Education, then to give first preference to the petitioner in the matter of appointment. The other petition (Civil Writ No. 3723 of 1979) is, however, dismissed, but with no order as to costs in both the petitions.

S. S. Sandhawalia, C.J.—I agree.
S. S. Kang, J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and D. S. Tewatia, JJ.

WAHIDI BEGUM—*Petitioner.*

versus

UNION OF INDIA and others,—*Respondents.*

Civil Writ Petition No. 5639 *of* 1975.

May 29, 1980.

Constitution of India 1950 (*as amended by the Constitution*) (*Forty Second Amendment*) *Act*, 1976—*Article* 226—*Displaced Persons* (*Compensation and Rehabilitation*) *Act* (*XLIV of* 1954)—*Section* 33—*Words 'any other remedy occurring in clause* (3) *of Article* 226—*Meaning of —Such remedy—Whether should be an effective remedy—Remedy under section* 33—*Whether an efficacious one so as to bar a petition under Article* 226.

Held, that the intention of Parliament that the remedy as envisaged in clause (3) of Article 226 of the Constitution of India 1950 has to be adequate, real and not illusory is deducible from sub-clauses (b) and (c) of clause (1) of Article 226 itself. Under sub-clauses (b) and (c), the writ jurisdiction can be exercised for the redress of the injury resulting from contravention of some constitutional or statutory provisions of law or illegality committed by authority in proceedings thereunder and where such injury is of substantial nature or results in substantial failure of justice. But in view of further embargo put on the exercise of the jurisdiction of the court as a result of the provisions of clause (3) of Article 226 the power is not exercisable, if for such an injury the redress can be had under the statute by resorting to the remedy provided therein. But where such remedy is incapable of providing redress as is envisaged under sub-clauses (b) and (c) then certainly it could never be the intention of the Parliament to take away the jurisdiction of the Court

and force the aggrieved person to resort to that futile, illusory or ineffective remedy and ultimately make him suffer an irreparable and irremediable injury. The word 'remedy' by itself postulates that it should be real and not illusory and if the words 'any other remedy' 'are not given this meaning, then in a given case the whole purpose of clauses (b) and (c) may get frustrated. If an alternate remedy cannot provide redress to the injury referred to in clauses (b) and (c) then Article 226(3) would be no bar to the exercise of writ jurisdiction. However, each case would have to be looked into on its own facts and if as a result of consideration of a provision of a particular statute providing for an alternate remedy, a conclusion can be arrived at that for the redress of injury referred to in clauses (b) and (c) such a provision is no remedy, then certainly a writ would be an appropriate remedy. (Para 12).

Held, that a petitioner who files petition under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act 1954 has no right to claim that he should be heard, that the proceedings under the said provisions are of a summary nature and that the proceedings under this provision are not a revision but only a representation that is made to the Central Government for its consideration which may be rejected summarily without passing any speaking order. This type of remedy is not only inefficacious but incapable of redressing the injury as envisaged under sub clauses (a) and (c) of clause (2) of Article 226.

(Para 24).

Petition under Articles 226/227 of the constitution of India praying that :—

(a) *the records of the case may please be summoned for the proper disposal of the writ petition;*

(b) *a writ of certiorari quashing the impugned order of the Chief Settlement Commissioner as well as the impugned instructions of the Deputy Secretary be issued,, with the direction, that the petitioner be allotted additional area in accordance with law, by applying the same standard of valuation to her original area as well as to the alternate area to be allotted to her. A direction may also kindly be issued to the Respondents to give adequate compensation to the petitioner for the period for which she has been illegally deprived of the benefit of her property for the last so many years;*

(c) *any other suitable writ order or direction which this Honble court may deem proper in the circumstances of the case be issued;*

(d) *Costs of this petition be awarded.*

It is further prayed that filing of certified copies of annexures *P-1 to P-5 and P-7 & P-8 be dispensed with.*

H. S. Wasu, Sr. Advocate with B. S. Wasu, *for the Petitioners..*

Naubat Singh, Sr. D.A.G. with B. L. Gulati, A.A.G., *for the Respondents.*

JUDGMENT

Prem Chand Jain, J.

