which confer on them special privileges. *Ex facie* it does not look eminently just or fair that the petitioners should be made to work for a greater number of hours than the other employees of the Government who are doing exactly the same sort of work as proof-readers, but that is not a matter which will render section 19-B unconstitutional and void. It is well known that if a statutory provision is good and valid, it does not become bad and void because in actual practice some discrimination is being exercised between one set and another set of employees doing the same kind of work. It may also seem anomalous that, as held by me, the definition of working journalist in the Act should cover the petitioners, but by section 19-B, they should have been deprived of the benefits of the Act. These are, however, matters which it is for the Parliament to look into and further clarify its intention by proper amending legislation, if considered necessary, but it is not possible to say that section 19-B suffers from the vice of discrimination and is liable to be struck down under Article 14 of the Constitution.

In the result, this petition fails but in the circumstances there will be no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

KANSHI RAM AND OTHERS,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 2054 of 1963

March 17, 1966

Land Resettlement Manual for Displaced Persons—Chapter VI, Part I, Rule 3—Land to be transferred to displaced persons—Whether to be evaluated in terms of standard acres—Entries in Revenue records—Whether decisive—Admitted and real facts—Whether to be taken into account—Land entered as Chahi *in last* Khasra girdawari *but in which there is no well—Whether can be classed as* Chahi *for allotment to a displaced person.*

Held, that the land which has to be transferred to a displaced person has to be evaluated in terms of standard acres according to its class at the time of its allotment. It is fallacious to contend that the class has to be determined by reference to the entries in the last *khasra girdawari* and in the case of doubtful charater of the *girdawari* by reference to the last completed *jamabandi* and in no case to the factual position of the land at the relevant time. Entries in the *khasra girdawari* or even the *jamabandi* are after all mere evidence of the facts recorded therein. The entries in the *girdawari* are certainly not conclusive about the correctness thereof. It would always be for the departmental authorities to decide as to what is the class of a particular land and, therefore, the value which has to be fixed for it. But in order to come to that decision the authorities must find out as a fact what they want to decide. In order to maintain the rule of law the authorities cannot be permitted to say that they know that the land is not *chahi* as there is no well from which it has a right to be irrigated but they would class it as *chahi* merely because it is so entered in the last *girdawari.* Rule 3 of Part I of Chapter VI of the Land Resettlement Manual for Displaced Persons provides that the *khasra girdawari* has to be followed if it shows that the land was cultivated though the *jamabandi* may not so show, because the entry in the *khasra girdawari* is more recent. The direction contained in the above-said rule does not at all indicate that the entry in the *khasra girdawari* has to be *followed* merely because the entry occurs in the harvest inspection book in question. It only guards against some officers thinking that they would correct the entries in the *khasra girdawari* so as to make it conform to entry in the *jamabandi* irrespective of what the factual position is.

Held, that the land which is capable of being irrigated by water from some well belonging to some one else in his land cannot be treated as *chahi.* Chahi land means such land which has a right to be irrigated by well water.

Case referred by the Hon'ble Mr. Justice R. S. Narula, dated November 25, 1965, *to a Division Bench owing to an important question of law involved in the case. The case was finally decided by the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, on the* 17*th March,* 1966.

Petition under Articles 226/227 *of the Constitution of India praying that a writ in the nature of* certiorari, mandamus, *or any other appropriate writ, order or direction be issued quashing the order, dated* 13*th*/14*th July,* 1963, *of Respondent No.* 1 *with connected orders of Respondents* 2, 3 *and* 4.

A. S. Sarhadi and S. S. Dhingra, Advocates, for the Petitioners.

D. S. Nehra and K. S. Nehra, Advocates, for the Respondents.

Order of Division Bench

Narula, J.—This judgment will dispose of Civil Writ No. 2054 of 1963 (*Kanshi Ram, etc.* v. *The Union of India, etc.*), and Civil Writ

No. 697 of 1964 (*Amar Singh* v. *The Union of India, etc.*) in both of which cases substantially the same questions of law arise. The relevant facts of *Kanshi Ram's case* have been set out in substantial detail in my order of reference, dated November 25, 1965, which order may be read as a part of this judgment. The facts relating the other case are mentioned in a later part of this judgment. I will first deal with *Kanshi Ram's case* in which the main arguments have been addressed before us.

