a section overriding all other provisions of this Act. Consequently, therefore, section 19 must be read along with section 10 and rules 71 and 72. As has been discussed above, section 10 and the rules above-mentioned clearly indicate that the allottee is entitled to continue in possession on the same terms and conditions; the Managing Officer cannot, under section 19, be deemed to be authorised to cancel the quasi-permanent allotment except on the grounds on which it could have been cancelled by the Custodian prior to the acquisition of the property by the Central Government. Thus, the powers of the Chief Settlement Commissioner to vary the allotment which is covered by section 10

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are limited to the cases as detailed in term 6 of the notification as amended which, in effect, are identical with the grounds given in sub-section (2) of section 24 and sub-rule (3) of rule 72. Chopra J., in *Thakar Jaishi Ram and others* v. *The Chief Settlement Commissioner* (4), took a similar view. A quasi-permanent allotment made by the Custodian in favour of the petitioner was cancelled by the Chief Settlement Commissioner holding that the contesting respondents, being small and sitting allottees, had a right superior to that of the petitioner. Referring to section 10 it was held that the petitioner was entitled to remain in possession of the land on the same terms and conditions as he held it before the acquisition of the property by the Central Government and that under section 19, the Managing Officer could cancel such an allotment subject to the rules. Referring to rules 71 and 72 it was observed as follows:—

> "Here again, it is the Settlement Officer who is to make an enquiry into the matter and record his finding as to the correctness or otherwise of the allotment. He is then to furnish a copy of his findings free of cost to the allottee and to submit the case for necessary orders to the Settlement Commissioner. Moreover, all that the Settlement Officer may enquire into to determine is: Did the allottee secure the allotment in excess of that due to him, was the allottee not entitled to any allotment or was the allotment obtained by means of fraud, false representation or concealment of material facts?"

The decision in *Anokh Singh* v. *Chief Settlement Commissioner*. (Letters Patent Appeal No. 160 of 1962)

(4) I.L.R. 1958 Punjab 1048=1958 P.L.R. 45.

also lends support to the above view. Dealing with the question as to the grounds on which the Chief Settlement Commissioner could cancel an allotment, it was observed as follows:—

> "We agree with the learned Judge that the allotment of the land in village Pipli Majra having been in the name of the appellants and the *sanad* of proprietary rights in it having been granted to them, cancellation of the proprietary rights could only take place in accordance with section 19 of Act 44 of 1954 and rules 72 and 73 of the rules made thereunder, * * * * Under sub-section (1) of section 19 of the Act an allotment can be cancelled subject to rules made under the Act."

After reproducing sub-rule (3) of rule 72, the learned Judges went on to observe as follows:—

> "This sub-rule, therefore, gives the grounds upon which the decision in regard to the allotment of the appellants could have been made adverse to them."

Later dealing with the question of *sanad* and after referring to term No. 1 of the same at page 12 of the judgment they further went on to observe as follows:—

> "The *sanad* of proprietary rights in favour of the petitioners could not be cancelled under section 19 and rules 72 and 73 of the rules and in this we agree with the learned Single Judge."
>
> * * * * * *

The learned counsel for the petitioners, further urged that when the proprietary rights in the land are

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transferred to the allottee by the Central Government by execution of the formal *sanad*, the Central Government ceases to be the owner of the property and the same no longer vests in the Central Government and thus, goes out of the "compensation pool". The operative words used in the sanad, namely "the President is hereby pleased to transfer the right, title and interest acquired by the Central Government" lend support to this contention and, in fact, do not admit of any other construction. In the press-note of the East Punjab Government, noticed above, it was pointed out that "the new allotments will not confer rights of ownership" and the reason obviously was that till then evacuees were treated as the owners and efforts were being made for an inter-Dominion settlement. However, an assurance was given to the allottees in this very press-note that "claims of allottees will be dealt with in accordance with decisions reached eventually regarding treatment of evacuee property". Under Act 44 of 1954, evacuee property was acquired under section 12 to form part of the "compensation pool" and procedure was laid down for transferring this property to the allottees by way of compensation. This transfer, as has been noticed, takes place on the execution of *sanad* which, as observed by the Supreme Court in *Amar Singh and others* v. *Custodian, Evacuee Property, Punjab and another* (5), "is the culmination of the hopes and expectations of allottees held out under the press communique of 7th February, 1948". If as a result of the execution of the *sanad* by the Central Government, the property goes out of the compensation pool, the obvious result would be that the Chief Settlement Commissioner and other hierarchy of officers appointed under section 3 to manage the property in the compensation pool (see section 16) or to exercise other powers in

(5) A.I.R. 1957 S.C. 599 at p. 609.

relation thereto (see sections 19 and 20), have no power to deal with the property so transferred. Thus, it was urged that the Chief Settlement Commissioner has no jurisdiction whatever either under sub-section (1) or sub-section (2) of section 24 to deal with the property which has ceased to be part of the compensation pool and, consequently, as soo as the *sanad* is executed the Chief Settlement Commissioner and other officers under the Act are *functus officio*.

This point of view does not seem to have been put, in this manner before the Bench in *Bara Singh* v. *Joginder Singh* (1). There, the learned Single Judge had held that the Chief Settlement Commissioner was not competent to cancel the *sanad* which could be cancelled only by the Central Government and that he was also not competent to cancel the allotment, as the same had merged into the *sanad*. It has further been stated by the learned Single Judge that it is only the Managing Officer who, under section 19, was authorised to cancel the allotment and that the Chief Settlement Commissioner could not do so. The Bench did not hold that the Chief Settlement Commisioner was competent directly to cancel the *sanad* but it came to the conclusions—

(1) That the powers of the Chief Settlement Commissioner under section 24 are extremely wide and that he could act in every case where a subordinate authority has failed or omitted to make a proper order and that, consequently, where a Managing Officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in the exercise of his power of revision, correct the error;

(2) that though the *sanad* is the last step required to be taken under the rules, but it

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has no special "significance or sanctity attaching to it" and that "it is formal and it follows the actual determination of the question whether property should or should not be permanently transferred to the claiment. It is plain that once a decision is reached that the property should be permanently transferred, the grant of the *sanad* follows, there being no act of judgment intervening the decision and the grant";

(3) that "the *sanad* or its grant being founded solely on the decision to transfer permanently ownership, that *sanad* must necessarily fall with the reversal of the decision on which it is based" and that the *sanad* is a deed of title yet it loses its importance if "the transaction which is the basis of the title deed is itself invalidated".

It was conceded before us that the Chief Settlement Commissioner is certainly entitled to cancel the allotment where a Managing Officer wrongly omits to cancel the allotment in the circumstances where he should have done so. However, as discussed above, the Managing Officer can exercise his power under section 19 only subject to the provisions of section 10 and rules 71 and 72 etc. and similarly the Chief Settlement Commissioner can also exercise his revisional powers within those limitations. With regard to the other points it was, however, urged that it is not correct to say that the grant of the *sanad* is without any special "significance or sanctity". On the other hand, it was stressed that execution of the deed of conveyance is of vital significance. It is onyl the execution of this deed which changes the nature of the property. Before its execution, it is evacuee property acquired and owned by, and vests in, the Central

Government. Even if all other formalities have been complied with, the allottee or other transferee does not become the owner but as soon as the *sanad* is executed in case of agricultural property or sale certificate is issued in case of urban property, the property ceases to be that of the Central Government. That great importance and significance attaches to the execution of this title deed is clear from the decision of the Supreme Court in *Bombay Salt and Chemical Industries* v. *L. J. Johnson and others* (6), where it was held as follows:—

> "The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provisions as to the sale certificate would indicate that only upon the issue of it a transfer of the property takes place."

In this case certain salt pans which were evacuee property and had been acquired by the Central Government, had been in possession of the appellants, who were displaced persons, by way of lease granted by the Custodian department and continued after the enforcement of Act 44 of 1954. These were later put to auction and purchased by a third party. Subsequently, the Chief Settlement Commissioner made an order while rejecting an application made to him by the appellants, confirming the sale in favour of the third party and directed the appellants to hand over the possession of the pans to that party forthwith. Later, they were actually dispossessed by the Managing Officer. Section 29 of Act 44 of 1954 provided that when a property is "transferred to another person under the provisions of this Act, then the person, who is in lawful occupation of the property is not to be

(6) A.I.R. 1958 S.C. 289.

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evicted" except in accordance with the provision of that section. The appellants claimed that on the confirmation of the sale, the salt pans became the property of the transferee-auction-purchaser and they were entitled to protection of section 29 and the Chief Settlement Commissioner could not deal with the property because it was no longer evacuee property. It was, however, held by the Supreme Court that there is no transfer of the property till the certificate is actually issued and that the protection of section 29 was not available and that the property was still evacuee property. From this, it is obvious that the sale certificate or other similar document of title is of all importance and as soon as such a document is executed the property no longer remains the evacuee property or part of the compensation pool.

That in such circumstances the property goes out of the compensation pool and the officers under the Act are *functus officio* and cannot deal with the same, is further supported by a number of decisions of this Court. See in this connection *Gurbachan Singh* v. *Sub-Divisional Magistrate, Sirsa* (Civil Writ No. 370 of 1958, decided on 23rd February, 1960), where a Naib-Tehsildar acting as a Managing Officer, on the instructions given by the Sub-Divisional Officer, purported to act under section 19 of the Act, on which some of the petitioners who had already been granted proprietary rights by *sanads* were actually dispossessed and some others were threatened to be dispossessed. On a writ having been brought by the petitioners challenging this action, it was observed by Mahajan, J., as follows:—

> "The Managing Officer, if he was acting under section 19 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of

1954) * * could only cancel the allotments or recover possession of that property, which was evacuee or which formed part of the compensation pool. The property in dispute having gone out of the compensation pool and having ceased to be evacuee property, the Managing Officer had no power under section 19 of the Act, which he could exercise; and so far the respondents, who had a grievance, are concerned, they could exercise their right in a civil Court if they had been deprived of their property unlawfully by the petitioners."

Again, at pages 9 and 10 of the judgment, it was observed—

"Moreover section 19 of the Act does not come into play in the present case. The land in dispute was allotted to the respondents and they were granted the proprietary *sanads* and the land has thus gone out of the compensation pool. So it cannot be said that it is either evacuee property or it is still part of the compensation pool, and as such the Managing Officer had no jurisdiction under section 19 of the Act to dispossess the petitioners unless and until the *sanads* were cancelled."

Khushabi Mal v. *Assistant Setttlement Commissioner* (Civil Writ No. 637 of 1959) decided on 6th of October, 1960, *Dewan Jhangi Ram* v. *Union of India* (7), (both decided by Mahajan, J.) and two decisions of Rajasthan High Court reported as *Gobind Ram* v. *Regional Settlement Commissioner* (8), and *Partumal* v. *Managing Officer, Jaipur* (2), were cases dealing with the

(7) 1961 P.L.R. 1610
(8) A.I.R. 1960 Raj. 177

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urban property, where the principle that the Chief Settlement Commissioner ceases to have jurisdiction to deal with the property, once a deed of conveyance has been issued, was duly recognised. In the Full Bench case of Rajasthan High Court, at page 117 of the report it was observed as follows:—

> "There is no provision in the Act or the rules under which the Managing Officer may resume the property already sold by him or reauction it. After a property is sold, it ceases to form part of the evacuee property pool and the authorities under the Act cannot meddle with it after its sale."

The learned Judges while dissenting from the view taken in *Bara Singh's case*, expressed themselves in the following words:—

> "In *Bara Singh's case* * * *, it has been held that an execution of a deed of conveyance amounts to drawing up of a formal document only and the same would become invalid no sooner the order of allotment is set aside by the appellate or revisional authority. * * * With due respect to the learned Judges, we think the proposition of law as laid down by them cannot be accepted. The allotment of property no doubt can be cancelled in revision under section 24 of the Act; but after a sale takes place, it cannot be disturbed by setting aside the order of allotment. The sale cannot be held to be only a formal expression of the order of allotment. Title to property is created by the sale and the vendee thereby acquires interest in the property. It would be too much to read in section 24 of the Act to hold that it extends to cancellation of sales by expressly providing for cancellation

of allotments. We are unable to regard execution of a sale deed as only a formal expression of an order of allotment dependent on its subsistence."

Thus, the basis on which the Bench proceeded in *Bara Singh's* case, viz., that the grant of *sanad* makes no difference to the authority of the Managing Officer or the Chief Settlement Commissioner to cancel the allotment and thus the *sanad,* does not appear to be correct. In *Bara Singh's case* the learned Judges seem to have been mainly influenced by the consideration that if a wrong order of the Managing Officer to transfer the property could be reversed by the Chief Settlement Commissioner before a conveyance deed executed why it should make any difference in his power to rectify such an order, if after passing such an order, the Managing Officer proceeds to execute the *sanad.* This is what is stated at pages 130 and 131 of the report:—

"It seems to me, therefore, an idle claim that, although the order of the Managing Officer deciding to transfer permanent ownership of the disputed house to the respondents was capable of being reversed by the Chief Settlement Commissioner, the actual grant of the *sanad* could not be upset by him.