(1) Mst. Wahidi Begum has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the order of the Chief Settlement Commissioner, as well as the instructions issued by the Deputy Secretary to the Government of Haryana, Rehabilitation Department.

(2) The case of the petitioner is that her father Khan Sahib Abdul Ghafoor Khan had agricultural land in village Mohamadpur Sotar and Meghanwali, Tehsil Fatehabad, District Hissar, that Khan Sahib Abdul Ghafoor Khan had not migrated to Pakistan at the time of the partition of the country and died at Hissar in 1955, that as he had stayed in India as an Indian national, on his application his property was restored to him by the Central Government, that on his death the petitioner succeeded to 1/4th share in the agricultural land left by him in these two villages, that the petitioner's entitlement for allotment of her share out of her father's property came to be 112-4¼ Standard Acres, that because of canal irrigation the value of the land having been increased, the petitioner was allotted 29.14 Standard Acres in lieu of the allotment to which she was entitled, that this allotment had been made on the basis of the directions issued in letter No. 1(33) G-1. 23837-42/68, dated 30th of December, 1968 issued by the Deputy Secretary to Government, Haryana, Rehabilitation Department, that the petitioner contested the allotment and that in the litigation failed up to the Chief Settlement Commissioner, Haryana, who declined to interfere on the basis of the said instructions. It is on the basis of these facts that the present petition was filed.

(3) In response to the notice by this Court, State of Haryana contested the case of the petitioner on various grounds. A preliminary objection about the maintainability of the writ was also raised as the petitioner had not availed of the alternate remedy available

to her under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act). Initially, when the petition came up for hearing before a learned Single Judge of this Court, the preliminary objection was pressed on behalf of the State of Haryana. Finding some conflict in the judicial decisions of this Court, the learned Single Judge,—*vide* his order dated 20th of October, 1978, referred the matter to a larger Bench.

(4) On reference, the matter came up for hearing before a Division Bench of this Court. Considering the importance of the preliminary objection, the Division Bench chose to refer the case to be decided by a larger Bench and that is how we are seized of the matter.

(5) By way of preliminary objection, what was sought to be argued by Mr. Naubat Singh, Senior Deputy Advocate General (Haryana) was that the present petition stood abated in view of the provisions of section 58(2) of the 42nd Amendment Act, that after the 42nd Amendment, the question of effective or efficacious remedy did not arise and clause (3) of Article 226 of the Constitution did not contemplate that such a remedy should be efficacious one and that as the statute itself provides for another remedy by way of a petition before the Central Government, a petition under Article 226 is barred.

(6) On the other hand, it was submitted by Mr. Wasu, Senior Advocate, learned counsel for the petitioner, that the bar contemplated under clause (3) arises only when there is another remedy which is equally speedy, efficacious and adequate, that such an intention of the Parliament could be deduced from the reading of sub-clauses (b) and (c) of clause (1) of Article 226 of the Constitution, that the word 'remedy' by itself postulates that it should be adequate and efficacious and should be real and not illusory, that the remedy as provided for under section 33 of the Act is not a remedy at all inasmuch as the petitioner is not heard by the authority before passing any order against her and that the power exercisable under section 33 of the Act discretionary.

(7) Before I deal with the merits of the controversy, it may be pointed out that after the coming into force of the 44th amendment, the point under debate in this petition, would hardly arise as by the said amendment, clauses (2) and (3) of Article 226 with which

we are concerned, stand deleted. At one time, it was thought that as a result of the latest amendment this preliminary objection would lose all its importance, but during the course of arguments, it was very fairly and rightly conceded by Mr. H. S. Wasu, Senior Advocate, appearing for the petitioner, that at least for the purpose of this petition, the preliminary objection has to be gone into as in the event of our decision of that preliminary objection in favour of the State, the abatement of the petition would be automatic and that is why the matter was heard on merits.

