decrees of the Courts below were wholly without jurisdiction. The appeal is allowed and the decree of the Additional District Judge is hereby set aside. In exercise of my revisional powers under section 115 of the Code of Civil Procedure, I further set aside the decree of the trial Court as well as being without jurisdiction. There will be no order as to costs in this Court.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh and Shamsher Bahadur, JJ.

SAMADH PARSHOTAM DASS ALIAS JOWAND SINGH,—*Petitioner*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No 1082 of 1960

1962

August, 6th

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 19 and 24—Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rule 102(d)—Cancellation of allotments made in favour of Samadhs and other institutions on the ground that they were incapable of moving into India—Whether can be made—Writ of certiorari to quash the cancellation orders—Whether can issue.

Held, that section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 do not exhaust the powers of the appropriate authorities to make order of cancellation of allotments. Section 24 of the said Act further empowers a Chief Settlement Commissioner in revision to call for the record of any proceeding and to pass such orders as he thinks fit. The breadth of the revisional powers of the Chief Settlement Commissioner would certainly cover a case of cancellation wherever it is found that the original allotment could not have been made under the directions which may at all times be given by the Central Government to the State

Government under section 32 of the Act. The instructions in paragraph 34 of the Land Resettlement Manual make special mention of the fact that allotments were being made to certain institutions pending a consideration of the legal aspects at inter-dominion level. No acceptance of the validity of the claims put forth by the managers of the institutions could be inferred by the temporary allotments made in their favour. When it was found on a systematic review that the *Samadhs* were not entitled at all to the allotments, as these were incapable of moving into India, the allotments were rightly cancelled and the grant of *sanads* made no difference at all. Distribution from the compensation pool cannot be claimed as a matter of right in the case of institutions. Principles have been evolved to ensure that allotments are made only to such institutions as have extended their beneficial activities in the State of Punjab. The instructions contained in paragraph 34 of the Land Resettlement Manual are in consonance with justice and fair play and strict observance of those instructions for cancelling the allotments in favour of *Samadhs* does not involve any patent error of law justifying the issuance of a writ of certiorari to quash those orders.

Case referred by Hon'ble Mr. Justice A. N. Grover, on 5th May, 1961, to the Division Bench seized of Civil Writ petition No. 119 of 1961, because of the similarity of questions of law involved. The case was finally decided by Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Shamsher Bahadur, on 6th August, 1961.

Petition under Article 226 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 dated 6th June, 1960, 18th June, 1960 and 28th December, 1959, passed by respondents 2, 3 and 4, respectively.*

B. R. TULI, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, AND N. N. GOSWAMI, ADVOCATE, for the Respondents.

ORDER

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—This judgment will dispose of seven petitions under Article 226 of the

Constitution of India raising the common question whether allotment of agricultural land made in favour of a *Samadh* could be subsequently cancelled on the ground that the institution which owned land in Pakistan was not capable of moving into India ?

The petitions which had been referred to a larger Bench for decision by different learned Single Judges are *Samadh Parshotam Dass* v. *Union of India* (Civil Writ No. 1082 of 1960), *Samadh Bawa Kalyan Dass, etc.* v. *The Chief Settlement Commissioner, Punjab, etc.* (Civil Writ No. 1428 of 1960), *Samadh Bawa Kalyan Dass, etc.* v. *The Chief Settlement Commissioner, Punjab, etc.* (Civil Writ No. 1429 of 1960), *Samadh Bawa Kalyan Dass, etc.* v. *The Chief Settlement Commissioner, Punjab, etc.* (Civil Writ No. 1430 of 1960), *Samadh Bawa Kalyan Dass* v. *The Chief Settlement Commissioner, Punjab, etc.* (Civil Writ No. 1441 of 1960), *Samadh Bawa Devi Dass, etc.* v. *The Chief Settlement Commissioner, Punjab, etc.* (Civil Writ No. 1450 of 1960) and *Pir Samunder Nath* v. *The Chief Settlement Commissioner, etc.* (Civil Writ No. 1752 of 1960).

The facts in all these petitions are somewhat similar save in one particular in the case of *Samadh Parshotam Dass* v. *Union of India* (Civil Writ No. 1082 of 1960) to which I will advert in a moment. For the sake of convenience the facts in *Pir Samunder Nath* v. *The Chief Settlement Commissioner, etc.* (Civil Writ No. 1752 of 1960) would be set out in detail, as this petition was argued first by Mr. Narotam Singh Bindra on behalf of the petitioner. The Petitioner, Pir Samunder Nath as *chela* and successor of Pir Kala Nath claimed allotment of land measuring 27.8 standard acres which had been allotted to Pir Kala Nath in 1953 on a quasi-permanent basis in village Faridpur of