To recapitulate the admitted relevant facts, a large tract of land was leased out for 20 years to the Sarswati Sugar Mills, Yamuna Nagar, in 1937. The entire land was admittedly *barani* at that time (the source of irrigation of which was only rain water) and it was so entered in all the revenue records. The Sarswati Sugar Mills installed their own tube-wells in a part of the land from which they irrigated the entire area. In 1947, the Muslim owners of the land evacuated to Pakistan and the rights of ownership in the entire land became evacuee property. In 1955, the entire evacuee land vested in the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 44 of 1954. In 1957, the 20 years' lease in favour of the Sarswati Sugar Mills came to an end. The Central Government transferred the ownership of a substantial part of the lease-hold land (117 acres) to the said Mills. The land so transferred included all the tube-wells which had been installed by the Mills. In the remaining land no tube-well was left.

Admittedly there is no well of any other kind in the remaining land. Factually, therefore, there is no dispute at all that the land of the original evacuees which was left out with the Central Government after the sale in favour of the Sugar Mills could not be described as *chahi* as there is no well in it from which it can be irrigated. Since after the tube-wells were dug and installed in the area, the entire piece of land had been rightly described as *chahi* in the revenue records. It was accordingly so described in the last completed jamabandi before 1962. On May 25, 1962, some land out of the remaining portion was transferred to the petitioners as compensation for the agricultural land left behind by them in Pakistan. It is admitted by all concerned that after taking into consideration the nature, quality and the quantum of agricultural land which they possessed in Pakistan an area of 40 standard acres and 3½ units is the entitlement of the petitioners. As the land allotted to the petitioners had been described as *chahi* in the last completed jamabandi it continued to be so described in the subsequent *girdawaris* though

in fact no well or tube-well is there in this land. It is also not disputed that if the land is treated as *chahi*, it has to be evaluated at 15 annas in a rupee, but if it is treated as *barani* it has to be evaluated at 11 annas in the rupee. The only question which calls for decision in the above circumstances is whether for the purposes of evaluating the land in terms of standard acres the real admitted facts should be taken into account or the mere entries in the *khasra girdawaris* should be decisive. This point was disposed of by Shri J. M. Tandon, the Chief Settlement Commissioner, in his impugned order, dated October 9, 1962, in the following words:—

> "I find that the allotment has been correctly made according to the rules and according to the entries of the khasra Girdawari. The contention of the learned counsel is that since there is no permanent mode attached for irrigating the land it should be evaluated as 'Barani'. I am afraid, I do not agree with this contention. The learned counsel has also argued that 'Chahi Mustar' lands have been evaluated as 'Barani'. This contention is not correct. According to the rules 'Chahi Mustar' means that the lands which are irrigated by taking the water on loan are also to be evaluated as irrigated lands."

In the written statement the respondents have tried to support the impugned order in the following words:—

> "The area now allotted to the petitioners had regularly and continuously been irrigated from the tube-well and was recorded as chahi in the Khasra Girdawari from 1937 to 1962. It was, therefore, correctly evaluated at Chahi rates at the time of allotment as laid down in para 3, Chapter VI, page 141 of the Land Resettlement Manual.
>
> According to the instructions, the latest kind of soil entered in the Khasra Girdawari is to be strictly followed at the time of allotment. The mere fact that the tube-well installed by the Mills does not exist in the land allotted to the petitioners could not change the character of soil from chahi to barani.
>
> .....
>
> It is no doubt a fact that the land was barani at the time it was leased out to the Mills by the Muslim evacuee, but having received irrigation from the tube-well for about 25 years, it had become chahi."

I think, there is an error of law apparent on the face of the impugned orders of the Chief Settlement Commissioner. The land which has to be transferred to a displaced person, has to be evaluated at the time of its allotment. It is not disputed that it is the class of the land at the time of allotment which is to form the basis of its evaluation. What is contended on behalf of the respondents is that the class has to be determined by reference to the entries in the last *khasra girdawari* and in the case of doubtful character of the girdawaris, by reference to the last completed *jamabandi* and in no case to the factual position of the land at the relevant time. This appears to be a totally fallacious reasoning. Entries in the *girdawari* or even the *jamabandi* are after all mere evidence of the facts recorded therein. The entries in the *girdawari* are certainly not conclusive about the correctness thereof. It would always be for the departmental authorities to decide as to what is the class of a particular land and, therefore, the value which has to be fixed for it. But in order to come to that decision the authorities must find out as a fact what they want to decide. In order to maintain the rule of law the authorities cannot be permitted to say that they know that the land is not *chahi* as there is no well from which it has a right to be irrigated, but they would class it as *chahi* merely because it is so entered in the last *girdawari*. *Khasra girdawari* is the harvest inspection book. Entries have to be made into it regarding every crop. A reference to column 5 of the prescribed form of the *khasra girdawari* contained in rule 9.3 of the rules framed under the Punjab Land Revenue Act shows that the class of land which has to be entered in the *girdawari* has to be the class "according to the last *jamabandi*". That is exactly why the Revenue officials, who prepared the *girdawaris* from 1957 to 1961, could not have described the land in dispute as *barani*. They had to describe it as *chahi* because it was so entered in the last completed *jamabandi*.