* * * *

As I read the Act and the rules, the important thing is the decision to transfer ownership rights and the *sanad* is merely a formal document evidencing that transfer, and, if the decision itself is found to be wrong, the *sanad* which is founded on that decision must go with it. * * * * *

I am unable to agree that grant of *sanad*

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is any thing more and I cannot, therefore, say that, because a *sanad* had been granted to the respondents, the transfer in their favour could not be upset by the Chief Settlement Commissioner."

It was rightly urged before us that there is very good reason for holding that so long as there is no deed of title executed in favour of the allottee, all orders leading to such an execution may be revised by the Chief Settlement Commissioner. As observed by the Supreme Court in *Amar Singh's case*, the rights of the quasi-permanent allottee do not, in any sense, constitute even qualified ownership of the land but after the proprietary rights have been transferred to him, the rights of the allottee mature into "property" for which he can claim protection of fundamental rights. Prior to the grant of proprietary rights the allottee has nothing more than the rights to possess and enjoyment in terms of the allotment made to him and he cannot even alienate those rights and there is no danger of the rights of the third parties coming into existence. The position remains the same even if after scrutiny the Managing Officer or the Settlement Commissioner finds that the allotment was in order and directs the transfer of the property rights. However, as soon as that order of transfer is carried into effect and proprietary rights are actually granted to the allottee by the execution of the *sanad*, he is entitled to deal with the property as an owner and the rights of the third parties may also come into existence, and there is obvious reason and sense in the argument that the intention of the legislature was that once the proprietary rights are granted, they could be resumed only in terms of the conditions specially mentioned in the deed of conveyance.

Another argument urged by the learned counsel for the petitioners was that *sanad* contains special procedure and the circumstances in which the proprietary

rights can be cancelled and that this special procedure should be taken to supersede any general procedure for the cancellation of allotments, etc., that might have been provided in the Act. Sub-section (2) of section 24 provides for cancellation of an allotment on grounds of fraud, false representation or concealment of any material fact. These very grounds are mentioned in the *sanads* for the cancellation of the grant of proprietary rights in the land. However, whereas under section 24 power of cancellation of allotment is given to the Chief Settlement Commissioner under the terms of the *sanad* the resumption of the property tranferred can be ordered only by the Central Government after the Central Government comes to the conclusion that any one of the grounds mentioned has been established. It is well settled, and it was not disputed, that if there are two provisions dealing with the same matter, one being a general one and the other a special one, the special will supersede the general. Even if it be taken that the Chief Settlement Commissioner under section 24 is authorised to cancel the sale in the garb of setting aside the allotment, yet the specific procedure contained in the *sanad*, which, in certain respects is different from that provided in section 24, would supersede the general provisions given in the Act. The specific provisions in the *sanad* will apply to cases where *sanad* has been granted and is to be cancelled , whereas the general procedure laid down in section 24 will apply to all other orders, where *sanad* has not yet been granted : See in this respect *J. K. C. S. and W. Mills* v. *State of Uttar Pradesh and others* (9). At page 1174 of the report, Das Gupta, J., delivering the judgment of the Supreme Court, stated—

> "The rule that general provisions should yield to specific provisions is not an arbitrary

(9) A.I.R. 1961 S.C. 1170.

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principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one concerning a large number of matters in general and another to only some of them, his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In *Pretty v. Solly*, (10), quoted in Craies on Statute Law at P. 206, 6th Edition, Romilly, M. R. mentioned the rule thus:—

> 'The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in the most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.'"

The learned Additional Advocate-General, however, contended—

(1) That the powers of the Chief Settlement Commissioner are wide and that under section 19 read with rule 102, the Managing Officer can cancel an allotment on any ground whatever notwithstanding rules 71, 72 or clause 6 of the conditions of allotment, dated 8th of July, 1949, as amended in 1952 and 1953.

(2) That in view of the wide wording of section 24, the Chief Settlement Commissioner can exercise powers notwithstanding the grant of the *sanad*.

(10) (1859) 53 E.R. 1032.

(3) That the property would not go out of the compensation pool till the validity of the proceedings culminating in the order for the transfer of property and grant of *sanad* are actually scrutinised by the Chief Settlement Commissioner.

(4) That there is a specific provision in sub-section (2) of section 24 enabling the Chief Settlement Commissioner to recover as arrear of land revenue, any compensation that may have been found to have been paid in excess, and that this shows that, even after the actual payment of compensation Chief Settlement Commissioner has power to get it back, and transfer of land being only another mode of payment of compensation, Chief Settlement Commissioner retains the power to get back the property transferred by first setting aside the allotment.

I will examine these arguments *seriatim*.

With regard to the first point, as already discussed above, *prima facie*, section 19 and rule 102 have to be read with the provisions of section 10 and, in my view, do not give any authority to the Managing Officer or to the Chief Settlement Commissioner to cancel an allotment except on the grounds on which such an allotment could be cancelled prior to the enforcement of the Act and the acquisition of the property by the Central Government. However, much stress was laid on certain observations in the Supreme Court judgment in *Amar Singh's case* (5), at p. 610. In that case a quasi-permanent allotment was cancelled by the Custodian on certain grounds which were not covered by the amended sub-rule (6) of rule 14. This amendment, however, came into force subsequent to the

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date of cancellation of the allotment (*see* page 607), and thus neither the amended sub-rule (6) nor the subsequent section 10 of the Act or the rules made thereunder were directly under consideration. It was, however, urged before the Supreme Court that on the assumption that "the orders of cancellation which he (the counsel) challenges, are erroneous, they (the allottees) would in the ordinary course have obtained the *sanad* for the lands and that the right to relief under Article 32 must be determined on that footing". A reference was then made to the provisions of section 10 and rule 72 and it was observed as follows:—

> "While it is true that under section 10 an allottee under the quasi-permanent allotment scheme has the benefit of continuing in possession thereof and may obtain transfer on application, such benefits are subject to the powers exercisable under section 19 of the same Act and rule 102 of the rules framed thereunder."

Thereafter relevant portions of section 19 and rule 102 were reproduced and it was observed as follows:—

> "These are in terms wide enough to include quasi-permanent allotments. This shows that notwithstanding the privilege of the quasi-permanent allottee to continue in possession under section 10 and the scope he has for obtaining a transfer under the same section and rule 72(2) of the rules made thereunder, his allotment itself is liable to be cancelled under section 19 and rule 102. Hence he has no such right to obtain a transfer which can be given effect to within the principle of *Frederic Guilder Julius* v. *The Right Rev. The Lord Bishop*

> *of Oxford; The Rev. Thomas Thellusson Carter* (11). He does not, therefore, appear to have an indefeasible right to obtain transfer of the very land of which he is the quasi-permanent allottee, if such land is acquired under section 12 of the Act. Thus, the position of the quasi-permanent allottee, whether before July 22, 1952, or after that date, is that his rights, such as they are, either under the notification of July 8, 1949, or under section 10 of Central Act, XLIV of 1954, are subject to powers of cancellation exercisable by the appropriate authorities in accordance with the changing requirements of the evacuee property law and its administration. Hence the quality of the interest of the displaced allottee in evacuee agricultural land allotted to him appear to be substantially the same for the present purpose and the real question is whether such interest constitutes 'property' within the meaning of Articles 19, 31(1) and 31(2) of the Constitution."

It was contended that according to these observations of the Supreme Court, under section 19, read with rule 102, a Managing Officer has unrestricted power to cancel a quasi-permanent allotment. In the first place, the Supreme Court was not dealing with a case where proprietary rights had actually been granted and thus, these observations can in no way affect the real point before us, i.e., the power of the Chief Settlement Commissioner or other officers under the Act to cancel an allotment after the grant of the proprietary rights. Secondly, the Supreme Court

(11) (1880) 5 A.C. 214.

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was only considering whether there was any indefeasible right in the quasi-permanent allottee to claim a transfer of the property so as to clothe his right as such an allottee with the characteristics of right of property, entitled to protection under Article 32 of the Constitution. There is no dispute that such an allotment is liable to cancellation under section 19 as well as under sub-rule (3) of rule 72. That is, however, not the same thing as to say that such an allotment can be cancelled for any reason whatever. As already discussed, the powers of the Managing Officer can be exercised within a limited sphere so far as the quasi-permanent allotments are concerned, though he has much wider powers in this respect *qua* the allotments of the urban property or the allotments other than those made under the notifications referred to in section 10. The observations of the Supreme Court, quoted above, therefore, in no way, advance the case of the respondent.

So far as the second argument is concerned, the same is a mere repetition of what has been stated by the Bench in *Bara Singh's case*, which has been dealt with by me above.

With regard to the third point, the argument of the learned Additional Advocate-General may be reproduced in his own words:—

> "No property is ever excluded from the compensation pool till the validity of the proceedings culminating in the order transferring property and grant of *sanad* or sale certificate is scrutinised by the officers under the Act and the rules. For scrutiny by the revisional authority no limitation (of time) is fixed and so the liability of annulling a transfer continues so long as

section 24 is in existence and the same is not amended or deleted by the legislature."

According to him, if a *sanad* is executed in favour of an allottee and nothing more is done, the Chief Settlement Commissioner can send for the record and cancel the allotment and thereby the *sanad*, even 40 or 50 years afterwards, provided section 24 is still on the statute book. He had to concede that this will mean that no allottee-transferee will ever feel settled and if he transfers the property to somebody else, even the title of such subsequent transferee will fall and this would be the result notwithstanding the fact that there is no fraud, misrepresentation or concealment of any material fact on the part of the allottee. The avowed object of the entire legislation culminating in Act 44 of 1954, leading to the grant of proprietary rights, is to settle the persons who had been displaced as a result of the partition of the country from their original homes in West Pakistan and any interpretation of the law, which leads to a contrary result, cannot easily be accepted. The main argument of the learned Additional Advocate-General in support of his contention was that in case of an auction sale under the Civil Procedure Code, that sale can be set aside in appeal notwithstanding the grant of the sale certificate. Such an analogy, however, is not of any assistance because of the special provisions made in the Code of Civil Procedure in this respect. He strongly urged before us that the other interpretation that the Chief Settlement Commissioner would be *functus officio* as soon as the *sanad* is granted, is likely to lead to inequitable results. He urged that supposing an order to transfer a property is passed, which admittedly can be appealed against or revised, and while such an appeal or revision is pending, the Managing Officer or the Settlement Officer actually executes the *sanad*, then the appeal or revision would become infructuous. Apart from other things, the

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fears are more imaginary than real. So far as the quasi-permanent allotments of land are concerned, the allotments were made long before Act 44 of 1954 came into force and before the applications or the declarations were invited under rule 71 for the grant of proprietary rights, a long period had elapsed during which disputes between the contesting claimants were mostly settled. So far as the question of entitlement of the allottee *per se* is concerned, that is a matter between the allottee on one side and the Central Government on the other. There is ample provision for reopening of the case if any excess allotment has been made to him or if the allotment or the transfer of rights has been obtained by fraud or mis-statement. Detailed facts have to be stated in the declaration under rule 71 and any mis-statement therein would be hit even by the provisions in the *sanad*, apart from the fact that these have to be scrutinised thoroughly under rule 72. With regard to urban property the matter will be examined subsequently, but even in such a case there is considerable time between the auction sale, its confirmation and the grant of the sale certificate, and apart from other things, if an appeal or revision is actually filed, the party concerned can obtain an order directing the subordinate officer to stay his hands and not to grant the *sanad*. Though this question does not directly arise before us in any of the petitions, yet it may be that the issue of *sanad* in contravention of such a stay order by the subordinate authority may be null and void. However, the mere fact that a pending revision or an appeal becomes infructuous on the happening of some subsequent event is no ground for holding that the property does not pass out of the compensation pool even after the execution of the conveyance deed. The argument of the learned Additional Advocate-General that an order of transfer can be treated to be final only if the matter actually comes before the Chief Settlement Commissioner and he applies his mind and

endorses the action of the subordinate officers, does not appear to be sound. By its very nature, records of only a very small percentage of cases decided by the subordinate authorities can possibly be examined by the Chief Settlement Commissioner either on his own motion or at the instance of the parties interested and it will be absurd to hold that no case which has not come to the Chief Settlement Commissioner can be treated as final even scores of years after the grant of proprietary rights.

With regard to the fourth point, all that sub-section (2) of section 24 provides is—

> "* * * and if it is found that a displaced person has been paid compensation which is not payable to him, or which is in excess of the amount payable to him, such amount or excess, as the case may be, may, on a certificate issued by the Chief Settlement Commissioner, be recovered in the same manner as an arrear of land revenue."