(8) On the respective contention of the learned counsel for the parties, the sole important question that needs determination is whether this writ petition has abated in view of the provisions of section 58(2) of the 42nd Amendment of the Constitution, as the petitioner admittedly has not availed of the remedy as provided for in section 33 of the Act, which reads as under:—

> "The Central Government may at any time call for the record of any proceeding under this Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and is not inconsistent with any of the provisions contained in this Act or the rules made thereunder".

and that as to what meaning should be given to the words 'any other remedy for such redress, occurring in clause (3) of Article 226.

(9) In order to determine the aforesaid question, it would be appropriate at this stage to notice the relevant provisions of Article 226 as they stood before and after the 42nd amendment, and also the provisions of Section 58(1) and (2) of the 42nd Amendment Act, which read as under:—

Original Article 226	*Amended Article* 226
226(1) Notwithstanding anything in Art. 32, every High Court shall have power, throughout the territories in relation to which it exercises	226(1) Notwithstanding anything in Art. 32, but subject to the provisions of Art. 131-A and Art. 226-A, every High Court shall have power

Original Article 226	*Amended Article 226*
jurisdiction, to issue to any person or authority, including inappropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.	throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them,—
(1-A) The power conferred by Cl. (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.	(a) for the enforcement of any of the rights conferred by the provisions of Part III; or
"(2) The power conferred on a High Court by Cl. (1) or Cl. (1-A) shall not be in derogation of the power conferred on the Supreme Court by Cl. (2) of Art. 32.	(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or
	(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in sub-clause (b) where such illegality has resulted in substantial failure of justice.

Original Article 226	*Amended Article 226*
	(2) The power conferred by Cl. (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for exercise of such power, nowithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
	(3) No petition for the redress of any injury referred to in sub-clause (b) or sub-clause (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.
	* * * *.

Section 58(1) and (2) or the 42nd Amendment Act are to the following effect:—

"58. (1) Notwithstanding anything contained in the Constitution, every petition made under Article 226 of the Constitution before the appointed day and pending before any High Court immediately before that day (such petition being referred to in this section as a pending petition) and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition before that day shall be dealt with in accordance with the provisions or Art, 226 as substituted by S. 38.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1) every pending petition before a High Court which would not have been admitted by the High Court under the provisions of Art. 226 as substituted by S. 388 if such petition had been made after the appointed day, shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on or in any proceedings relating to such petition shall stand vacated".

The bare reading of section 58(2) shows that the new amendment in Article 226 has been given retrospective effect inasmuch as every pending petition before the High Court, which would not have been admitted under the provisions of Article 226 as were substituted by section 38 of the 42nd Amendment Act, if such a petition had been made after the appointed day, i.e., 1st of February, 1977, must abate. Therefore, the abatement matter can be decided only by considering the short question whether under the amended Article 226, the present petition could have been admitted by this Court or not.

(10) Coming to the provisions of Article 226 of the Constitution as they stood before the amendment, there is no gainsaying that the writ jurisdiction power was very wide and could be exercised not only for enforcement of fundamental rights but for 'other purposes' also. It was only as a result of self-imposed restrictions that the petitions were not entertained where adequate alternate remedy existed. However, after the 42nd amendment, the exercise of the power under Article 226 has been restricted by introducing three sub-clauses in clause (1). So far as sub-clause (a) is concerned, the exercise of writ jurisdiction is provided for the enforcement of fundamental rights and the original writ jurisdiction has been kept intact without any fetter as envisaged under Article 226 (3) of the Constitution. But sub-clauses (b) and (c) have restricted the wide scope of the jurisdiction for 'other purposes' to the specified purpose or redress of any injury by reason of the contravention of any other provision of the Constitution or any provision of any enactment or Ordinance or by order, rule, regulation, bye-law or other instrument made thereunder, where such injury is of a substantial nature; or for redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in sub-clause (b) where such illegality has resulted in substantial failure of justice. Therefore, it is evident that in cases where there is contravention of any other constitutional provision or other statutory

provisions including orders, rules, bye-laws or instruments made thereunder, which has resulted in injury of a substantial nature and (ii), where the authority has committed any illegality, in its proceedings under any of those constitutional or the statutory provisions and the illegality has resulted in substantial failure of justice, that the extraordinary power could be exercised. But again on the exercise of this power, a further fetter is put by providing clause (3) that no such petition for redress of injury referred to in sub-clauses (b) and (c) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force.