Mr. Tandon, in his impugned order has made a reference to rule 3 of part I of Chapter VI of the Land Resettlement Manual for Displaced Persons in Punjab and Pepsu by Tarlok Singh. The said rule reads as follows:—

> "3. The instructions for the verification of village khasra lists are as follows:
>
> (1) Area, class of land and rights:
>
> The village khasra list should be checked carefully with the jamabandi, so as to make sure that:
>
> (a) particulars of khasra numbers have been correctly copied;

(b) there are no khasra numbers in the list which should be excluded from it;

(c) no khasra numbers which should be included in the list are left out; and

(d) the class of land, area and rights shown against each khasra number are correctly entered.

There should be no khasra numbers in the list, which may apparently be open to allotment, but should, in fact, be excluded from allotment. For instance the jamabandi may show certain kharsa numbers as cultivated, but the entry in the khasra girdawari which is more recent and has to be followed, may be *ghair mumkin* river.

(2) ....."

Clause (a) of sub-rule (1) of rule 3, quoted above, also shows that the entries have to be made in the girdawari from the previous *jamabandi*. It is, however, the last sentence of the above-quoted rule which is relevant for our purposes. It gives an indication in the right direction. It provides that the *khasra girdawari* has to be followed if it shows that the land was cultivated though the *jamabandi* may not so show, because the entry in the *khasra girdawari* is more recent. The direction contained in the above-said rule does not at all indicate that the entry in the *khasra girdawari* has to be followed merely because the entry occurs in the harvest inspection book in question. It only guards against some officers thinking that they would correct the entries in the *khasra girdawari* so as to make it conform to the entry in the *jamabandi* irrespective of what the factual position is. No part of the above-said rule lends support to the argument of the counsel for the respondents.

Reliance has again been placed by the respondents on the following sentence in the introductory part of Chapter VI at page 140 of the Land Resettlement Manual:—

"Rights pertaining to individual khasra numbers were classified in the manner explained below and the area of each khasra number and the class of land, according to the last *jamabandi* as well as the last *khasra girdawari*, were noted carefully."

The above sentence occurs in the history of how things had happened and does not indicate what should be done in evaluating acquired evacuee land.

On the contrary there is a clear indication in para 6 at page 146 in the same Chapter of the Land Resettlement Manual which reads as follows:—

> "6. In the village khasra list against every *chahi khasra* number, the name of the well from which the field is irrigated should be entered. The object of this entry is to ensure that in the course of allotment the number of share-holders in a well should be the minimum possible and that each individual secures his chahi area on the minimum possible number of wells."

At the time of allotment of *chahi* land either the well from which the land is irrigated falls entirely within the land allotted to a particular displaced person or his share in the well from which his land is to be irrigated is defined. In the case of the petitioners neither any well falls within their land nor they have been allotted a share in any well. In fact it is impossible for the Government to do so because the tube-wells on account of the existence of which this land was described as *chahi* at certain times do not belong to the Government and were never evacuee properties and it is not, therefore, open to the Government to allot any share out of them to the petitioners.

Reference was also made by the learned counsel in this case to rules 49 to 51 contained in Chapter VIII of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The said reference is, however, misconceived as rule 69 in the same Chapter says that nothing contained in Chapter VIII would apply to agricultural land allotted in the States of Punjab and Pepsu under section 10 of the Act. Admittedly the allotment to the petitioners was under section 10 of the Act.