Obviously, under this provision, the Chief Settlement Commissioner is authorised to recover the excess of compensation paid, as arrears of land revenue. It in no way authorises the Chief Settlement Commissioner to get back any property in specie which has been transferred to a displaced person whether by way of compensation or otherwise and this provision obviously refers to compensation payable in respect of properties other than the land covered by section 10. Furthermore, the mere fact that the Chief Settlement Commissioner is authorised to recover certain amount, wrongly paid to a displaced person, is no argument for holding that he has also power to cancel the transfer of the property made to such a displaced person. On the other hand, the fact that this section gives power to him only to get back the money, impliedly

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negatives any other power, in particular the power to get back the property in specie.

Mr. Gujral, who appeared for the petitioner in Civil Writ No. 859 of 1961, pressed into service another argument. He urged that under section 10, it is specifically provided that "the Central Government may * * * transfer to him (allottee) such property" by way of payment of compensation. Now the Central Government can delegate this power under section 34. Again, under section 40(2)(g) the Central Government can make rules with regard to the terms and conditions subject to which property may be transferred to a displaced person under section 10. These rules admittedly, are those contained in Chapter X of the rules, namely, rules 71, 72, etc. Thus, if the power of the Central Government is not delegated, the transfer of the land by way of compensation, after complying with the terms and conditions, as have been laid down in the rules, could be made only by the Central Government. It was not disputed that if law says that a particular thing shall be done by one authority, that thing cannot be done by another. Reference in this connection may be made to In *re. Art.* 143, *Constitution of India, etc.* (12), At page 389 following observations of Crawford on Statutory Construction, at page 333, were quoted with approval:—

> "If a statute enumerates the things upon which it is to operate everything else must necessarily and by implication be excluded from its operation and effect. So if a statute directs certain acts to be done in a specified manner by certain persons, their performance in any other manner than that specified or by any other person than is there named is impliedly prohibited."

(12) A.I.R. 1951 S.C. 332.

Admittedly, there is no separate notification providing for delegation of authority of the Central Government under section 10. However, under sub-rule (2) of rule 72, it is specifically provided that the Settlement Officer will issue a *sanad* to the allottee in the form specified in Appendix XVII. The learned counsel urged that this notification by which rules, including rules 71 and 72, had been promulgated, must be treated as a composite notification under sections 34 and 40 (although mention is made only of section 40), whereby not only the terms and conditions of transfer were laid down by the Central Government also delegated its power to the Settlement Officers to transfer property. There being no separate notification of delegation, the argument does appear to be plausible.

It was then urged that in transferring the property, referred to in section 10, the Settlement Officers were exercising their powers as the delegates of the Central Government and not in their own right as officers under the Act and, consequently, the Chief Settlement Commissioner, who is merely authorised to revise an order passed by "an officer under the Act" acting as such, has no jurisdiction to revise an order of a delegate of the Central Government. Reliance in this respect was placed on a decision of the Supreme Court in *Roop Chand* v. *State of Punjab and another* (13). This was a case under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, and the question was whether under section 42 the State Government can revise an order passed by an officer as a delegate of the State Government, under section 21(4). Section 21(4) provided an appeal to the State Government against an order of a subordinate officer. The appeal in that case was heard by the Assistant Director of Consolidation, to whom State

(13) (1963) 65 P.L.R. 576=A.I.R. 1963 S.C. 1503.

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Government's powers and functions concerning an appeal had been delegated. Section 42 provided that "the State Government may at any time for the purpose of satisfying itself as to the legality and propriety of any order passed * * by any officer under this Act call for and examine the records of any case * *". The order passed by the Assistant Director of Consolidation under section 21(4) was revised under section 42 by the Director of Consolidation to whom powers of the State Government under section 42 had been delegated. The argument on behalf of the State Government, while justifying the order passed in revision, was that the Assistant Director of Consolidation, even if he acted under the authority delegated to him by the State Government, was none-the-less "an officer under the Act" with the result that the order passed by him was revisable by the State Government. This argument was repelled by the Supreme Court and at page 5 of the judgment it was observed as follows:—

> "The question is not whether the officer is one under the Act—which perhaps means mentioned in or appointed under the Act—but whether the order is by him in his own right as such officer ? * *
>
> The learned Advocate-General said that when power is delegated to an officer under section 41(1), he does not cease to be an officer and, therefore, an order passed by him is an order passed by an officer within section 42. It seems to us that this is not at all determinative. If the officer does not cease to be an officer because Government had delegated power to him, neither does he cease to be a delegate of the Government because he is an officer. The real question is different. It is whether the order made by the officer was

made as a delegate of the Government or in his own right."

It was held by the Supreme Court that the State Government has no authority under section 42 to revise an order passed by its delegate under section 21(4), though such a delegate may happen to be an officer under the Act.

On the other side, it was urged that the Central Government is empowered to transfer property under sections 16, 17 and 20 subject to the rules made under the Act and that the power to transfer the property is given by the statute and the question of delegation does not arise, and that in exercising powers of transfer under rules 71, 72, etc., the Settlement Officer and the Settlement Commissioner, more or less, act in a quasi-judicial manner and the question of delegation of quasi-judicial powers does not arise. It was further contended that delegation of power necessarily implies that the person delegating it also retains such powers and he can withdraw the power delegated, at any time, and that, in any case, it made no difference whether these officers exercised the delegated powers or acted in their own right. The last argument need not delay us for the simple reason that the Supreme Court has given a clear decision to the contrary. If, in fact, the Settlement Officer is exercising "delegated powers" then this exercise of power by him must be treated to have been exercised by the Central Government itself, and section 24 does not authorise the Chief Settlement Commissioner to revise any orders passed by the Central Government. So far as the question of retention of power by the person delegating it is concerned, section 34 is quite clear in this respect and it provides that after the Central Government delegates its power to an officer, such power shall be "exercisable also by such officer". The use

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of the word "also" makes it quite clear that the Central Government still retains the power to transfer the property as authorised under section 10 notwithstanding the fact that it had delegated its power to the Settlement Officer or the Settlement Commissioner. With regard to sections 16, 17, and 20, it was urged by Mr. Gujral that reading these sections with section 10, it is quite clear that the power to transfer the particular type of property dealt with in section 10 was given only to the Central Government and the subsequent sections in no way alter this. Section 16 is only to the effect that the Central Government may take such measures as it considers necessary for the custody, management and disposal of compensation pool and for this purpose, appoint such officers as it may deem fit. This in no way means that so far as the particular type of property dealt with in section 10 is concerned, the statute provides for the transfer of the same by another authority. Section 17 relates to the functions and duties of Managing Officers in general who have to carry out such functions as are assigned to them under the supervision of the Chief Settlement Commissioner. Section 20 has been reproduced above. The operative part giving power to transfer property out of the compensation pool is in sub-section (1). Sub-clauses (b) and (c) of sub-section (1) relate to lease and allotment of properties and sub-clause (d) to the transfer of shares in the evacuee companies. Sub-clause (a) is the only clause which authorises the Managing Officer to transfer any property by sale of such property to a displaced person. This he can do subject to any rules made under the Act. It was rightly contended that reading this sub-clause of section 20(1) with section 10, it is clear that here the property referred to is the property other than that covered by section 10. The property, which is allotted on a quasi-permanent basis is, in fact, not to be transferred by "sale" and as is

clear from the procedure given in rules 71 and 72, such property is only to be transferred to the allottee as such by way of payment of compensation. With regard to the claim of urban property abandoned by a displaced person, the same is determined in terms of money and then the property, which may be in the possession of the claimant, is transferred to him on valuation and the price is set off against his "verified claim". As has been discussed above, the expression "verified claim" does not include claims regarding rural property in respect of which allotment of land has been made in part or whole. Thus, there is no force in the argument that sections 16, 17 and 20 in any way go counter to the proposition that it is only the Central Government which is authorised to transfer property under section 10, and as at present advised, there does appear to be force in the argument that, while tranferring such property under the rules, the Settlement Officers, etc., are merely acting as the delegates of the Central Government and this may be an additional ground in support of the conclusion already arrived at by me that once a *sanad* is executed by the Settlement Officer, etc., as a delegate of the Central Government, the same cannot be cancelled under section 24.

Now I will deal with the case of urban property. The evacuee unban property, which had been acquired by the Central Government under section 12 of the Act could be of three kinds—

(1) Residential houses, shops or vacant sites;
(2) agricultural land; and
(3) industrial establishments.

Only first category of property is involved in the petitions before us but the position will be the same even with regard to the other categories. After the partition of the country, some items of the urban evacuee

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property were in possession of some persons who even prior to the partition of the country were tenants under the original evacuee owner. Such tenancies were continued by the Custodian and thereafter by the Central Government. Most of the other urban evacuee property was allotted or leased by the Custodian and continued by the Central Government or allotted or leased by the Managing Officer under section 20. These displaced persons in possession of evacuee property either under the original evacuee or under the orders of the Custodian may or may not have left any urban property in West Pakistan. Those who did leave some urban property would have "verified claims" in respect of such property and as a result of the procedure given in sections 4 and 7, referred to above, would become entitled to a certain sum of money by way of compensation in respect of which a certificate would be issued to them and they will be entitled to the payment of this compensation in any of the methods provided in section 8 which broadly fall into two, viz., (a) in cash, or (b) by sale of property and adjustment of the amount of compensation due against the purchase money wholly or in part, as the case may be. Now, the Managing Officer may sell the urban acquired property on evaluation, by open auction or by tender (see section 20). Chapter V of the Rules deals with the cases where the acquired property is to be transferred to an allottee by way of payment of compensation. Rule 22, *inter alia*, lays down that if the value of the residential property in the occupation of a displaced person does not exceed Rs. 10,000 (later raised to Rs. 15,000), the same shall oridinarily be allotted, that is, transferred to the occupier on evaluation. Similarly, limits are laid down for the shops and industrial concerns. The properties, the value of which exceeds that laid down in rule 22, are to be sold (see rule 23). Rule 24 lays down the method of valuation of various properties and rule 25

provides that if an allottable property is in the sole occupation of a displaced person having a verified claim, the property shall be transferred to him and the amount of claim adjusted against the purchase price and the balance recovered in instalments or otherwise, as provided in the rules. Rule 26 is in respect of cases where the sole occupier has no verified claim. In such a case he has to pay some amount in cash and the balance in instalments. Rules 27 and 28 relate to details about instalments and interest and rule 29 deals with a case where there is a refusal by the sole occupier to accept the transfer. Where more than one person (all of whom held verified claims) are in occupation of the allottable property, rule 30, as it now stands, provides that the same is allottable to the claimant whose gross compensation is the highest, and the other persons may be allotted such other evacuee property, which is allottable, as may be available. According to rule 31, where, out of the persons occupying the allottable property, none holds a verified claim, the transfer is to be made to the person who occupies the largest portion of the property. Rule 33 provides that when a property is transferred to any person under this chapter, a deed of transfer shall be executed in the form specified in Appendix 24 or 25. Rules 33-A and 33-B deal with the form of the deed of transfer where property is transferred under section 20-A and where property is divided horizontally respectively. Rule 34 deals with the question of the date from which the transfer shall be deemed to have been made. Chapter V-A contains more or less similar provisions with regard to the allotment of urban evacuee agricultural lands and need not detain us. Chapter XIV lays down the procedure for sale of the property in the compensation pool otherwise than by transfer on valuation. Rule 90 deals with the sale of property by public auction. According to this, a proclamation has to be made in

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the manner provided under sub-rules (2) and (3) and the sale is to take place not earlier than 15 days thereafter [*see* sub-rule (4)]. The person declared to be the highest bidder shall pay 10 per cent of the bid at the fall of the hammer and if the highest bidder happens to be a displaced person having a verified claim in respect of an amount exceeding the amount of deposit required, he executes an indemnity bond in the form specified [*see* sub-rule (8)]. This bid is subject to the approval of the Settlement Commissioner or an officer appointed by him for the purpose [sub-rule (10)]. This approval cannot be given until seven days after the date of auction. On receiving intimation of such a transfer, the auction-purchaser has to deposit the balance of the purchase money in cash or get this balance adjusted against any verified claim due to him or any other persons whom he may associate with him for the purpose, within fifteen days of the receipt of notice [sub-rules (11) and (12)]. On the purchase price having been realised in full in one form or the other, "the Managing Officer shall issue to him a sale certificate in the form specified in Appendix 22 or 23" and a certified copy of this is to be sent to the Registering Officer having jurisdiction in the local limits. Rule 91 deals with the sale of the property by tender and here also, on payment of the entire price, a deed of transfer is to be executed in the form specified in Appendix 24 or 25. Rule 92 prescribes the procedure for setting aside a sale by public auction or by tender.