(11) What has now to be found out is as to what could be the intention of the Parliament in using the words 'any other remedy for such redress' in clause (3) of Article 226. Could it be said that the intention of the Parliament by using these words was to bar the exercise of extraordinary jurisdiction of the Court in all cases in which any other remedy has been provided for under the statute irrespective of the fact that in a given case such a remedy may be illusory, ineffective and not capable of affording efficacious relief.

(12) In my view, answer to the aforesaid problem is not far to seek as the intention of the Parliament that the 'remedy' has to be adequate, real and not illusory, is deducible from sub-clauses (b) and (c) or clause (1) of Article 226 itself. As earlier observed, under sub-clauses (b) and (c) the writ jurisdiction can be exercised for the redress of injury resulting from contravention of some constitutional or statutory provision of law or illegality committed by authority in proceedings thereunder and where such an injury is of substantial nature or results in substantial failure of justice. But in view of the further embargo put on the exercise of the jurisdiction of the Court as a result of the provisions of clause (3) of Article 226, the power is not exercisable if for such an injury the redress can be had under the statute by resorting to the remedy provided therein. But where such remedy is incapable of providing redress as is envisaged under sub-clauses (b) and (c), then certainly it could never be the intention of the Parliament to take away the jurisdiction of the Court and force the aggrieved person to resort to that futile, illusory or ineffective remedy, and ultimately make him suffer an irreparable and irremediable injury. The word 'remedy' by itself postulates that it should be real and not illusory. If the words 'any other remedy' are given the meaning suggested by the learned counsel for the State, then in a given case the whole purpose of

clauses (b) and (c) may get frustrated. If an alternate remedy cannot provide redress to the injury referred to in clauses (b) and (c) then Article 226(3) would be no bar to the exercise of writ jurisdiction. However, it may be observed that each case would have to be looked into on its own facts and if as a result of consideration of a provision of a particular statute providing for an alternate remedy, a conclusion can be arrived at that for the redress of injury referred to in clauses (b) and (c) such a provision is no remedy, then certainly a writ would be an appropriate remedy.

(13) I do not propose to dilate any further on this aspect of the matter as the point which has been debated before us is not *res-integra* as several other. High Courts have gone into this matter and have held that 'any other remedy' has to be such which is capable of giving such redress as specified in sub-clauses (b) and (c). The first case to which reference may be made is *Government of India and others* v. *The National Tobacco Co. of India Ltd.* (1), wherein it has been observed thus:—

> "Clause (3) specifically states that for redressal of any injury referred to in sub-clauses (b) and (c) no writ petition shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. Therefore, the 'other remedy' contemplated by Cl. (b) need not necessarily be one which is provided under any statute, Ordinance, order, rule, regulation, bye-law, etc., the breach of which is complained of. It would be sufficient if that other remedy is provided for by or under any other law for the time being in force. Undoubtedly law in force takes in common law as well. *Vide Director of Rationing and Distribution* v. *Corporation of Calcutta* (2), *Builders Supply Corporation* v. *Union of India* (3) *and Daulabhai* v. *State of M.P.* (4). Therefore, if another remedy is provided either by the law, the breach of which is complained of in the writ petition or under any other law in force, it would be a bar to the maintainability of the writ petition. But at the same time it should be remembered that the 'other remedy' must be capable of

(1) A.I.R. 1977 A.P. 250.
(2) A.I.R. 1960 S.C. 1355.
(3) A.I.R. 1965 S.C. 1061.
(4) AI.R. 1969 S.C. 78.

