will be open to the Department to reconsider the entire matter as to valuation and come to a proper conclusion on evidence.

The Department will before it reconsiders the matter issue notice to the petitioner and hear him and also receive any fresh material which the petitioner may like to place before it. As the department has succeeded on the principal questions of law, I would leave the parties to bear their own costs.

B. R. T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

PIR TIRATH NATH,—*Petitioner*

versus

THE CHIEF SETTLEMENT COMMISSIONER, PUNJAB, AND OTHERS,—*Respondents*

Civil Writ No. 1038 of 1961.

1962

November, 5th.

Cypres doctrine—Meaning, scope and effect of.

Held, that the cy pres doctrine broadly stated, would connote that when a general charitable intention is expressed by the donor it would not be permitted to fail on the ground that the mode, if specified, cannot be executed, and, that the law would substitute another mode as near as possible to the mode specified. The real core of this doctrine is that when the donor has prescribed a particular mode of application, which mode is incapable of being performed, but the donor's overriding or dominant charitable intention transcends the particular mode of the prescribed application, the Court is entitled to carry out the dominant charitable intention as if the particular direction did not exist at all. But when the particular mode of application is the essence of the donor's intention and that mode becomes incapable of being performed then the Court cannot possibly

have any power to direct any other charitable application in place of the one which has failed. In other words, where the funds left by the donor cannot be applied in the exact manner dictated by him it should be applied beneficially to similar purposes by different means, but this can be done only if a general intention of a charitable gift is imputable to the donor. Thus, if a charitable performance is limited to a particular object or to a particular institution and there is not general charitable intention, then even if it becomes impossible to carry out the object, the doctrine of *cypres* cannot possibly be applied.

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 orders of respondents Nos. 1 to 3, dated 18th July, 1961, 13th July, 1961 and 22nd March, 1961, respectively.*

H. S. WASU, ADVOCATE, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, with L. K. SOOD, ADVOCATE, *for the Respondents.*

ORDER

Dua, J.

DUA, J.—This petition appears to be concluded by a Bench decision of this Court in *Samadh Parshotam Das* v. *The Union of India,* (1). The learned counsel for the petitioner, however, contends that the Division Bench in the reported case did not consider the question of the applicability of the *cy pres* doctrine to the case and, therefore, applying that doctrine to the case in hand the petitioner is entitled to the allotted land in lieu of the endowed land left in West Pakistan. The learned counsel has during the course of arguments submitted that the institution of which he claims to be a trustee is a "*Samadhi*" and not a "*Samadh*" and, therefore, is as such capable of moving this side of the border between Pakistan and India.

(1) 1962 P.L.R. 1086 : I.L.R. 1963 (1) Punj. 87.

The counsel has read certain portions of the order of the Assistant Registrar-cum-Managing Officer, Land Claims Organisation, Department of Rehabilitation, dated 22nd March, 1961 and has submitted that the officer has proceeded on the assumption as if the institution in question was a *Samadh*. I do not think the distinction sought to be drawn by the learned counsel is either permissible or has otherwise any cogency.

In so far as the doctrine of *cypres* is concerned, here again, the counsel does not seem to be on sound basis. The *cypres* doctrine, broadly stated, would connote that when a general charitable intention is expressed by the donor, it would not be permitted to fail on the ground that the mode, if specified, cannot be executed, and, that the law would substitute another mode as near as possible to the mode specified. The real core of this doctrine would appear to me to be that when the donor has prescribed a particular mode of application, which mode is incapable of being performed, but the donor's overriding or dominant charitable intention transcends the particular mode of the prescribed application, the Court is entitled to carry out the dominent charitable intention as if the particular direction did not exist at all. But when the particular mode of application is the essence of the donor's intention and that mode becomes incapable of being performed then the Court cannot possibly have any power to direct any other charitable application in place of the one which has failed. In other words, where the funds left by the donor cannot be applied in the exact manner dictated by him, it should be applied beneficially to similar purposes by different means, but this can be done only if a general intention of a charitable gift is imputable to the donor. Thus, if a charitable performance is limited to a particular object or to a particular institution and there

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is no general charitable intention, then even if it becomes impossible to carry out the object, the doctrine of *cypres* cannot possibly be applied. Now, if this be the true scope and effect of this doctrine, then I am unable on the existing record, to find any material which would show the original intent of the donor. But then, this apart, there is no endowed property here which is to be applied according to the *cypres* doctrine. What the petitioner desires is that the Government should give him property under the compensation law to enable him to establish an institution of which he should be allowed to act as a trustee on lines similar to those on which *Samadhi Pir Nidhi Nath* used to be run in village *Mukhad* in West Pakistan. The counsel has cited three decisions in support of his contention. *Ratilal Panachand Gandhi, etc.* v. *State of Bombay, etc.*, (2) on which reliance has principally been placed merely lays down the essential ingredients of the doctrine of *cypres*, but the facts of that case have no resemblance to those before me. According to this decision when the particular purpose for which a charitable trust is created fails or by reasons of certain circumstances, the trust cannot be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purposes specified by the settler, the Court will not, when there is a general charitable intention expressed by the settler, allow the trust to fail but will execute it *cypres*, that is to say, in the same way as nearly as possible to that which the author of the trust intended. It is obvious that this observaion does not vest the petitioner with a right to ask the Government to allot to him property under the Compensation Act. *Board of Commissioners for the Hindu Religious Endowments* v. *Parasram*

(2) A.I.R. 1954 S.C. 388.

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Veeraraghavacharlu, etc. (3); is equally unavailing to the petitioner and so is *Mohatap Bahadur* v. *Kali Pada Chatterjee, etc.* (4).

For the foregoing discussion, I do not think the petitioner has made out any case for entitling him to the allotment of the land in question on the basis of *cypres* doctrine. The petition thus fails and is hereby dismissed but without any order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh and A. N. Grover, JJ.

MOHAN LAL SHARMA,—*Petitioner.*

versus

THE CENTRAL GOVERNMENT AND OTHERS,—*Respondents.*

Civil Writ No. 1648 of 1960.

1962

November, 6th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 32—Memorandum containing Banjar cut formula—Whether legal or valid—Cancellation of allotment made on the basis of Banjar cut formula—Whether liable to be quashed by certiorari.

Held, that the memorandum issued by the Punjab Government containing the Banjar cut formula has no legal validity. An order cancelling the allotment or lease of land on the basis of the Banjar cut formula is liable to be quashed by *certiorari* on the ground of an apparent error of law. The temporary allotment of land to displaced persons on oral verification cannot be termed *ex gratia* grant. The only provision under which cancellation of temporary allotments or leases can be made are section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and rule 102 of the Rules made under that Act and Rehabilitation authorities never acted in accordance with

(3) A.I.R. 1937 Mad. 750
(4) A.I.R. 1914 Cal. 200