Here we may also notice the form specified for the sale certificate of the transfer. Appendix XXII contains the form of a certificate of sale relating to free-hold properties and Appendix XXIII to lease-hold properties and are essentially similar. The relevant part is as follows:—

> "This is to certify that.....having given the highest bid at a sale by public auction held

in pursuance of the powers conferred upon me under section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 * * * on the.....day of.....of the property described in the schedule and his bid having been accepted and the value thereof having been paid by him in cash by adjustment * * has been declared the purchaser of the said property with effect from the..... day of....."

Appendix XXIV contains the form of deed of conveyance to be executed in the case of free-hold properties and Appendix XXV regarding lease-hold properties. After reciting that the conveyance deed was between the President of India on one side and the purchaser on the other, it goes on as follows:—

"WHEREAS the vendor is seized and possessed of the land, hereditaments and premises more particularly described in Schedule hereunder written.

AND WHEREAS the vendor has agreed with the purchaser for the absolute sale to him of the said land * * * *intended to be hereby granted at or for the price of Rs... paid to the vendor by the purchase * * * the receipt whereof the vendor doth hereby admit and acknowledge * * hereby grant, release, convey and assure upto the purchaser all that piece or parcel of land

* * * * * * * * *

together with all building, commons, fences * * * and appurtenance whatsoever to the said piece or parcel of land * * *.'

AND ALL THE ESTATE, right, title, interest, claim and demand whatsoever of the vendor into and upon the said promises * *

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EXCEPTING AND RESERVING to the vendor all mines and minerals * * * *"

Leaving out rule 92 for the time being, it is clear that the transfer of the property by sale certificate or by the conveyance deed is absolute and unconditional, the only things excepted in the conveyance deed being mines and minerals, with which we are not concerned. There is no provision whatsoever for resumption of the land once sold. Another thing that is to be noted is that compensation payable in respect of the verified claims that may be held by the occupier or the auction-purchaser or the successful tenderer or his associates, has really nothing to do with the grant. That is only a way of payment of the purchase price recognised and accepted on behalf of the President. The sole occupier, whether a displaced person or otherwise, is entitled to the transfer of the property if it is "allotable", the idea being not to unsettle the settled conditions. If a person is in occupation of the property, the value of which is not beyond the limits prescribed in rule 22, he is entitled to get that property on payment of the value of the property as assessed by the department. The argument that was advanced in case of rural agricultural property that after the grant of *sanad* the property goes out of the compensation pool, applies with equal, if not greater, force in the case of urban property. Here, in each case, there is a sale of the property by the Managing Officer for a fixed price. On the execution of the sale certificate, the transferee become the owner of the property which no longer remains the evacuee property (see *Bombay Salt case* (6), referred to above.

Shri Khushabi Mal v. *The Assistant Settlement Commissioner,* Civil Writ No. 637 of 1959) illustrates how difficulties can arise where subsequently the

valuation, as arrived at under rule 24, of the property is altered by the higher authorities. In this case the allottee of a shop had a verified claim. There was a controversy with regard to its valuation and the matter was finally settled by the Deputy Chief Settlement Commissioner who held the value to be less than Rs. 10,000. Meantime, however, the shop had been auctioned and the highest bid was Rs. 18,225. The contention of the allottee was that the bid was inflated because he was carrying on the business in that shop and so wanted to retain it at any cost. On application by the department to the Central Government, the Deputy Secretary revised (apparently under section 33) the order of the Deputy Chief Settlement Commissioner holding that the value of the shop was less than Rs. 10,000. Against that order, the petitioner filed the aforesaid writ in the High Court, and during the pendency of the same the property was actually transferred to the petitioner and a conveyance deed was executed on 10th of June, 1959, by which the property was absolutely transferred to the petitioner. It was held that there being a valid and absolute transfer of the property to the petitioner, the aution held—which had been impugned by the petitioner—must stand abrogated, and as a result of this finding, the order of the Deputy Secretary raising the valuation was quashed. *Gobind Ram* v. ***Regional Settlement Commissioner*** (8), may also be considered here. There, A, who had a verified claim, was transferred a house in lieu of his compensation and a conveyance deed was executed in his favour. Later, another person, who had not intervened earlier, moved the Chief Settlement Commissioner challenging the order of the Regional Settlement Commissioner, alleging that, in fact, he was in possession of the disputed property. The Chief Settlement Commissioner set aside the order of the Regional Settlement Commissioner with the direction that the property be resumed and

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sold by auction. It was held that "even if the allotment was liable to be cancelled, it could not be cancelled after the property had been transferred by a formal deed of conveyance, except under the condition, mentioned in the deed". Before us, the learned Additional Advocate-General pointed out that the property, in this case was apparently urban property, as is clear from paragraph 2 of the judgment, and that the provisions of section 10, referred to in paragraph 19 of the report, had no relevance and furthermore, rule 33, referred to by the learned Judges, providing for the conveyance, had nothing to do with the transfer of agricultural property, to which section 10 relates. No doubt, a reference to section 10 seems to have been under some misapprehension but that, in no way, takes away from the value of the *ratio decidendi* of the case that once the property is transferred absolutely to an allottee, the same ceases to be evacuee property, and, therefore, the Chief Settlement Commissioner was *functus officio* and could not deal with it. *Dewan Jhangi Ram* v. *Union of India* and *others* (7), involved the question whether a house could be partitioned or not. In this case, a double-storeyed house was taken on rent by the son of the petitioner Jhangi Ram from its Muslim owners who migrated to Pakistan and was occupied by the petitioner, his son and Hardayal Dhingra respondent No. 5—brother-in-law of the petitioner's son. The Custodian allotted the property jointly in the name of all the three. Subsequenly after the enforcement of Act 44 of 1954 and the acquisition of the property by the Central Government, the house was valued at Rs. 8,474. Both the petitioner and the respondent had verified claims. However, respondent No. 5 had received the entire compensation payable to him. On an application made by the petitioner, respondent No. 5 was sent for and he made a statement that he was not interested in the purchase of the house and,

consequently, on 1st of August, 1957, the Settlement Officer decided that the house be transferred to the petitioner and a sale-deed was executed on 28th of May, 1958 and it was thereafter duly registered. Later, on an application by respondent No. 5 for the horizontal division of the house having been rejected by the Managing Officer and an appeal against that order having been rejected by the Chief Settlement Commissioner, he approached the Central Government under section 33, which empowers the Central Government to call the records of any proceedings and pass such orders in relation thereto as in its opinion the circumstances of the case require. The proviso to rule 30; as it then existed, was as follows:—

> "Provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him."

.. The Central Government, in effect, decided to partition the property horizontally. Mahajan J. came to the conclusion that there was no independent conclusion arrived at by the Central Government in a quasi-judicial manner that the property could be divided and that the order was liable to be set aside on that score. In paragraph 4 the learned Judge however further observed as follows:—

> "The property had been absolutely sold to the petitioner on the 28th of May, 1958, and once the property had been sold, it no longer formed part of the compensation pool. * * * *It has been held in the following cases that no order cancelling

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the sale can be passed once a sale of the evacuee property has been effected without having resort to rule 92."

The learned Additional Advocate-General vehemently urged that if this view is taken that after the execution of the transfer deed the authorities are *functus officio*, then the Central Government would be left with no remedy even where the transfer deed has been executed by a subordinate officer deliberately flouting the rules of procedure or even where the Managing Officer has acted fraudulently and in collusion with the transferee. The contention of the learned Additional Advocate-General, however, seems to be misconceived. All that follows from what is stated above is that the Chief Settlement Commissioner or other officers appointed under the Act to manage the property in the compensation pool, have no authority to deal with it and to decide whether the transfer has been properly made or not. The two parties to the transfer, namely, the Central Government and the transferee would be governed by the ordinary law of the the land and as fraud vitiates all transaction, a remedy will be open to the Central Government, as it is open to any other vendor, to seek redress in the ordinary Courts of law. However, it was urged that section 36 bars the jurisdiction of the civil Courts. Section 36 is in the following words:—

> "Save as otherwise expressly provided in this Act, no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

All that this section provides is that if under the Act the Central Government or other officers are empowered to determine a particular matter, no suit or proceedings can lie in respect of the same. However, when it is held that neither the Central Government nor the officers appointed under the Act can go into the question of the validity of the transfer or otherwise, once a sale-deed has been executed, section 36 will not cover such matter and the jurisdiction of civil Courts cannot be barred. It is well-settled that the civil Courts can even go into the question where the exercise of the powers by the authorities is challenged on the grounds of the same being without jurisdiction, but in the present case, where the authorities under the Act would not have any jurisdiction to go into the matter, the only forum to determine the controversy would be the ordinary Courts of law.

We may now examine rule 92, which may be reproduced *in extenso*—

"(1) where a person desires that the sale of any property made under rule 90 or 91 should be set aside because of any alleged irregularity or fraud in the conduct of sale (including in the case of a sale by public auction in the notice of the sale) he may make an application to that effect to the Setllement Commissioner or any officer, authorised by him in this behalf to approve the acceptance of the bid or tender, as the case may be.

(2) Every application for setting aside a sale under this rule shall be made—

(a) where the sale is made by public auction within seven days from the date of the acceptance of the bid;

(b) where the sale is made by inviting tenders, within seven days from the date when the tenders were opened.

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(3) If after consideration of the facts alleged, the officer to whom the application is made under this rule is satisfied that any material irregularity or fraud has been committed in the publication or the conduct of the sale he may make an order that the property be reauctioned or be resold by inviting fresh tenders, as the case may be;

Provided that no sale can be set aside under this rule unless upon the facts proved such officer is satisfied that the applicant has sustained substantial injury by reason of the irregularity or fraud, as the case may be;

(4) Notwithstanding anything contained in this rule, the Settlement Commissioner may of his own motion, set aside any sale under this chapter if he is satisfied that any material irregularity or fraud which has resulted in a substantial injury to any person has been committed in the conduct of the sale."

From sub-section (1) two things are clear : First that the power of setting aside the sale either under sub-rule (3) or sub-rule (4) is confined only to sales under Chapter XIV, or, in other words, to sales by public auction under rule 90 or sale by tender under rule 91. This rule, therefore, gives no power whatever to set aside a sale or transfer on evaluation under other Chapters, including Chapter V : secondly, that the sale can be set aside only on account of "irregularity or fraud committed in the publication or conduct of the sales." Now sub-rule (2) provides that an application for setting aside a sale under this rule has to be made within seven days from the date of the acceptance of the bid or from the date when the tenders were opened. Sub-rule (11) of rule 90 provides for an intimation of the approval of the bid to

be given to the highest bidder who is directed to pay the balance of the price within fifteen days from the receipt of the intimation and it is only after such balance of the purchase-money has been paid that any further action towards the issue of the sale certificate can be taken. Furthermore, if the highest bidder happens to be entitled to compensation for a vrified claim, under sub-rule (12) he has to make an application within seven days of the receipt of the intimation about the approval of the bid or give particulars of any such application already made by him for compensation payable to him and thereafter under sub-rule (13), the Regional Settlement Commissioner scrutinises the compensation application etc. In either case, a period of seven days or more has to elapse before any further action can be taken. Similar provisions exist in section 91 for sale by tender. The fact that rule 92 specifically provides for an application for setting aside the sale to be made within seven days of the approval of the bid or the opening of the tender, clearly shows that action under this rule is intended to be taken before a sale certificate is actually issued. It could, however, be urged that under sub-rule (4) the powers of the Settlement Commissioner are much wider and he can take such an action of his own motion and that he is not bound by any time factor. No doubt, no time limit is prescribed in sub-rule (4) yet it is not stated in this rule that he can exercise this power "at any time". *Prima facie*, therefore, this power can be exercised only within a reasonable time and in any case only so long as the property is part of the compensation pool and not after the same has been transferred absolutely to the auction-purchaser or the highest tenderer. The question, however, does not arise directly in any of the petitions before us and was not, therefore, properly argued and no final view should be taken to have been expressed in this respect. It may, however, be repeated that the powr is a very

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limited one and can be exercised only if there are irregularities or fraud in the publication and conduct of the sale and in no way concerns the contest between different aspirants to the purchase of the property or to its transfer. The power is further limited by the provision that before it can be exercised, the officer concerned must come to the conclusion that the irregularity etc. has resulted in substantial injury to the applicant. For these reasons, such cases are bound to be of rare occurrence. It can well be said that the provisions of rule 92 make it clear that once a sale takes place, i.e., a bid has been accepted and a binding contract comes into existence under the rules, even if no sale certificate has yet been issued, no power is left with the Settlement Commissioner or other subordinate officers to set aside the sale except for fraud or misrepresentation in the publication and the conduct of the sale.