The learned counsel for the respondents has then relied strongly on the judgment of Grover, J., dated 10th November, 1965 in *Hari Krishan* vs. *Union of India and others,* C.W. No. 2601 of 1964. I do not think, the said judgment can be of any great assistance to the respondents for deciding the dispute involved in the cases before us. In *Hari Krishan's case* there was a finding to the effect that water could be borrowed for irrigating the disputed land. The instructions on the basis of which the impugned order cancelling certain allotment was upheld, were in the following words:—

> "Land which *is* irrigated by borrowed well water *and* is entered in the *jamabandi* as *'chahi mushtar'* may be

evaluated as *chahi*" (The word "is" and the word "and" have been underlined by me—Italicised here).

It is significant that even the above-quoted instructions did not state that the land which was merely capable of being irrigated by borrowed water should be treated as *chahi*. Nor do the above instructions indicate that the mere entry in the *jamabandi* has to be treated as conclusive. The instructions are clear to the effect that they give discretion to the evaluating authority to treat certain land to be *chahi* if two conditions are fulfilled, viz., (i) the land is actually irrigated by borrowed water at the relevant time; and (ii) it is entered in the *jamabandi* as *chahi mushtar* which means irrigated by borrowed water. The counsel for the State has further relied on the following sentence in the judgment of Grover, J., divorced from its context:—

"Both types of lands were capable of being irrigated by borrowed water from some adjoining well."

On the basis of this observation it is argued that the disputed land is also capable of being irrigated from the tube-wells belonging to the Saraswati Sugar Mills situated in the land belonging to those Sugar Mills. I do not think, Grover, J., ever suggested anything of the type which the learned counsel for the State wants to spell out of the judgment of the learned Judge. The observation made above clearly related to the nature of the two types of land and no more. There is no force at all in the argument of the State counsel to the effect that land which is merely capable of being irrigated by water from some well belonging to some one else in his land should be treated as *chahi*. In that sense it could be argued that a well can be dug in the land in dispute and it is, therefore, capable of becoming *chahi* and should accordingly be treated as such. This contention automatically reveals the fallacy in it.

It is next contended on behalf of the respondents that Grover, J., declined to go into the question whether the land was in fact *chahi* or not as the learned Judge observed that "this is, however, a matter into which this Court cannot enter". There is no doubt that this Court will never enter into the factual controversy whether a particular piece of land is *chahi* or not, in exercise of this Court's writ jurisdiction. But no such factual dispute is involved in the instant case. All that we are asked to decide is

whether on the admitted facts the land in question has been correctly described in law as *chahi* or not. My answer to the question is clearly in the negative. Grover, J., was considering the effect and scope of clause (d) of rule 102 of the 1955 Rules framed under the Displaced Persons (Compensation and Rehabilitation) Act. The learned Judge held that the ground on which the extra allotment of the petitioner in that case had been cancelled was a sufficient ground within the meaning of that clause. No such question arises in the instant case. It has not been contended by the respondents either in the written statement or even at the bar that the land is in fact *chahi*. The only argument advanced is, as stated above, that according to the departmental instructions it should be described as *chahi* merely because it is so entered in the *girdawari*. If there are any such instructions they are wholly void. The department is certainly entitled to take into consideration the entire evidence available before it including entries in relevant revenue records for deciding the class of any particular piece of land, but it would be illegal for the Rehabilitation authorities to determine the class merely on account of the entries in the *Girdawari* or even the *jamabandi* if they are otherwise convinced that the said entries are not according to the factual position or have ceased to be correct on account of some intervening or supervening circumstances. *Chahi* land means such land which has a right to be irrigated by well water. On the admitted facts no such right exists in respect of the land in dispute. Any executive instructions to the contrary would not be binding on the quasi-judicial tribunals constituted under the Compensation Act. It has been repeatedly held that executive instructions do not have the force of law and do not bind the quasi-judicial tribunals. Reference in this connection may be had to the Judgment of a Division Bench of this Court in *Suraj Parkash Kapur* v. *The State of Punjab and others* (1).

It was lastly contended by the learned counsel for the respondents that no manifest injustice was caused to the petitioners, and, therefore, this Court should not interfere in this matter under Article 226 of the Constitution. There is no force whatever in this argument. The petitioners are admittedly entitled to an allotment of 40—3½ standard acres of land. Merely on account of a legal error in the manner of evaluation of land they are being deprived of the property to which they are entitled under the law. This clearly results in manifest injustice to the petitioners.

(1) I.L.R. 1957 Punj. 665=1957 P.L.R. 103.