affording such redress, as is postulated under sub-clauses (b) and (c). If the other remedy is not capable of giving to the aggrieved person similar redress as is contemplated by sub-clause (b) or sub-clause (c), then it cannot be considered to be a bar. A suit by itself cannot be ruled out as another remedy available. The 'other remedy' stated in Cl. (3) is a remedy provided for by or under any other law for the time being in force. A suit cannot be excluded from this wide amplitute of the 'other remedy'. We seek support to this view from *State of Madhya Pradesh* v. *Bhailal Bhai* (5), *Thamsingh* versus *Superintendent of Taxes,* (6) and *Tata Engineering and Locomotive Co., Ltd.* versus *Assistant Commissioner of Commercial Taxes,* (7).

Care must be taken to clarify another aspect. Mere existence of what is called 'another remedy' provided under the same law for the time being in force cannot always he said to be a remedy which is capable of giving such redress as is provided under sub-clauses (b) or (c). The other remedy provided under other law shall not be illusory. That should be real. We may give an example to bring home this aspect. Supposing there is an appeal provided against the decision of a particular authority under a statute, the breach of which is complained of. But if it is manifest from the record that the primary authority has acted under the instructions or directions of the higher authority, which is also the appellate authority, then there is no point in saying that a writ petition would not be available because there is the other remedy of appeal provided under a statute or law. In such an event, the appeal before the appellate authority would be meaningless and illusory, because the appellate authority has already expressed an opinion on the point. To refuse to entertain a writ petition on this ground would be opposed to the very spirit of the present Art. 226 in general and sub-clauses (b) and (c) of Cl. (1) and Cl. (3) in particular. The words 'any other remedy for such redress' are significant and meaningful and they clearly bring out the intention of

(5) A.I.R. 1964 S.C. 1006.
(6) A.I.R. 1964 S.C. 1419.
(7) A.I.R. 1967 S.C. 1401.

the Parliament that only that other remedy which is truly and really capable of giving such redress as is postulated in sub-clauses (b) and (c) would be a bar to the maintainability of the writ petition. Needless to say that in order to find out whether there is such a bar to the entertainment of a writ petition, the Court will have to examine the facts and circumstances of each case and the redressal that is sought and the nature of the other remedy that may be available under any other law for the time being in force. It is impossible and undesirable to lay hard and fast rules in this behalf".

The second case is *M.P. State Road Transport Corporation, Bhopal* versus *The Regional Transport Authority, Jabalpur and another* (8), wherein it has been observed as under:—

"The jurisdiction for the specified purposes in clauses (b) and (c) can now be invoked only if there is no other remedy for such redress provided for by or under any other law for the time being in force. The learned counsel for the petitioner specifically stated that the present petition did not fall under sub-clause (a) and was for the specified purposes of sub-clauses (b) and (c) only. Section 58 of the Amendment Act, thereafter gives retrospective effect, however, in a limited manner inasmuch as it applies to writ petitions and interlocutory orders of stay, which have been pending on the appointed day. From the language of Art. 226(3) it is apparent that the words 'any other remedy for such redress' are significant in disclosing the intention of the Parliament that the fetter will apply only to such cases where the other remedy is capable of giving such redress as specified in sub-clauses (b) and (c) of Art. 226(1). It should be, therefore, always necessary for the Courts to examine the facts and circumstances of each case. The redress sought and the scope of the other remedy provided under any other law for the time being in force and consequently the applicability of the fetter imposed by S. 58 and Art. 226 (3) will always depend on the facts and circumstances of each case. It will not be possible under these circumstances to lay any hard and fast rule in this respect.

(8) A.I.R. 1978 M.P. I.

In view of the discussion made above, the position which emerges is that if there is any other remedy provided for seeking the redress as contemplated by sub-clauses (b) and (c) of Art. 226(1) the fetter of clause (3) will apply and by operation of S. 58 of the Amendment Act, the petitions pending on the appointed day for such redress will abate as hit by the same. Earlier, the practice that the High Court entertained the writ petitions in suitable cases, irrespective of the fact that there was an alternative remedy and the petitioner had not exhausted the same, cannot now be continued because the self-imposed restraint for not ordinarily entertaining such petitions by invoking the writ jurisdiction has now been made statutory restraint".