The question that still remains for consideration is whether the Chief Settlement Commissioner, in the exercise of his revisional powers, can interfere and set aside a sale where only binding contract has come into existence but the sale-deed has not yet been executed. *Ram Lal* v. *Union of India*, (Civil Writ No. 1662 of 1962) is the only case before us which is of this type. There were two houses Nos. 71 and 72, various portions of which were in occupation of Ram Lal, Mehar Chand and Loku Ram. House No. 72 was offered to Ram Lal, who was a non-claimant, on the basis that he was occupying that house. This offer was accepted and the first two instalments together with interest were paid. The other house No. 71 was transferred in favour of Loku Ram. There were appeals and revisions filed by Loku Ram and Mehar Chand and ultimately it was held by the authorities that, in fact, Mehar Chand was in occupation of No. 71

and that house was ordered to be transferred to him. So far as No. 72 was concerned, it was held that Loku Ram was in occupation of a portion of that house and not No. 71, as was wrongly considered originally, and that he being a claimant had a better right to the transfer of the house on evaluation. Ram Lal has filed the writ.

Prima facie, the order of the Managing Officer and that of the Settlement Commissioner holding a particular person to be entitled to the transfer of the urban property under the rules and offering the same to that man and even his accepting that offer, are all orders passed by the Managing Officer or the Settlement Commissioner in the exercise of his powers under the Act and the rules and consequently in view of the wide powers vested in the Chief Settlement Commissioner under section 24 of the Act, are subject to revision at any time. The Supreme Court judgment in the *Bombay Salt case*, noted above, makes it clear that the property does not go out of the compensation pool till the sale-deed is executed. However, in the same case, it has been specifically mentioned that on the confirmation of the bid, a binding contract between the parties comes into existence. The binding nature of the contract would be further strengthened if thereafter the highest bidder or the person in occupation, to whom the property has been agreed to be transferred on valuation, has further paid part or whole of the purchase-money in pursuance of the terms of the agreement. The question for consideration is as to what is the effect of this binding contract on the powers of the authorities under the Act to go back on the agreement and to set aside the bid or withdraw the offer of the house on the ground either that the property should not have been sold by auction according to the rules or that someone else had a superior right to the transfer of the property. Unfortunately,

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no arguments were addressed to us on this aspect of the case and we, therefore, got no assistance in this respect. *Prima facie,* however, under the ordinary law of contract, once there is a binding contract, a party to the same cannot go back on it except on very special grounds, like mutual mistake etc., well recognised under the Contract Act. In the present case, however, it can be urged that a person making the bid at an auction and thereafter entering into agreement with the authorities, does so with the full knowledge that these orders of the subordinate authorities are liable to be set aside and corrected till the execution of the sale-deed under the revisional powers of the Chief Settlement Commissioner. As at present advised, therefore, I am of the view that the Chief Settlement Commissioner, in the exercise of his revisional powers, would be entitled to interfere in any sale effected by transfer on valuation, by open auction or by tender, so long as the sale certificate or the conveyance deed has not been executed. His exercise of these revisional powers is circumscribed only by the fact that the orders passed by him must be in accordance with the provisions of the Act and the rules and should conform to the principles of natural justice.

Some attempt was made before us to suggest that sub-section (2) of section 24 was a proviso to sub-section (1) of this section and that, therefore, orders for payment of compensation, allotment and leases can be cancelled only if it is proved that the same have been obtained by fraud, misrepresentation or concealment of any material fact and that the wide powers of the Chief Settlement Commissioner to cancel or vary any orders of the subordinate officers under sub-section (1) were confined to orders other than the three types of orders mentioned in sub-section (2). By way of illustration, orders, under section 9 read with rules 83 and 86, dealing with the question of successors

of the claimants; declaring a particular property as allottable property or otherwise, under rule 22; fixing the valuation of the property under rule 24; declaring a particular person to be an occupant or otherwise; orders declaring as to whether a person is a claimant or a non-claimant, and, who, out of the occupiers, is preferentially entitled to the transfer (rules 26 and 30 etc.) and orders under section 21 for the recovery as arrears of land revenue of dues payable to the Custodian or the Central Government, were cited as the orders which are not covered by sub-section (2) and would be covered by sub-section (1). However, the opening words of sub-section (2), namely, "without prejudice to the generality of the foregoing power under sub-section (1)" rather indicate that what is stated in sub-section (2) is only by way of illustration and this sub-section is not a mere proviso, and the powers given in this sub-section are not in derogation of those given in sub-section (1). Similar words were used in the Defence of India Rules and were interpreted as such by the Privy Council in *Emperor* v. *Sibnath Banerji* (14). No authority taking a contrary view was brought to our notice on behalf of the counsel for the petitioners.

Reference was, however, made to the judgment of Grover, J., in *Lal Devi* v. *Deputy Chief Settlement Commissioner* (Civil Writ No. 1242 of 1959). Lal Devi was an allottee of a house which was valued originally at Rs. 6,291. On 9th of April, 1958, the amount of compensation due to her, being Rs. 4,801, was adjusted against the purchase price and a certificate of payment of compensation under rule 116 was issued, which showed Rs. 1,709 as recoverable from her after adjustment of the compensation, which balance was payable by instalments under the rules.

(14) A.I.R. 1945 P.C. 156.

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The Deputy Chief Settlement Commissioner, purporting to exercise his revisional powers under section 24, enhanced the valuation from Rs. 6,291 to Rs. 7,530 and cancelled the certificate issued to her under rule 116. The argument before the learned Judge was that after a certificate has been granted under rule 116 adjusting the compensation, the powers of revision under section 24 could be exercised only under sub-section (2) and not under sub-section (1). Following the observations of Chopra, J., in *Thakar Jaishi Ram's case* referred to above, to the effect that the Chief Settlement Commissioner could set aside an allotment only after he was satisfied that the allotment was obtained by means of fraud, false representation or concealment of any material fact and cannot cancel an allotment on consideration of merits of the respective claims of the parties etc., and further holding that the cancellation of the certificate was likely to have the effect of cancellation of the allotment, the learned Judge accepted the writ and quashed the order of the Deputy Chief Settlement Commissioner. *Thakar Jaishi Ram's case* was not a case of allotment of urban property but of the agricultural land covered by section 10, and for the reasons already given above, such allotments cannot be cancelled except on the grounds which were covered by clause 6 of rule 14 under which these grants were made. No doubt such grounds are similar to those detailed in sub-section (2) of section 24 but this decision is no authority for the fact that the allotment, which is not covered by section 10, cannot be cancelled by the Chief Settlement Commissioner on grounds other than those of fraud, misrepresentation etc.

Another argument which was strongly pressed into service on behalf of the petitioners in support of this contention was that if the Chief Settlement Commissioner takes action under sub-section (1), there is

no revision provided, the only remedy open to an aggrieved person being by way of a petition to the Central Government under section 33 relating to the residuary powers of the Central Government. This petition is not so efficacious as a revision which is provided under sub-section (4) of section 24 against an order passed under sub-section (2). The argument was that fraud, misrepresentation and concealment of any material fact are rather serious lapses on the part of the allottee etc. and if such a person is given a right of revision against an order passed against him by the Chief Settlement Commissioner but no such right is given to him when an order is passed against him on much less stronger grounds, it would show that the cases dealt with under sub-section (2) are not merely by way of illustration but are a category apart and that sub-section (2) should be treated as creating a special category of cases which can be set aside only on grounds of fraud, misrepresentation etc. and could not be dealt with under sub-section (1). The argument is no doubt attractive. The right of revision under sub-section (4) is certainly more valuable because the petitioner in case of a revision is entitled to be heard before the same is disposed of whereas he has no such right in case of a petition under section 33 : (See in this respect *Ranjit Singh* v. *Union of India and others* (15), and *Hira Lal Kher* v. *The Chief Settlement Commissioner* (16). However, the mere fact of a right of revision having been provided against the orders passed under sub-section (2) is not conclusive. An order of allotment or lease can be altered even by the Managing Officer under section 19 read with the rules. These powers of the Managing Officer to cancel allotment are not limited to cases of fraud, misrepresentation etc. Sub-section (1) of section 24 gives

(15) I.L.R. (1962) 2 Punjab 579=1962 P.L.R. 44.
(16) 1961 P.L.R. 560.

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general and wide powers to the Chief Settlement Commissioner to call for the records of any case and revise any order passed by the subordinate officers and his powers must necessarily be co-extensive with those of the subordinate officers. The mere fact that a revision is provided against the cancellation of an allotment due to fraud, misrepresentation etc. may be due to the fact that such a finding is of a serious nature and may reflect on the allottee, which would not be the case where the allotment is cancelled because of irregularities unconnected with the action of the allottee himself, and not reflecting on his conduct.

In view of the above, my answers to the points raised before us may be summarised as follows :—

I. The quasi-permanent allotments made under the notifications referred to in section 10 can be cancelled by the Managing Officer only on the grounds given in sub-rule (6) of rule 14 and not otherwise. The powers of the Settlement Commissioner, in appeal, or those of the Chief Settlement Commissioner, in revision, are no wider;

II. Once proprietary rights have been conferred on such an allottee by execution of a *sanad* in his favour (provided this action of the officer granting the *sanad* does not amount to an act beyond his jurisdiction), the property goes out of the compensation pool, and the Chief Settlement Commissioner becomes *functus officio*, and cannot interfere with the property in any manner and the only way in which the property so transferred can be resumed is by the Central Government in accordance with the terms of the *sanad*;

III. So far as the other allotments are concerned, the Chief Settlement Commissioner, in the exercise of his revisional powers, can cancel or modify the same and this power is circumscribed only by the fact that the orders passed by him must be in accordance with the provisions of the Act and the rules made thereunder and should conform to the principles of natural justice;

IV. A sale by public auction, by tender or transfer on valuation results in a binding contract between the parties on the bid being confirmed or the tender, or the offer of transfer made to the occupier, being accepted, and should not lightly be interfered with, but the Chief Settlement Commissioner has power, in a proper case, in the exercise of his revisional powers, to cancel or modify any order of his subordinates passed in relation to any such sale or transfer, so long as a sale certificate or conveyance deed has not been executed;

V. After a sale certificate, in case of sale by public auction, or conveyance deed, in case of sale by tender or by transfer on valuation, of urban property, is granted (provided this action of the officer granting the certificate or the conveyance deed does not amount to an act beyond his jurisdiction), the property goes out of the compensation pool and the transferee becomes its absolute owner. Thereafter the Chief Settlement Commissioner and other officers under the Act are *functus officio* and cannot cancel the sale or resume the property. The

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parties to the conveyance deed are only left to their remedies under the ordinary law of the land;

VI. However, the Chief Settlement Commissioner has authority under section 24(2) to recover, as arrears of land revenue, any amount found to have been paid in excess of the compensation due to the displaced person, which had been adjusted against the purchase price;

VII. Any unpaid part of the purchase price can also be recovered as arrears of land revenue and would further be a first charge on the property even in the hands of a transferee from the purchaser from the Central Government : [Section 20(3)]

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PANDIT, J.—The question that falls for determination is whether the Full Bench decision of the Rajasthan High Court in *Partumal and another* v. *Managing Officer, Jaipur, and others* (2) or the Bench decision of this Court in *Bara Singh* v. *Joginder Singh and others* (1), lays down the correct proposition of law.

The facts in *Partumal's case* are these. The petitioners, who were father and son, were displaced persons from West Pakistan. They occupied evacuee property situate in Ajmer, which was allotted to them by the Custodian of Evacuee Property. On their application to the Managing Officer, the latter agreed to sell a portion of this property to the son. On payment of the sale price, the Managing Officer granted a deed of conveyance in his favour regarding the said portion, which was already in his occupation as a tenant. One Hemandas, who was also in possession of

another portion of this property, filed an appeal to the Regional Settlement Commissioner for the transfer of this portion to him. During the pendency of this appeal, the matter was referred by the Regional Settlement Commissioner to the Chief Settlement Commissioner, Delhi, in his administrative capacity and the latter set aside the transfer of the said portion to the son, holding that the decision of the Managing Officer about the divisibility of the property was bad in law and against instructions. The Chief Settlement Commissioner, therefore, directed that the property be sold by auction as it was a salable one and could not be transferred by way of allotment. The Managing Officer called upon the son to surrender his deed of conveyance and also made arrangements for putting the property to auction. This led to the filing of the writ petition in the High Court. The Full Bench held that under section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act), the Chief Settlement Commissioner, Delhi, had no authority to cancel the sale after the deed of conveyance had been executed in favour of the petitioner and his order in this behalf was wholly without jurisdiction and could not be regarded as valid and the Managing Officer could not be allowed to take shelter under an invalid order of the Chief Settlement Commissioner for resuming the property of the petitioners and in auctioning the same. The action of the Managing Officer in doing so was not warranted by law and as it interfered with the fundamental rights of the petitioners, they were entitled to protection under article 226 of the Constitution.