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Jagadhri tehsil in Ambala district, in lieu of land left in village Saloke in Sialkot district. The land in village Saloke in Sialkot district was mutated in the name of *"Samadh Bhura Nath zer ihtmam gaddi nashin tilla sahib"*. The land was utilised as a Samadh which was erected in the memory of Jogi Bhura Nath and was managed by Tilla Guru Gorakh Nath. The allotment was made in the name of Samadh Bhura Nath though the management was in the hands of the petitioner Pir Samunder Nath as the successor of Pir Kala Nath who was carrying on the management at the time of the allotment. The allotment was cancelled in pursuance of paragraph 34 of Chapter IV of the Land Resettlement Manual by Tarlok Singh. In paragraph 34, it is stated that the allotment to displaced institutions and allotment of land held by evacuee institutions presented special problems. Some of these institutions were managed by trusts and pending a full consideration of the legal aspects it was stated in sub-paragraph (2) that:—

> "(2) Institutions which can prove legally that they have moved from West Punjab to East Punjab should be allotted land in East Punjab. In other words if the body in whose name the property stands has moved to the Indian Union and is legally capable of so moving, land may be allotted to it; and
>
> (3) x x x
> ..... In interpreting the decision at (2), for want of precise information and other reasons, it is likely that errors have crept in. A systematic review of allotments made in respect of land held by *gurdwaras, temples, ashrams, etc.*, which stood frequently in the name of individuals is required after the allotment operations are completed."

In all these cases the institutions, which are *Samadhs*, were allotted lands on basis of the revenue entries relating to their holdings in Pakistan. A systematic review of these allotments was clearly envisaged as it was likely that errors could creep in. The allotment essentially was of a temporary nature.

In all cases, the managing bodies of the *Samadhs* migrated to East Punjab and appropriated the income of the lands allotted to the institutions. In the case of *Samadh Parshotam Dass* v. *Union of India* (Civil Writ No. 1082 of 1960), it was claimed that the urn containing the ashes of Guru Parshotam Dass was also brought to India. It was asserted in this case that the urn containing the ashes had been kept in the Samadh and was preserved by Mahant Man Singh who had been allotted the land as a representative of the Managing body of the Samadh.

When a revision took place, the view was taken by the Settlement authorities that a Samadh was an institution which could not and in fact had not moved to India. The migration of the managers or the members of the Managing body was not a movement of the institution as such. A *Samadh* is built to commemorate the memory of a patron saint and as it is a fixture there was no question of its ever moving to India. The votaries of the saint may have migrated to India but the institution as such was incapable of re-establishment at any other place but that of its inception. The original allotments have been cancelled by the Managing Officers in all the different cases and these orders have been upheld by the Chief Settlement Commissioner. The managers of the Samadhs who migrated to India feeling aggrieved have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution to

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have the orders of the Chief Settlement Commissioner set aside and the learned Single Judges before whom the petitions came up for hearing in the first instance have referred them to a larger Bench for decision.

On behalf of the petitioners we have heard Messrs. Narotam Singh Bindra, Balraj Tuli and Anand Mohan Suri at length and each of the three counsel besides addressing us on certain aspects of the problem has adopted the arguments of the other counsel as well.

It is contended in the first instance that a *Samadh* is not a juristic person and whoever is in possession as manager is the *de facto* owner of the institution. Reliance is placed on the Supreme Court authority of *Saraswathi Ammal and another* v. *Rajagopal Ammal* (1), where it was held that "a perpetual endowment of properties for the purpose of *Samadhi Kainkaryam*, i.e., worship of and at the *Samadhi* (tomb) of a person, is not valid under Hindu Law." It is argued that as the original dedication was invalid, the trust reverted to the donor and his successors. The managing body in spite of the invalidity of the original dedication have, however, maintained and respected the purpose of the *Samadh* and have been expanding moneys for the original purpose, namely, to commemorate the memory of the saint whose ashes are interned in the *Samadh*. We are not concerned with the form in which the issue has been raised by Mr. Bindra. The argument that the building of a *Samadhi* or tomb over the mortal remains of a saintly person is not charitable purpose or a valid dedication under Hindu Law is hardly of any help to the petitioners who have claimed the property on behalf of the *Samadhs*.

(1) 1954 S.C.R. 277.

If there was any infirmity in the original dedication, it is the donor or his successors who would gain and not the managing body. All that we have to see is whether the institution as such was capable of moving into India and in each case the decision of the Chief Settlement Commissioner is based on factual findings which are unchallengeable in these proceedings. We do not find anything wrong in the view taken by the Settlement authorities that in order to prove that the institution had moved into India under paragraph 34 of Chapter IV of the Land Resettlement Manual, the institution had to re-establish itself in East Punjab within a reasonable time. In all the cases, it has been found by the Chief Settlement Commissioner that either the institution had not re-established itself in India or that the *Samadh* had not moved at all and the managers in either event could not claim the allotment on behalf of the *Samadh.*

Mr. Bindra also invited our attention to a passage in Hindu Law of Religious and Charitable Trust by Mukherjea (1962 edition) at page 329, where it is stated that:—

> "A Mohant and for the matter of that any other sannyasi can, as has been said above, acquire personal property of his own. If he does acquire personal property with his own money or by his own exertion, it cannot be inherited by his natural relations but passes on, after his death, to his spiritual heirs according to the text of Yagnavalka referred to above."