Reference was also made by the State counsel to the Judgment of the Supreme Court in *Syed Yakoob* v. *K. S. Radhakrishnan and others* (2). It is argued that it was held in that case that a writ of *certiorari* can be issued only for correcting errors of jurisdiction committed by inferior Courts. In fact it was clearly held by their Lordships of the Supreme Court in *Syed Yakoob's case* that a writ can be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. I think, the departmental officers acted in a wholly improper manner and contrary to law in treating the *barani* land as *chahi* in this case. In *Gulab Singh* v. *Chief Settlement Commissioner, Punjab, and others* (3), it was held that entries in jamabandis *prima facie* provide an important piece of evidence but they cannot be taken to be the only proof of the facts mentioned therein. It was also observed in that case that entries in *khasra girdawaris* could take precedence over the *jamabandi* entries as regards the question whether the land was under cultivation or received irrigation at the date of partition. But where a displaced person disputes the entries it is only fair that his claim should be checked from the best evidence that may be available. Applying the principles of that judgment to the instant case it is clear that the petitioners must succeed. *Prime facie* value can be attached to documents, but the basic purpose is to find out real value of the land and practical expediency alone can never be allowed to take the place of justice.

In support of his argument against interference in this case under Article 226 of the Constitution the learned counsel for the State also relies on the judgment of their Lordships of the Supreme Court in *Prem Singh and others* v. *Deputy Custodian General, Evacuee Property, and others* (4). In that case, however, it was held that there was no error of law apparent on the face of the record. In the instant case I have already held above that there is a clear error of law apparent on the face of the record. No technical rules restricting the jurisdiction of this Court under Article 226 of the Constitution can ever be framed. This Court has often applied rules of caution in self-restraint in the exercise

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(2) A.I.R. 1964 S.C. 477.

(3) I.L.R. (1964)2 Punj. 576=1964 P.L.R. 953.

(4) A.I.R. 1957 S.C. 804.

of its writ jurisdiction. Otherwise the scope of this Court's jurisdiction under Article 226 of the Constitution is very large and unfettered, as held by the Supreme Court in *Dwarka Nath* v. *Income-tax Officer, Special Circle, D. Ward, Kanpur, and another* (5). In that case it was held as follows:—

> "Article 226 is couched in comprehensive phraseology and it *ex facie* confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

C.W. No. 2054 of 1963 is, therefore, allowed and the impugned orders of the Rehabilitation authorities are set aside. The application of the petitioners for allotment of additional land on the basis of proper evaluation of the land already allotted to them will now have to be disposed of by the Rehabilitation authorities in accordance with law.

In *Amar Singh's case* land has been treated as *chahi* because of the entries in the *jamabandi* to that effect though the entries in the

(5) A.I.R. 1966 S.C. 81.

girdawari were to the contrary. One of the disputes involved in the case was whether the old well existing in the land in question was in such a condition as to make the land non-*chahi*. This question has not been decided by the Rehabilitation authorities on the facts of the case or on the evidence before them. It has been decided only on account of the entries in the *jamabandi* by which the Rehabilitation authorities felt themselves bound on account of executive instructions. For the reasons already given by me in *Kanshi Ram's case* it is impossible to sustain the impugned orders in this case also. It would of course be for the authorities under the Act to decide as a question of fact whether the land in this case is actually *chahi* or not. In doing so they may certainly take into consideration the relevant entries in the revenue records but not rule out the facts as they may stare the authorities at the side.

Both these writ petitions are, therefore, allowed, but no order is made as to costs.

K.S.K.

APPELLATE CIVIL

Before D. Falshaw, C.J., and Daya Krishan Mahajan, J.

SADHU RAM AND OTHERS,—*Appellants*

versus

UDE RAM,—*Respondent*

F.A.O. No. 78 of 1964

March 21, 1966

Evidence Act (I of 1872)—S. 20—Scope of—Statement made by parties to a suit referring all their disputes for decision to a third person—Whether a reference under S. 20 or a reference to arbitration.

Held, that all that section 20, Evidence Act, says is that if a party to a suit agrees to be bound by a statement of fact made by a their party, the statement of that third party, when made, is to be treated as an admission by the party who made the offer, and if both parties agree to refer a matter to a third party, his statement will be binding on both of them. The word "information" in the section means a statement of fact not a decision of any kind. But when parties to a suit make a statement that the refer all their disputes to a third person for decision, such a reference is a reference to arbitration and not merely a reference