It may be mentioned that this Full Bench, in arriving at this conclusion, mainly, relied on the earlier Bench decision of that Court in *Gobind Ram* v. *Regional Settlement Commissioner, Rajasthan, Jaipur*

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and others (8). In that case, the property in dispute belonged to one Mohd. Abdul Hafiz. The petitioner took the same on rent from him in 1947. The landlord then migrated to Pakistan and the property vested in the Custodian. The same was later on allotted to the petitioner. The petitioner's application for receiving the compensation on account of his claim in respect of properties left in Pakistan was pending with the Rehabilitation Authorities. He applied to the Settlement Commissioner, Ajmer, for the transfer of this property to him on permanent basis in lieu of his claim. After due enquiry, the Assistant Custodian of Evacuee Property granted the petitioner a quasi-permanent allotment of this property. Later on, the Regional Settlement Commissioner adjusted, out of the compensation payable to the petitioner, the value of the property assessed at Rs. 3,144 and made an entry in the compensation certificate and thereafter the Managing Officer executed a formal conveyance deed in favour of the petitioner on behalf of the President of India. One Gagandas Balani, who had not intervened so far, filed an appeal to the Chief Settlement Commissioner, Delhi, challenging the order of the Regional Settlement Commissioner on the ground that he was in actual possession of the property and that the petitioner was not in the sole occupation of the premises and prayed that the allotment in the name of the petitioner should be set aside and an allotment order on quasi-permanent basis be made in his (Gagandas's) favour. It was also prayed that in case the allotment order was not made in his favour, then the property should be put to auction. The Chief Settlement Commissioner set aside the order with a direction that the property be resumed and sold by auction. This led to the filing of the writ petition. The Bench held that the order of allotment, in the circumstances of the case, was not challengable. Even if the allotment was liable to be

cancelled, it could not be done so after the property had been transferred by a formal deed of conveyance, except under the conditions mentioned in the deed. The Chief Settlement Commissioner had no authority to cancel the transfer made in favour of the petitioner and his order was wholly without jurisdiction. It was a nullity and had to be ignored. The Regional Settlement Commissioner in Rajasthan was, therefore, not authorised to enforce that order and encroach upon the rights of the petitioner, who had already acquired a vested right in the property.

The facts in *Bara Singh's case* were : Joginder Singh, Harbans Singh and Gurdip Singh were three brothers. Gurdip Singh was killed in Pakistan during the communal disturbances. The first two brothers came to India and filed their claims in respect of their property as well as that of Gurdip Singh deceased. The two brothers were allotted agricultural land and also the house-property. Some agricultural land and House No. 50 situate in Adampur in Jullundur District was allotted in the name of Gurdip Singh deceased. On 6th December, 1955, the Managing Officer transferred this House No. 50 in favour of Joginder Singh and Harbans Singh and granted them a *sanad* as required by the rules made under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Rules). One Bara Singh was interested in this house and he claimed to be in its occupation. He, consequently, moved the Assistant Settlement Commissioner to cancel the allotment made in the name of Gurdip Singh. The Assistant Settlement Commissioner refused to interfere on the ground that the proprietary rights in the house had already been transferred to Joginder Singh and Harbans Singh. Bara Singh filed a revision before the Chief Settlement Commissioner, who came to the conclusion that the allotment of this house in the

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name of Gurdip Singh was unjustified, because he had never settled in any rural area in India, having died in Pakistan, and that the proprietary rights in the house should not have been transferred to his two brothers. He, therefore, set aside the order of the Managing Officer dated 6th December, 1955, granting the *sanad* to Joginder Singh and Harbans Singh in respect of this house and also cancelled the order dated 6th October, 1950 by which the allotment of the house in dispute had been originally made. This led to the filing of the writ petition by Joginder Singh and Harbans Singh. It came up before Gurnam Singh, J., who held that the Chief Settlement Commissioner was not competent either to cancel the *sanad* granted to the petitioners transferring the proprietary rights to them or to reverse the order of allotment made on 6th October, 1950. He, consequently, allowed the writ petition and quashed the order of the Chief Settlement Commissioner. A Letters Patent Appeal was filed by Bara Singh against this decision. While upsetting the judgment of the learned Single Judge, the Bench held that the Chief Settlement Commissioner could at any time reverse the order of the Managing Officer authorising the grant of proprietary rights even after the *sanad* had been granted to the claimant. The *sanad* or its grant being founded solely on the decision to transfer permanent ownership, that *sanad* must necessarily fall with the reversal of the decision on which it was based. It also held that if in any case where the Managing Officer wrongly omitted to cancel the allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner could, in exercise of his power of revision, correct the error and similarly where the Managing Officer wrongly transferred proprietary rights in respect of any property, the Chief Settlement Commissioner could reverse the order and annul the transfer.

The decision *in Govind Ram's case* is based on the following reasons :—

1. The petitioner had obtained the lease prior to the acquisition of the property by the Central Government under the Act and, consequently, the property had been transferred to him under section 10 of the Act. Such a transfer could only be made by the Central Government. Even though the initiative for this transfer might have been taken by the Managing Officer, but the deed of transfer, however, was executed on behalf of the President of India. Reliance was placed on Rule 33 of the Rules which provided that where any property was transferred to any person under Chapter 2, the deed of transfer would be executed in the form specified in appendices 24 and 25. These forms were executed on behalf of the President of India. It was inconceivable, on the very face of it, that the transfer of property of the Cenral Government under section 10 read with Rule 33 should be challenged on an appeal to the Chief Settlement Commissioner.

2. Reference was then made to the provisions of section 20 of the Act, which empowered the Managing Officer or the Managing Corporation to transfer the property out of the compensation pool. It was stated that the powers given under this section were distinct from those of the Central Government under section 10 of the Act. Even these powers were to be exercised subject to the Rules. Rule 33 applied to such cases also and, therefore, the transfer, in these cases would also be on behalf of

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the President. Further Rule 34, *inter alia*, provided that when a property was transferred to any person under Chapter 3 of the Act, the property would be deemed to have been transferred to him, where such person had made an application for payment of compensation before 31st October, 1953, from 1st November, 1953. Section 20 read in the light of these Rules contemplated an act of sale and not an order liable to be challenged in appeal or revision. Under these circumstances, the contention raised by the Rehabilitation Authorities that the actual transfer should pre-suppose an order of transfer and that order of transfer could be challenged in appeal or revision under sections 23 and 24 of the Act could not be accepted.

3. That after the execution of the deed of conveyance, the rights of the parties stood determined by the terms of the deed. Condition No. 1 thereof provided that it would be lawful for the vendor to resume the whole or any part of the said property, if the Central Government was at any time satisfied and recorded a decision in writing to the effect that the transferee or his predecessor-in-interest had obtained that transfer by fraud or misrepresentation. A specific power of resumption and the manner of exercising that power by the Government had been indicated in the conveyance deed. Therefore, it was not possible for the Chief Settlement Commissioner to ignore these specific conditions and to direct resumption in the so-called exercise of powers of appeal or revision.

4. The contention that with the cancellation of the allotment, the sale should *ipso facto* stand cancelled was not sound. Even if the allotment was liable to be cancelled, it could not be done so after the property had been transferred by formal deed of conveyance except under the condition mentioned in the deed.

The additional reasons given in *Partumal's case* were these :—

1. It is true that the powers of the Chief Settlement Commissioner under section 24(1) of the Act were very wide, but clause (2) of the said section afforded some indication regarding those powers. In sub-section (2), the Chief Settlement Commissioner was authorised to cancel leases of immovable property, but, as provided in sub-section (4), the order of their cancellation was subject to revision by the Central Government on an application filed in that behalf within 30 days by an aggrieved party. If the Chief Settlement Commissioner had been given powers of cancellation of sales under sub-section (1) of section 24, the law would have provided at least similar machinery for revision of such orders. Sale of immovable property stood on a higher level than a lease and it could not be conceived that when a safeguard of revision by the Central Government was provided against cancellation of a lease under an order of the Chief Settlement Commissioner, no such safeguard would have been considered necessary in the matter of cancellation of sales by him,

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It was, thus, safe to infer that section 24(1) did not authorise cancellation of sales after they were completed. No doubt, allotments could be set aside under section 24 of the Act, but after such allotments ripened into sales, they could not be cancelled.

(2) The sale was not a formal expression of the order of allotment. Title to property was created by the sale and the vendee thereby acquired interest in the property. It would be too much to read in section 24 of the Act to hold that it extended to cancellation of sales by expressly providing for cancellation of allotments. Execution of a sale-deed could not be regarded as only a formal expression of an order of allotment dependant on its subsistence.

The decision in *Bara Singh's* case has proceeded on the following reasonings :—

(1) Section 10 of the Act directed that any immovable property leased or allotted to a displaced person by the Custodian must be allowed to remain in the possession of that person on the same terms and conditions on which he held the same immediately before the date of the acquisition under the provisions of the Act and that the Central Government might for the purpose of payment of compensation to such displaced person actually transfer such property to him. It could not be said that in no circumstances could such property allotted to a displaced person by the Custodian be taken away from him, because section 19 of the Act gave wide powers to a Managing

Officer appointed under the Act to cancel or terminate any such allotment, notwithstanding any contract or any other law, the only limitation being that such cancellation must proceed in accordance with the rules made under the Act.

(2) In any case, where a Managing Officer wrongly omitted to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner could, in exercise of his power of revision, correct the error and, similarly, where a Managing Officer wrongly transferred proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner could reverse the order and annul the transfer.

(3) The *sanad* had no special significance or sanctity attaching to it. It was a formal act, which followed the actual determination of the question whether the property should or should not be permanently transferred to the claimant and it was plain that once the decision was reached that the property should be permanently transferred, the grant of a *sanad* followed, there being no act of judgment intervening between the decision and the grant. The *sanad* or its grant being founded solely on the decision to transfer permanent ownership, that *sanad* must necessarily fall with the reversal of the decision on which it was based. *Sanad* was no doubt a title-deed, but, obviously, a title-deed ceased to have any content if the transaction which was the basis of that title-deed, was,

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itself, invalidated. It was, therefore, an idle claim that although the order of the Managing Officer deciding to transfer permanent ownership of the disputed house to the respondents was capable of being reversed by the Chief Settlement Commissioner, the actual grant of the *sanad* could not be upset by him. There was no force in the suggestion that the order, itself, could not be reversed by the Chief Settlement Commissioner, because it was followed by the grant of *sanad*. A reading of the rules and the Act showed that the important thing was the decision to transfer ownership rights and the *sanad* was merely a formal document evidencing that transfer and if the decision, itself, was found to be wrong, the *sanad*, which was founded on that decision, must go with it.

(4) The authority to transfer acquired property to displaced persons in payment of compensation was to be found in section 10 of the Act, which provision authorised the transfer of the same on such terms and conditions as might be prescribed. Rules 72 and 73 then laid down the terms and conditions by specifying the form of the *sanad*, so that the condition in the *sanad*, which was so much relied upon, was merely the exercise of rule making power of the Central Government in accordance with section 10 of the Act. It had nothing to do and could have no effect on the powers of the Chief Settlement Commissioner under section 24 of the Act. It was clear that Parliament had given certain powers to the Chief Settlement Commissioner to correct the errors of

his subordinates and those powers were exercisable by him alone, and equally clear that under the Act he could always reverse an order transferring any property to a claimant; and the *sanad* would fall with it. This power could not be affected by the circumstance, that even, otherwise, the President could in certain circumstances resume the grant. The unspoken thought behind the argument on behalf of the respondents seemed to be that, if an exalted person like the President had only limited powers to resume a grant, it was not proper that the Chief Settlement Commissioner should have wider powers. But here, apparently, the argument ignored the fact that all power in this connection flowed from the will of Parliament as expressed in the Act and that enactment left no doubt that the Chief Settlement Commissioner could at any time reverse an order transferring the grant of proprietary rights. It could not, therefore, be said that because a *sanad* had been granted to the respondents, the transfer in their favour could not be upset by the Chief Settlement Commissioner.

Let us now examine the reasons given by the Division Bench of the Rajasthan High Court in *Govind Ram's case* (8).