The third case to which reference may be made is *A'bad Cotton Mfg. Co., Ltd., etc.* v. *Union of India, etc.* (9), where it was observed thus:—

"Therefore, the principle which emerges from these decisions is that when the petitioner is to be asked to exhaust his alternative remedies provided under the Act before entertaining the writ petition, this distinction would always be material where the order is nullity as being *ex-facie* without jurisdiction or in non-compliance with the provisions of the Act or the essential principles of justice or on any other ground as explained in *Tarachand Gupta's case* or *Bhopal Sugar Industries case* or *Mohd. Nooh's case* (supra) and is, therefore, a purported order or a nullity. In such a context the alternative remedy would be a futile remedy because it did not affect the inherent nullity in the challenged decision, which would result in material distinction that the party may appeal against such decision but he was not bound to do so.

As pointed out in *Dana Nathu* v. *Sub-Divisional Magistrate, Rajkot,* (10), if the order of the executive authority is an *ultra vires* order, it would be a nullity and even if an appeal is filed, the order confirmed in appeal, would also

(9) A.I.R. 1977 Guj. 113.
(10) (1973) 14 Guj. L.R. 209 (213).

be a nullity. Therefore, in such cases where the challenge is on the ground that the order is an *ultra vires* order, the question of exhausting alternative remedy could hardly arise as the petitioner could straightway seek remedy of judicial review. These settled principles would be all the more applicable after this constitutional fetter where the emphasis is now on full redress of injuries for which specified purpose only this extra-ordinary remedy is created so that in such substantial injuries consisting of non-compliance with other constitutional or statutory provisions or illegalities which go to the root so as to result in failure of justice when committed by authorities and tribunals acting under those provisions, it would be a poor consolation to a citizen to be told in cases of such purported orders to avail of such remedy which he is not bound to exhaust and which would not be efficacious at all but a futile remedy in case the order is confirmed as it would still remain a nullity.

* * * *

* * * *

The aforesaid discussion clearly reveals that every Act would have to be examined when such a question of the existence of alternative remedy arises and it would have to be found out as to what is the amplitute of the normal Act remedies for appeal or revision so that the question of real or purported order would be decisive. If the Act remedy is so wide as to cover even purported orders so that no part of the activity of the authority is a collateral activity, the Act having provided for direct remedies to such a wide extent, that remedy would have to be first exhausted. On the other hand, where the Act remedies are not of such wide amplitude, but only for orders under the Act, in cases of such purported orders, the appeal remedy could not come in the way of the petitioner as it could not be said to have been provided for such purported orders which are null and void and which it would not be obligatory for the petitioner to exhaust for the simple reason that such an appeal remedy would not be able to cure the defect even if the appeal confirms the original order bearing this indelible mark of nullity".

To the same effect are the judgments of the Patna High Court in *Ranchi Club Limited* v. *State of Bihar, etc.*, (11) and that of Allahabad High Court in *Smt. Imtiaz Bano* v. *Masood Ahmad Jafri* etc., (12).

(14) Thus as a result of the aforesaid discussion, I hold that the words 'any other remedy' occurring in Article 226(3) would mean a real remedy capable of affording relief for the injury envisaged in sub-clauses (b) and (c) of clause (1) of Article 226.

(15) Having arrived at the aforesaid conclusion, the next question that arises for determination is whether remedy provided for under section 33 of the Act satisfies the aforesaid test. In my view, the answer has to be in the negative.

