it, which is founded on sound public policy, for all times governs even the proceedings before the Industrial Tribunals. In the case before the Supreme Court the earlier decision of the Tribunal related to pay scales and, therefore, the question of jurisdiction based on a decision regarding a collateral matter did not arise. The same distinction would obtain with respect to the other cases relied upon by the Sangh. No doubt, the rule of *res judicata* is based on wisdom of experience and is intended to secure finality of litigation so as to avoid a person being vexed twice over for the same cause, but its scope cannot be extended beyond its legitimate limits, for the rule is merely one of convenience and not of absolute justice. If the proposition sought to be laid down on behalf of the Sangh were to be accepted, it would mean that in every case where the Tribunal assumes jurisdiction, which in fact it has none, over a subject-matter by an erroneous decision, that will bind the parties for all times to come. I cannot see why a party cannot in subsequent proceedings say that the previous decision of the Tribunal, being a decision on a collateral or a jurisdictional fact by a Court of limited jurisdiction, is not conclusive between them. In this view, it must be held that the Tribunal committed an error apparent on the face of the record in holding that the previous decision operated as *res judicata*. The writ petitions are, therefore, allowed and the interim awards, dated 18th January, 1965, in all the three cases, are quashed. The matter will go back to the Tribunal for decision in accordance with law. Both the parties have expressed a desire that they should be provided with a further opportunity to adduce evidence on this issue. I, therefore, direct the Tribunal to give that opportunity to the parties. In the circumstances of the case, there will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Prem Chand Pandit, JJ.

SOM PARKASH AND OTHERS,—*Petitioners*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 508 of 1963

July 18, 1966

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 19(4)—Notification issued under fixing the rent, at 6 times the land revenue for unauthorised possession of land —Whether valid.

Held, that the notification, dated the 8th July, 1960 issued by the Central Government under sub-section (4) of section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, fixing the rent to be charged from persons in unauthorised occupation of evacuee land as 6 times the land revenue is valid and legal.

Held, that the principle of assessment based on land revenue determined by the State cannot be held to be either arbitrary or whimsical or irrational. The theory on which our land revenue system is based is that Government is entitled to a share of produce of the land but only after leaving a fair profit to the proprietor which would create a valuable and marketable property in the land. This is done by the process of assessment of land revenue and this process has been adopted since a long time. It is true that this process is not regulated by anything possessing arithmetical precision, but the process is by and large fair and is carried out by experienced officers. The submission that in each case a separate enquiry must be held for determining the nature and the quality of the area held in excess and the amount of yield therefrom is unsustainable, because, for one thing, in writ proceedings unless there is a material violation of law resulting in manifest injustice, High Court would be disinclined in its discretion to interfere. In this case the power is given to the Central Government to specify the principles of assessment of rent and this specification has been done by adopting the assessment of land revenue in this State. There is nothing wrong with this specification : on the other hand, it appears to be reasonable, fair and quite rational entailing no grave injustice to the person concerned. If anything, the amount of land revenue *prima facie* appears to be favourable to those charged with the payment of rent. The managing officer has merely adopted the principle laid down by the Central Government.

Case referred by the Hon'ble Justice Inder Dev Dua on the 31st August, 1965 to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice P. C. Pandit, on the 18th July, 1966.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the impugned orders of respondent No. 2.*

ROOP CHAND CHAUDHRY AND SUBASH CHAUDHRY, ADVOCATES, for the Petitioners.

M. R. SHARMA, S. S. DEWAN AND Y. P. GANDHI, ADVOCATES, for the Respondents.

ORDER OF DIVISION BENCH

DUA, J.—This petition under Article 226 of the Constitution has been placed before us in pursuance of my order, dated 31st August,

1965, which may be read as a part of this order. The only question raised before us is that the demand of rent from the petitioners at six times the land revenue for the period of their occupation is arbitrary and, therefore, liable to be quashed by this Court on its writ side. The question thus really centres round the construction of section 19(4) of the Displaced Persons (C & R), Act No. 44 of 1954, in pursuance of which a notification was issued by the Central Government fixing the rate at which rent is to be charged from persons in possession of evacuee property acquired by the State to which he was not entitled or which was in excess of the area claimable by him under the Act and the Rules.

I consider it desirable here to reproduce section 19(4) and the notification issued thereunder—

> "19. Power to vary or cancel lease or allotment of any property acquired under this Act.—
>
> * * * * * * *
>
> (4) Where a managing officer or a managing corporation is satisfied that any person, whether by way of allotment or of lease, is, or has at any time been, in possession of any evacuee property acquired under this Act to which he was not entitled, or which was in excess of that to which he was entitled, under the law under which such allotment or lease was made or granted, then, without prejudice to any other action which may be taken against that person, the managing officer or the managing corporation may, having regard to such principles of assessment of rent as may be specified in this behalf by the Central Government, by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so assessed for the period for which the property remains or has remained in his possession:
>
> Provided that no such order shall be made without giving to the person concerned a reasonable opportunity of being heard."