As regards the first reason, admittedly, the property in dispute is a house, situate in the State of Rajasthan, but section 10 of the Act applies to those cases, where immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published by the notification of the Government of Punjab in the Department of Rehabilitation No. 4891-S or 4892-S, dated 8th July, 1949 or

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by the notification of the Government of Patiala and East Punjab States Union No. 8-R or 9-R, dated 23rd July, 1949 and published in the Official Gazette of that State dated 7th August, 1949. Since both these notifications applied to the States of Punjab and Pepsu, therefore, the provisions of section 10 of the Act, could have no application to *Govind Ram's case*. Moreover, the attention of the learned Judges was not invited to the fact that Rule 33 did not apply to a case covered by section 10 of the Act, because specific Rules Nos. 71 to 76 have been framed for payment of compensation under this section and they are contained in Chapter 10 of the Rules. Rule 33 occurs in Chapter 5 and this Chapter deals with the payment of compensation of acquired evacuee properties, but has got no connection with the payment of compensation under section 10 of the Act. Undoubtedly, the facts of *Govind Ram's case* attract the applicability of Rule 33, but the provisions of section 10 and Rules 71 to 76 have no concern with them. Under Rule 33, where some property is transferred to any person under Chapter 5 of the Rules, then a deed of transfer is executed in form specified in appendices 24 or 25, as the case may be, with necessary modifications. These forms do indicate that the deed of transfer would be executed on behalf of the President of India and in the very nature of things, the deed had to be executed in this manner, because by virtue of the provisions of this Act, the property formed part of the compensation pool and had vested in the Central Government. This fact does not, in any way, affect the revisional powers of the Chief Settlement Commissioner to set aside the order of transfer of the property made by the Managing Officer or the Managing Corporation under section 20 read with Rule 33.

Even though the provisions of section 10 of the Act were not applicable to the facts of *Govind Ram's case*, as mentioned above, the interpretation of this

section by the Division Bench, with great respect, in my opinion, is not correct. They have held that the transfer under this section could only be made by the Central Government, and that though the initiative for transfer might have been taken by the Managing Officer, but the deed of transfer was executed on behalf of the President of India. The words used in this section are to the effect that "the Central Government may, for the purpose of payment of compensation, to such displaced person, transfer to him such property on such terms and conditions as may be prescribed. It appears that the attention of the learned Judges was not drawn to Rules 71 to 76 framed for payment of compensation under section 10 of the Act. Rules 72 and 73 clearly indicate that in some cases the Settlement Officer and in others, the Settlement Commissioner, is authorised to transfer these properties. The Managing Officer does not come into the picture at all. It is clear that when section 10 of the Act mentions the fact that the Central Government could make such a transfer, it meant that these transfers had to be made by the officers appointed under this Act and the Rules made thereunder. After all the Central Government acts through some of its officers and those in the present case are the Settlement Officer and the Settlement Commissioner. These officers perform the functions assigned to them by or under this Act under the general superintendence and control of the Chief Settlement Commissioner,—(*vide* section 3(2) of the Act). Therefore, if the transfer was being made by the Settlement Officer or the Settlement Commissioner, as the case may be, their orders were liable to be revised by the Chief Settlement Commissioner. The Central Government, as such, was not making any order of transfer, which was being reversed by the Chief Settlement Commissioner, but, on the other hand, it was the order of the Settlement Officer or the Settlement Commissioner, who are,

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admittedly, subordinate to the Chief Settlement Commissioner, and it was that order which was being revised. In my view, the failure to bring the provisions of Rules 71 to 76 to the notice of the learned Judges has resulted in their making the observations to the effect that it was inconceivable on the very face of it that the transfer of property by the Central Government under section 10 read with Rule 33 should be challenged in an appeal to the Chief Settlement Commissioner.

As regards ground No. 2, it is true that the powers given under section 20 were distinct from those under section 10 of the Act. It is also true that the provisions of Rule 33 applied to the transfers made under section 20 of the Act, which had to be made on behalf of the President of India. It is further true that under Rule 34, if the property was transferred to any person under Chapter 3 of the Act, the same would be deemed to have been transferred to him, where such person had made an application for payment of compensation before 31st October, 1953, from 1st November, 1953. However, the observations of the learned Judges to the effect that section 20 read in the light of Rules 33 and 34 contemplated an act of sale and not an order liable to be challenged in appeal or revision, with great respect, is not warranted by the statute. An order of transfer in the very nature of things has to precede the actual drawing up of the deed of transfer. The officer concerned will weigh the claims of the various persons, who are interested in the property, and then pass an order of transfer in favour of the person eligible for the same. It is after this that the deed of sale would be executed in his favour. It is, therefore, clear that the deed of conveyance cannot be executed until and unless an order of transfer in favour of a particular person has been passed, in the first instance, by the authorities concerned. This order of transfer, if it is the subject-matter

of appeal or revision, is liable to be affirmed, modified or reversed by the appellate and revisional authorities provided under the Act.

Coming to the third ground, the deed of conveyance has its value so long as the order of transfer on which it is based remains intact and is not modified or reversed by the appellate or revisional authorities. In other words, the deed would be valid so long as the transaction behind it is good in law. If the transaction fails, the deed automatically goes and is of no consequence. Rule 72 prescribes that if the Settlement Officer is satisfied that the allotment is in accordance with quasi-permanent allotment scheme, he may pass an order transferring the property to the allottee in permanent ownership as compensation and shall also issue to him a *sanad* in the form specified in appendices 17 or 18, as the case may be. Assuming for the sake of argument that the Settlement Officer passes the order of transfer in favour of A and then issues to him a *sanad* and in the meantime, B, the other claimant, files an appeal or revision within limitation against this order of transfer by the Settlement Officer, can it be said that by the mere issuance of the *sanad* his appeal or revision becomes infructuous and would not be entertained by the appellate or the revisional authorities. Such an intention, in my opinion, could not be attributed to the Legislature. If the order of transfer in favour of A is reversed in appeal or revision, then the *sanad* will fall with it and will be of no effect. If the sale transaction is bad in law, then the sale-deed, which is based on it would automatically be ineffective. It is then B who will be entitled to the *sanad*. There is no doubt a condition mentioned in the form appendices 17 and 18 to the effect that it would be lawful for the President to resume the whole or any part of the said property, if the Central Government was at any time satisfied and recorded a decision

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in writing to the effect that the transferee or his predecessor-in-interest had obtained the grant or allotment of the said property or had obtained any compensation under the Act in any other form by fraud, false representation or concealment of material facts. But this is an additional safeguard for the Central Government. This can, however, in no way affect the powers of the Chief Settlement Commissioner under section 24(2) of the Act. The position is that the Chief Settlement Commissioner may, in a particular case, which comes to his notice, take action under section 24(2). At the same time, if the Central Government *suo motu* wants to proceed in a case, then it can also do so. Further, this condition would also be helpful when the statute becomes dead and the officers under this Act are no more functioning and it transpires that a person had obtained the order of transfer etc. in his favour by fraud, false representation or concealment of material facts, because then the President can exercise his power to resume the whole or part of such property. If the order of transfer can be validly set aside by the higher authorities under the provisions of the Act, I see no reason why they cannot exercise their powers by the mere fact that a *sanad* had been issued in the meantime, especially, when the issuance of the *sanad* has to follow immediately after the order of transfer is made. The grant of the *sanad* is not such an event, which makes the officers under the Act *functus officio*, immediately after it is issued. It was conceded by the learned counsel for the petitioners that the order of transfer passed by the Settlement Officer or the Settlement Commissioner could have been set aside by the Chief Settlement Commissioner on revision, if a *sanad* had not been issued. It does not appeal either to reason or logic that simply because the Settlement Officer or the Settlement Commissioner had issued the *sanad* immediately after his passing the

order of transfer, which he was perfectly entitled to do under the rules, his order becomes sacrosanct and not open to challenge. This will indirectly be giving a handle to person with influence to get the *sanad* issued in their favour immediately and then getting the orders of transfer in their favour immune from any attack and making the appellate and the revisional authorities powerless even though the Settlement Officer or the Settlement Commissioner may have committed grave errors, both of fact and law, in passing the order of transfer. Such, in my opinion, could never have been the intention of the Legislature.

Regarding ground No. 4, though the learned Judges have held that even if the allotment was liable to be cancelled, it could not be done so after the property had been transferred by a formal deed of conveyance except under the conditions mentioned in the deed, but they have not given any reasons for this finding. They have also not given any grounds for the other finding that the contention that with the cancellation of the allotment, the sale should *ipso facto* stand cancelled was not sound. I have already discussed above in detail that when the order transferring the property is reversed by the appellate or the revisional authority, then the sale-deed or the *sanad* automatically goes with it and is of no legal effect. I have also examined at some length the effect of the granting of the *sanad* or the deed of conveyance and have held that their issuance did not result in making the officers *functus officio*. In other words, whenever, they thought that an order of transfer was liable to be set aside under law, they would do so in spite of the fact that a *sanad* or a deed of conveyance had been issued in the meantime. If the order of transfer was set aside, then the *sanad* or the deed of conveyance, being based on that order of transfer, would have no value in the eye of law and would fall with the reversal of the order of transfer.

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Now, adverting to the additional reasons given by the Full Bench in *Partumal's case* (2), a reading of the provisions of sub-section (1) of section 24 of the Act would show that the Chief Settlement Commissioner has been given very wide powers and can at any time call for the record of any proceeding under this Act in which any of his subordinates has passed an order for the purpose of satisfying himself as to the legality or propriety thereof and he can pass such order in relation thereto as he thinks fit. Sub-section (2) of this section starts with the words "without prejudice to the generality of the foregoing power under sub-section (1)". This expression occurs in section 2 of the Defence of India Act, 1939 (Act No. 35 of 1939), the relevant portion of which runs thus—

> "S. 2(1). The Central Government may, by notification in the Official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.
>
> (2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for all or any of the following matters, namely:—
>
> * * *
>
> * * *"

While interpreting this expression in *Emperor* v. *Sibnath Banerji and others* (14), their Lordships of the Privy Council observed as under:—

> "In the opinion of their Lordships, the function of sub-section (2) is merely an illustrative

one; the rule-making power is conferred by sub-section (1) and 'the rules' which are referred to in the opening sentence of sub-section (2) are the rules which are authorised by, and made under, sub-section (1); provisions of sub-section (2) are not restrictive of sub-section (1); as indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-section (1)'."

Applying this test, it is quite clear that the powers given to the Chief Settlement Commissioner in sub-section (2) of section 24 are not in any way restrictive of his powers under sub-section (1). On the other hand, they are merely illustrative. Sub-section (2) applies to those cases where the payment of compensation to a displaced person or any lease or allotment granted to such a person has been obtained by means of fraud, false representation or concealment of any material fact. In such cases, the Chief Settlement Commissioner is authorised to direct that no compensation shall be paid to such a person or he can reduce the amount of compensation or can cancel his lease or allotment as the case may be. It will be noticed that this sub-section deals only with displaced persons and no others and with three types of cases, viz., (1) payment of compensation, (2) leases and (3) allotments. If in obtaining any of these things, a displaced person committed any fraud or made a false representation or concealed some material facts, then the Chief Settlement Commissioner was authorised to take necessary action. The reason why a revision under sub-section (4) of this section has been provided against any of the orders under sub-section (2) appears to be that these orders were being passed by him on the original side, for the first time, and not by his subordinates, and, therefore, in order to safeguard the

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interests of the displaced persons, one opportunity by way of a revision was provided under sub-section (4). The orders that are made by the Chief Settlement Commissioner under sub-section (1) are on the revisional side, where some orders have already been passed by his subordinate officers and are not being passed by him on the original side. Since the Chief Settlement Commissioner himself was the highest revisional Court, naturally, therefore, no further revision was provided against his orders under sub-section (1). Sub-section (2) deals only with some special types of cases. All other cases, including those of sales, are covered by the provisions of sub-section (1). It is pertinent to mention that all cases of leases or allotments are not covered by sub-section (2). Only those leases or allotments, which are made to displaced persons and had been obtained by fraud, false representation, etc., come within the purview of this sub-section. The rest of the cases relating to leases and allotments would also be covered by sub-section (1). This means that sub-section (2) deals with certain specified cases and because the orders with respect to them were to be made by the Chief Settlement Commissioner himself, in the first instance, therefore, a revision was provided for them under sub-section (4). All the remaining cases, including those of sales, whether made to a displaced person or a non-displaced person are covered by sub-section (1) and no further revision was considered necessary against them.

As regards the second additional ground, the learned Judges have not given any reasons for the same. Moreover, I have already held above that the sale-deed was not, in any way, independent of the order of transfer. If the order of transfer is reserved, the sale-deed must automatically go with it. Of course, title is created by the execution of the sale-deed, but if the transaction behind the deed is set aside, the deed

has got no value in the eye of law. Just as under the Code of Civil Procedure when the sale is set aside, the sale certificate automatically goes and is a waste paper, similar is the case of a sale-deed or a *sanad*, when the order of transfer, on the basis of which the sale deed or *sanad* was granted is reversed.

From the foregoing discussion, it is clear that the reasons given in the above mentioned two cases of Rajasthan High Court, in my opinion, with great respect to the learned Judges, who decided them, are not sound.