(16) As to what is the scope of the remedy under section 33 of the Act, it is not necessary for me to deal with this aspect in depth, as already there are a few judgments of this Court in this respect. The first judgment to which reference may be made is *Ranjit Singh* v. *Union of India and others* (13), wherein it has been observed thus:—

> "It is, however, quite clear that the provisions of section 33 are very different from those of section 24 which is headed "Power of revision of the Chief Settlement Commissioner." This clearly means that any petition filed under that section must be treated as a regular revision petition. On the other hand, section 33 is headed "Certain residuary powers of Central Government". Some of the words of the two sections are undoubtedly similar but I do not regard any representation made to the Central Government with a view to causing it to exercise its residuary powers under section 33 as a revision petition or governed by rule 105. Our attention was drawn to a decision of D. K. Mahajan, J. in *Dewan Jhangi Ram* v. *Union of India* (14), in which the view has been expressed that the petitioner should be heard before a decision is made by the Central Government under section 33, but in that case it appears that the person who moved this Court under Article 226 was one

(11) A.I.R. 1978 Pat. 32.
(12) A.I.R. 1979 All. 25.
(13) 1962 P.L.R. 44.
(14) 63 P.L.R. 610.

against whom some previous order in his favour had been reversed by the Central Government purporting to act under section 33 without giving him any opportunity to be heard. I would certainly agree that although the words which occur in sub-section (3) of section 24 of the Act—"No order which prejudicially affects any person shall be passed under this section without giving him reasonable opportunity of being heard" do not occur in section 33, they embody a principle which should be applied by the Central Government when acting under section 33 and that before any previous decision is reversed under this section, the person likely to be prejudicially affected by it should be given an opportunity to be heard. This, however, does not mean that any person who chooses to make a request to the Central Government for the purpose of reversing some earlier decision must necessarily be given a personal hearing before the decision of the Government not to interfere is communicated to him".

The next authority is *Basant Singh Jaitly and another* v. *Chief Settlement Commissioner and another,* (15), wherein relying on the observations in an unreported judgment of a Division Bench, the learned Judge held as follows:—

"Considering all facts and circumstances of the instant case, I hold that the petitioner not having exhausted remedy available to him under section 33 of the Displaced Persons (Com. & Reh.) Act does not debar me from pronouncing on the merits of this case. I hold that the said remedy would not have been equally efficacious and adequate. This objection of the respondents' counsel is overruled".

The next judgment to which reference may be made is *Mehta Lal Chand* v. ***Union of India and others,*** (16), wherein it was observed thus:—

"The sum and substance of the entire discussion is that the powers of the Central Government under section 33 cannot be equated with the revisional powers which it exercised under section 24(4) of the Act.

(15) 1965 Curr. Law Journal (Pb.) 817.
(16) A.I.R. 1972 P. & H. 378.

At the time when the rule-making authority added a proviso to Rule 105, the entire question relating to the principles of natural justice *vis-a-vis* the proceedings before the Central Government was before its mind's eye. When it negatived the right of hearing even in respect of dismissal of a petition under section 24(4) of the Act, it can safely be inferred that the rule-making authority did not intend that the Central Government should afford any hearing to a petitioner to prejudice it under section 33 of the Act.

To hold otherwise would lead to manifestly absurd results, for if a person whose rights to property are involved and his petition can be dismissed summarily without a hearing, then it does not stand to reason that a mere stranger having no rights or claim against the compensation pool should be granted a hearing before his petition under section 33 of the Act is dismissed in a summary manner".

I do not propose to multiply the judgments as on a review of the observations reproduced above, it is quite evident that the petitioner who files a petition under section 33 of the Act has no right to claim that he should be heard, that the proceedings under the said provisions are of a summary nature and that the proceedings under this provision are not a revision but only a representation that is made to the Central Government for its consideration, which may be rejected summarily without passing any speaking order. As earlier observed, this type of remedy is not only inefficacious but incapable of redressing the injury as envisaged under sub-clauses (b) and (c) of clause (2) of Article 226.

(17) In view of my aforesaid conclusion, I find no merit in the preliminary objection and hold that the writ petition has not abated. The petition would now be heard on merits by the learned Single Judge.

S. S. Sandhawalia, C.J.—I agree.

D. S. Tewatia, J.—I agree.

N. K. S.

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