The notification contained in Annexure 'R-1' attached to the return is in the following terms:—

"GOVERNMENT OF INDIA

MINISTRY OF REHABILITATION,

OFFICE OF THE CHIEF SETTLEMENT COMMISSIONER,

Jaisalmer House, New Delhi,

Dated, the 8th July, 1960.

ORDER

G.S.R. .—In exercise of the powers conferred by sub-section (4) of section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby specifies the following principles of assessment of rent for purposes of charging the same from a person, who is/has at any time been in possession of any such evacuee property as is specified below in the State of Punjab, and acquired under the said Act, to which he was not entitled or which was in excess of that to which he was entitled, under the law under which the allotment or lease thereof was made or granted to him, for the period for which the property remains or has remained in his possession: —

(1) In case of allotments or leases of evacuee agricultural lands which had been obtained by fraud or concealment of material facts by the allottees or lessees :

8 times the land revenue shall be charged as rent.

(2) In any other case of allotment or lease of exacuee agricultural lands as aforesaid :

6 times the land revenue shall be charged as rent.

KANWAR BAHADUR,

Settlement Commissioner and Ex-officio
Deputy Secretary to the Government of India."

The argument most seriously pressed by Ch. Roop Chand, on behalf of the petitioners is that the Central Government has not laid down any principle for the assessment of rent as required by section 19(4) and that the directive embodied in the notification in question requiring rent to be charged at six times the land revenue in case of possession of land acquired by the Central Government under section 12 in excess of the area to which the person in possession would be entitled under the law under which the allotment or lease of land was made or granted to him is arbitrary and unsupportable on any rational grounds. Our attention has been drawn to sub-section (5) of section 19 of the Compensation Act, which provides for assessment of damages from persons in unauthorised possession of evacuee property acquired by the Central Government under section 12 of the

Compensation Act and it is emphasised that just as assessment of damages under this sub-section has to be made in each individual case, under sub-section (4) also the Central Government must in each case determine what should be the rent charged keeping in view the quality of the land and its actual yield during the period involved. According to Ch. Roop Chand's submission, to determine the rent in terms of land revenue is not only irrational, but smacks of arbitrariness. The counsel has contended that it is primarily for the managing officer or the managing corporation to assess the rent payable in respect of the property in possession of the person within the contemplation of section 19(4). This he must do independently by arriving at his own judgment and not by following the directive issued by the Central Government in the impugned notification, which, according to the petitioners' submission, does not specify any principle for assessing the rent.

This challenge is met on behalf of the Union of India and the Managing Officer, Rehabilitation, by reference to the additional affidavit of Shri Sarnagat Singh, Under-Secretary to Government, Punjab, Rehabilitation Department, attested on 2nd February, 1966, by the Oath Commissioner. The affidavit itself, however, does not bear any date. In this affidavit it is sworn that the rent at the rate of six times the land revenue is generally considered equivalent to the minimum lease amount and since the principles of assessment of actual or customary rent entail a lengthy procedure in the form of reference to various settlement reports, price schedules and excerpts from the Khasra Girdawaris, it was considered more desirable to adopt the same rates for assessment of rent as are applicable to leases. A copy of the Punjab Government D.O. No. 121-RII/12406/Reh (R), dated 31st March, 1960, annexed to the affidavit as Annexure A-VII, addressed by Miss Sarla Khanna, I.A.S., Deputy Secretary, Rehabilitation, Punjab, to Shri H. R. Nair, Deputy Chief Settlement Commissioner, Government of India, Ministry of Rehabilitation has also been referred to in support of the submission that the fixation of six times the land revenue is both reasonable and rational. The counsel has also relied on Annexure 'A-VIII', produced along with the additional affidavit which contains calculations suggesting that 6 times the land revenue works out to an amount lower than the normal rent generally chargeable. This Annexure relates to Chahi and Barani land. The additional affidavit was placed on the record pursuant to an order of my learned brother Pandit J., passed on 28th March, 1966, on the application, dated 25th