Learned counsel for the petitioners raised an argument that the Settlement Officer and the Settlement Commissioner, when acting under Chapter 10 of the Rules, were the delegates of the Central Government under section 10 and any order passed by them was of the Central Government and the same, therefore, could not be revised by the Chief Settlement Commissioner under section 24 of the Act. The argument was that under section 10, it was only the Central Government which could transfer the property, but on such terms and conditions as might be prescribed. Those terms and conditions were contained in Chapter 10 of the Rules, which were framed under section 40(2)(g) of the Act. Under this Chapter, it was the Settlement Officer or the Settlement Commissioner who could transfer the property and, therefore, these officers were the delegates of the Central Government.

In my opinion, there is no force in this contention. There is no indication of delegation of powers by the Central Government either in section 10 of the Act or in Rules 71 to 76 of Chapter 10. There is a special provision dealing with this subject and that is section 34 of the Act, wherein it is mentioned that the Central Government may by notification in the Official Gazette

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direct that any power exerciseable by it under the Act shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercise-able also by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as might be prescribed in the Notification. Admittedly, no notification has been issued in the Official Gazette with regard to the delegation of powers under section 10 of the Act. The rules appearing in Chapter 10 show that the Settlement Officer and the Settlement Commissioner have been appointed under the Act to deal with the property covered by section 10, but they cannot be termed as *delegates* of the Central Government for this purpose. It cannot, therefore, be said that the orders by them are of the Central Government and cannot be revised by the Chief Settlement Commissioner. On the other hand, the true position is that the Chief Settlement Commissioner can revise any of the orders passed by the Settlement Officers, Settlement Commissioner and other officers mentioned in sub-section (1) of section 24 of the Act. Since the orders under Rules 71 to 76 are passed by the Settlement Officer and the Settlement Commissioner, therefore, the same can be revised by the Chief Settlement Commissioner in the exercise of his revisional powers. This matter can be looked at from another angle as well. If the contention of the learned counsel for the petitioners in this respect were to be accepted, then the result would be that *all the orders of any kind passed* by the Settlement Officer and the Settlement Commissioner under section 10, read with Chapter 10 of the Rules would be deemed to be the orders of the Central Government and they would not be revisable even by the Central Government itself, leave aside the Chief Settlement Commissioner (*see* in this connection the observations of their Lordships of the Supreme Court in *Roop Chand* v. *State of Punjab and*

another (12), where it was held that "when Government delegates its power under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, to an officer and that officer pursuant to such delegation hears an appeal and makes an order, the order of the officer is the order of the Government and the Government cannot interfere with it under section 42 of the Act". The interpretation put by the learned counsel for the petitioners would result in very anomalous positions. Take for instance a case, where the Settlement Officer or the Settlement Commissioner refuses to make an order of transfer in favour of a particular individual and, admittedly, on illegal grounds. This order of his would be immune from attack and both the Chief Settlement Commissioner and the Central Government would be quite powerless and would not be able to do anything with regard to the same. Now take a converse case, where the Settlement Officer or the Settlement Commissioner erroneously transfers the property in favour of a particular person. In that case also, both the Chief Settlement Commissioner and the Central Government would be helpless to undo the wrong and give relief to the aggrieved party. Moreover, if, at all, the Central Government wanted to delegate its powers under section 10 to some officer appointed under the Act, then it would have in the ordinary course of things given the same to the Chief Settlement Commissioner who was the senior most officer appointed under the Act. Majority of the cases in Punjab, as is well known, are covered by the provisions of section 10 of the Act and it is inconceivable that the Central Government would delegate all its powers under this section to the junior officers, when, admittedly, there are senior officers available under the Act. Such an interpretation, in my view, cannot be imputed to the Legislature.

Notwithstanding anything mentioned above, the

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Central Government can also exercise its powers under the provisions of section 10 of the Act and for this purpose can delegate its powers to any officer. The fact, however, remains that, ordinarily, the cases under section 10 would be dealt with by the Settlement Officers or the Settlement Commissioners, but the Central Government and its delegate, where a notification has been duly issued, can also exercise such powers whenever they deem necessary.

Another point that was raised before us was as to what were the revisional powers of the Chief Settlement Commissioner to cancel the orders of transfer after the *sanad* was granted or the sale-deed was executed.

It was conceded by the learned counsel for the petitioners that the order of transfer could be reversed by the Chief Settlement Commissioner if the *sanad* was not granted or the sale-deed was not executed. I have already held above that the grant of a *sanad* or the execution of a sale-deed does not make any difference. If the order of transfer is set aside by the Chief Settlement Commissioner, the *sanad* or the sale deed will automatically fall with it. Whatever powers the Chief Settlement Commissioner had for setting aside the order of transfer before the grant of *sanad* or the execution of the sale-deed, the same powers will be exercised by him even after the issuance of the *sanad* or the sale-deed. These powers are to be sought in the Act, itself, and not from any other enactment. Various officers have been given powers under the Act and the rules framed thereunder for dealing with different kinds of properties. All those orders are liable to be revised by the Chief Settlement Commissioner under section 24 of the Act. If there has been an infringement of any rule or law, the Chief Settlement Commissioner will set aside those orders. It

will not be proper to give an exhaustive list of the supervisory or the revisional powers of the Chief Settlement Commissioner. Everything will depend upon the facts and circumstances of each particular case.

There was one other matter, which was argued before us and required determination and it is this. Section 24 of the Act says that the Chief Settlement Commissioner "may at any time call for the record of any proceeding under this Act, * * * * and may pass such order in relation thereto as he thinks fit." What is the meaning of the words "at any time" occurring in this section, that is to say, within what time limit can the Chief Settlement Commissioner exercise his revisional powers either *suo motu* or on the application of an aggrieved party? Rule 104 lays down that a petition for revision under the Act shall be presented within the same period as a memorandum of appeal and Rule 103 says that a memorandum of appeal shall be presented within 30 days of the date of the order appealed against. Thus, it will be seen that an aggrieved party has to file a revision within 30 days and no period has been prescribed for a *suo motu* revision by the Chief Settlement Commissioner. Ordinarily, a petitioner will have to file his revision within 30 days, unless, of course, there were special circumstances, which prevented him from doing so. The invariable rule in such cases is that the aggrieved party must approach the Chief Settlement Commissioner at the earliest possible moment. Where there has been a great unexplained delay or laches in filing the revision, the Chief Settlement Commissioner will naturally refuse to interfere. It is difficult to lay down any hard and fast rule in this connection. It will depend on the facts of each particular case as to whether there are grounds for entertaining the revision after the period of limitation prescribed in the rules.

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However, the Chief Settlement Commissioner *suo motu* can interfere with the orders of his subordinates and no limitation is prescribed for that either in the rules or in the statute, but it is understood that he would interfere within a reasonable time depending on the circumstances of each case. It is assumed that he would exercise his discretion in a reasonable manner and not arbitrarily. As I have already said, in his case also no hard and fast rule can be laid down. A similar matter came up for consideration before their Lordships of the Supreme Court in *Purshotam Lal Dhawan* v. *Diwan Chaman Lal and another* (17). In section 27 of the Administration of Evacuee Property Act, 1950, the words used were—"The Custodian-General may at any time either on his own motion or on application made to him in this behalf call for the record of any proceedings in which any Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit." Rule 31(5), framed under that Act, laid down that any petition for revision when made to the Custodian-General, would, ordinarily, be made within 60 days of the date of the order sought to be revised. While dealing with these provisions, the learned Judges observed that section 27 of the Act conferred plenary power of revision on the Custodian-General and had empowered him to exercise his revisional powers either *suo motu* or on application made to him in that behalf at any time. The phrase "at any time" indicated that the power of the Custodian-General was uncontrolled by any time factor, but only by the scope of the Act, within which he functioned. The Central Government could not obviously make a rule unless section 56 (dealing with rule-making power) of the Act conferred on it an express power to impose

(17) A.I.R. 1961 SC 1371.

a time-fetter on the Custodian-General's powers. So the Rule could only be read consistent with the power conferred on the Custodian-General under section 27 of the Act. That was the reason why Rule 31 (5) did not prescribe any limitation on the Custodian-General to exercise *suo motu* his revisional power. His powers under section 27 read with Rule 31(5) were not intended to be exercised arbitrarily. Being a judicial power, he had to exercise his discretion reasonably and it was for him to consider whether in a particular case he should entertain a revision beyond a period of 60 days stated in Rule 31(5).

It is needless to mention that if the Chief Settlement Commissioner exceeds his powers in interfering with the orders of his subordinate officers, either on the point of jurisdiction or on the question of limitation, there are ample safeguards provided for the same under the Act. The Central Government can interfere under section 33 and in certain cases under section 21(4) of the Act. The aggrieved party can also approach this Court under Articles 226 and 227 of the Constitution.

Let us now consider the reasons on which *Bara Singh's* case was based.

Regarding ground No. 1, the learned Judges have held that the provisions of section 19 and the rule applicable thereto, namely, Rule 102, also applied to cases governed by section 10 of the Act. This finding was given, because an argument was sought to be raised that where a displaced person had been allotted land under any of the notifications mentioned in section 10, then that property, for the purpose of payment of compensation, had to be transferred to him. This contention was negatived, and in my view quite rightly, because section 19 clearly lays down that notwithstanding anything contained in any contract or any other

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law for the time being in force, but subject to any rules that may be made under this Act, the Managing Officer, or the Managing Corporation could cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act was held or occupied by a person, whether such an allotment or lease was granted before or after the commencement of the Act. Besides, Rule 102 authorised a Managing Officer or a Managing Corporation to cancel an allotment or terminate a lease or vary the terms of any such lease or allotment under certain circumstances enumerated therein. Dealing with these two provisions, their Lordships of the Supreme Court in *Amar Singh and others* v. *Custodian, Evacuee Property, Punjab, and another* (5), observed as under at page 610—

> "There are in terms wide enough to include quasi-permanent allotments. This shows that notwithstanding the privilege of the quasi-permanent allottee to continue in possession under section 10 and the scope he has for obtaining a transfer under the same section and Rule 72(2) of the Rules made thereunder, his allotment, itself, is liable to be cancelled under section 19 and Rule 102. Hence he has no such right to obtain a transfer which can be given effect to within the principle of *Frederic Guilder Julias* v. *The Right Rev. The Lord Bishop of Oxford; The Rev. Thomas Thellunon carter* (11). He does not, therefore, appear to have an indefeasible right to obtain transfer of the very land of which he is the quasi-permanent allottee, if such land is acquired under section 12 of the Act. Thus, the position of quasi-permanent allottee, whether before July, 22, 1952 or after that

date, is, that his rights, such as they are, either under the notification of July 8, 1949 or under section 10 of Central Act XLIV of 1954, are subject to powers of cancellation exercisable by the appropriate authorities in accordance with the changing requirements of the evacuee property law and its administration."

This observation clearly supports the view taken by the Division Bench in *Bara Singh's case*.

Coming to ground No. 2, there can be no dispute for the proposition that the revisional authority can go into the orders passed by the subordinate officers for the purpose of satisfying himself as to the legality or the propriety of any such order. He can correct the errors committed by them both with regard to fact and law and can pass such order in relation thereto as he thinks fit.

As regards ground No. 3, I have already dealt with this matter at length and held that the real order is the order of transfer. If that is reversed in appeal or revision, the *sanad* or the sale-deed, which was based thereon, would automatically go along with it. If the order of transfer can, admittedly, be set aside when the *sanad* or the sale-deed has not been executed, I see no reason why the Chief Settlement Commissioner cannot exercise the same powers of revision, if in the meantime the *sanad* or the sale-deed has been issued, which, under the rules, had to be granted, as a matter of course, immediately after the order of transfer was made.

Coming to ground No. 4, this point has also been discussed by me in the earlier part of my judgment. It is true that under the conditions of the *sanad*, the President has been given the power to resume it under

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certain conditions. This, in my opinion, as already mentioned above, was an additional safeguard, but it did not take away the powers of the Chief Settlement Commissioner to take action under the provisions of section 24 (2) of the Act.

In view of all that I have said above, I have no hesitation in holding that *Bara Singh's case* (1), lays down the correct proposition of law.

Mahajan, J.

MAHAJAN, J.—At the time when this matter was argued before us, there was a sharp difference of opinion between Harbans Singh, J., and Pandit, J. Both the learned Judges, therefore, proceeded to record their separate opinions. I have gone through their respective opinions. I am of the view that though the cases which have been placed before us are really hard ones, where the *sanads* are sought to be set aside after a long period, but that cannot and should not be a consideration in the interpretation of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act. After considering the views of my learned brothers I am of the view that the view expressed by Pandit, J., is the correct view to take. I, therefore, agree with the judgment proposed to be delivered by him.

BY THE COURT.

In view of the majority decision, it must be held that *Bara Singh's case* lays down the correct proposition of law. The various writ petitions will now be placed before a learned Single Judge for their final disposal in the light of the observations made above.

B.R.T.