January, 1966, presented by the Government Pleader for the requisite permission. It was admitted before us that a copy of this application had been duly given to the petitioners' learned counsel. No attempt has, however, been made to controvert the assertions contained in the additional affidavit. On behalf of the respondents, reliance has also been placed on a Bench decision by Dulat and R. P. Khosla, JJ., in *Jagir Singh* v. *State of Punjab* (1). In this judgment, it is observed that the formation of an assessment circle necessarily takes into consideration the various factors mentioned in Douie's Settlement Manual and those factors include the nature of soil and its quality apart from various other factors affecting yield. The object of referring to this decision apparently seems to be that the land revenue must be deemed to have been determined after reference to various factors affecting yield from the land which is subjected to the payment of land revenue. A passing reference has also been made to a decision of the Supreme Court in *Vasanlal Manganbhai* v. *State of Bombay* (2), in which it is observed that the fixation of agricultural rent depends upon so many uncertain factors which may vary from time to time and from place to place that it would be idle to contend that the Legislature desired to fix the maximum only once or twice. It is, however, not possible to draw much assistance from this decision. The observations of Mukherjea, J., in *In re Article* 143, *Constitution of India and Delhi Laws Act* (3), at p. 400 read out by Shri Sharma on behalf of the respondents are also of little assistance on the point which concerns us in the case in hand.

In my opinion, the principle of assessment based on land revenue determined by the State cannot be held to be either arbitrary or whimsical or irrational. The theory on which our land revenue system is based is that Government is entitled to a share of produce of the land, but only after leaving a fair profit to the proprietor which would create a valuable and marketable property in the land. This is done by the process of assessment of land revenue and this process has been adopted since a long time. It is true that this process is not regulated by anything possessing arithmetical precision, but the process is by and large fair and is carried out by experienced

(1) 1965 P.L.J. 114.
(2) A.I.R. 1964 S.C. 4.
(3) A.I.R. 1951 S.C. 332.

officers. As this basic factor is not disputed on behalf of the petitioners, it is unnecessary to refer to the relevant part of the Settlement Manual and of the Punjab Land Revenue Act. The submission that in each case a separate enquiry must be held for determining the nature and the quality of the area held in excess and the amount of yield therefrom, is unsustainable, because, for one thing, in writ proceedings unless there is a material violation of law resulting in manifest injustice, this Court would be disinclined in its discretion to interfere. In the case in hand, the power is given to the Central Government to specify the principles of assessment of rent and this specification has been done by adopting the assessment of of land revenue in this State. There seems to me to be nothing wrong with this specification: on the other hand, it apears to be reasonable, fair and quite rational entailing no grave injustice to the person concerned. If anything, the amount of land revenue *prima facie* appears to be favourable to those charged with the payment of rent. The managing officer has merely adopted the principle laid down by the Central Government.

I may make it clear that in the case in hand we are only concerned with that part of the notification which prescribes rent to be realised at the rate of six times the land revenue and we are only expressing our opinion on this part of the notification.

The petitioners' learned counsel desires us to send the case back to the Single Bench for deciding other points mentioned in the writ petition. This request is obviously misconceived. Arguments were addressed before me sitting in Single Bench on 27th August, 1965, when orders were reserved. On 31st August, 1965, I considered it desirable that this writ petition be heard by a larger Bench at an early date, if possible within two weeks. It is thus obvious that I did not refer to a larger Bench any particular point, but the entire writ petition was directed by me to be heard by a larger Bench. In the opening address, the learned counsel for the petitioners did not raise any other point except the one discussed above, and it was only when we expressed our view on this question that the learned counsel made this request. In my opinion, there is no question of any other point surviving for decision by the Single Bench. It may be pointed out that even before me sitting in Single Bench, it was the question of fixation of rent at six times the land revenue on which the writ petition was sought to be supported and three unreported decisions were pressed into service. There is thus no occasion for

remitting the case back to the Single Bench. It may be stated that those unreported decisions have not been relied upon by the petitioners' learned counsel before us and it is conceded that law has since been amended.

I may in passing observe that in my referring order, I had suggested an early hearing of this writ petition, if possible, within two weeks. This was done because I am aware of some more cases pending in this Court in which this precise point was raised and it was considered that this petition should be disposed of as speedily as possible. It is unfortunate that this petition should instead of two weeks have taken nearly 11 months to be disposed of. It is hoped that in future attempts would be made to expedite the hearing of cases in which such directions are made in the referring orders.

For the foregoing reasons, this petition fails and is dismissed, but without costs.

PREM CHAND PANDIT, J.—I agree.

B.R.T

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

THE MUNICIPAL COMMITTEE, AMBALA CITY,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 242 of 1966

July 20, 1966

Punjab Municipal (Executive Officer) Act (II of 1931)—S. 3—Municipal Account Code—Rules XVI. 1 and XVI. 4—Executive Officer—Whether entitled to contribution to provident fund by the Municipal Committee.

Held, that an Executive Officer holding a Substantive post within the meaning of Rule XVI. 1 of the Municipal Account Code is entitled to the contribution from the Municipal Committee to his Provident fund under Rule XVI. 4 of the Code.