No one has disputed the succession of the personal property of a Mahant, but that is hardly a question in issue in these writ proceedings. We

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have to repeat that the only question which calls for determination is whether the *Samadh* as such has moved to East Punjab after the partition? The answer must be in the negative as held by the Settlement authorities. As pointed out by the learned Advocate-General, the scheme evolved for allotment to institutions embodied in Tarlok Singh's Land Resettlement Manual was a rough and ready scheme of immediate distribution of land to institutions which held agricultural holdings in West Punjab. The allotment was subject to a "systematic review" in respect of land held by *gurdwaras*, *temples* and *ashrams* and there is no apparent legal error in the view which has been taken by the Settlement authorities after closer and final scrutiny of the earlier allotments made soon after the partition. A review of allotment has always been contemplated and no exception could be taken to the manner in which it has been made.

It has been contended that the cancellations which were made in 1959, 1960 and 1961 were no longer governed by paragraph 34 of the Land Resettlement Manual and had to follow the procedure laid down in the Administration of Evacuee Property (Central) Rules, 1950. Our attention has been drawn to rule 14(6) in this connection which lays down that allotment of rural evacuee property on a quasi-permanent basis can be varied on certain specified terms. In our view this rule is clearly inapplicable as it deals only with the cancellations which are to be made by the Custodian of Evacuee Property. The cancellations which have been made in the cases in point are governed by sections 19 and 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which deal with the cancellation of allotment by Managing Officers. Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955,

needs to be specially noted. This rule is under Chapter XVII and deals with the powers of Managing Officers. *Inter alia*, a Managing Officer is empowered to cancel any lease or allotment "(d) for any other sufficient reason to be recorded in writing". All that is required is that notice should be given to the person affected thereby. Four contingencies are provided for cancellation of allotment and leases. Clauses (a), (b) and (c) admittedly are not applicable to the present cases and there is authority for the proposition that the ground for cancellation embodied in clause (d) is to be read independently and not *ejusdem generis*. In other words, the authority concerned can reach its independent finding about the existence of sufficient reasons for cancellation of allotments. Reference may be made to *Mohinder Singh* v. *Union of India and others* (2), where it was held by Falshaw, J. (as the Chief Justice then was) that rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, is *intra vires* of section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and further that the reasons invoked in clause (d) of rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules may not be *ejusdem generis* as reasons embodied in clauses (a), (b) and (c) of the rules, and it is sufficient if reasons given *are adequate*. In *Amar Singh* v. *Custodian, Evacuee Property, Punjab* (3), it was observed by their Lordships of the Supreme Court at page 831, that section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, provide ample powers for cancellation of a quasi-permanent allotment which does not vest any indefeasible right in the holder to obtain transfer of that land.

(2) 1958 P.L.R. 272.
(3) 1957 S.C.R. 801.

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Section 19 and rule 102 do not exhaust the powers of the appropriate authorities to make orders of cancellation of allotments. Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, further empowers a Chief Settlement Commissioner in revision to call for the record of any proceeding and to pass such orders as he thinks fit. The breadth of the revisional powers of the Chief Settlement Commissioner would certainly cover a case of cancellation wherever, it is found that the original allotment could not have been made under the directions which may at all times be given by the Central Government to the State Government under section 32 of the Act. The instructions in paragraph 34 of the Land Resettlement Manual make special mention of the fact that allotments were being made to certain institutions pending a consideration of the legal aspects at inter-dominion level. No acceptance of the validity of the claims put forth by the managers of the institutions could be inferred by the temporary allotments made in their favour. When it was found on a systematic review that the *Samadhs* were not entitled at all to the allotments, as these were incapable of moving into India, the allotments were cancelled.

The grant of *sanads* could make no difference at all. Mr. Bindra argued that the *sanads* was granted to the managers of Samadh Bhura Nath on 26th of December, 1955 and the cancellation of allotment could not have been made on the ground that the *Samadh* had neither moved nor was capable of moving into India. We are unable to find any patent error of law which would justify interference by this Court. As has been reiterated by their Lordships of the Supreme Court in *Shri Ambica Mills Co., Ltd.* v. *Shri S. B. Bhatt and another* (4), writs of certiorari can be issued not

(4) A.I.R. 1961 S.C. 970.

only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. We cannot regard the strict observance of the instructions contained in the Land Resettlement Manual cancelling the allotments in favour of *Samadhs* to involve any patent error of law. Distribution from the compensation pool cannot be claimed as a matter of right in the case of institutions. Principles have been evolved to ensure that allotments are made only to such institutions as have extended their beneficial activities in the State of Punjab. The instructions contained in paragraph 34 of the Land Resettlement Manual are in consonance with justice and fair play and no valid argument has been advanced to set aside the orders passed by the Chief Settlement Commissioner. These petitions would accordingly fail and are dismissed. As the petitions involve some questions of difficulty, we would make no order as to costs.

MEHAR SINGH, J.— I agree.

B. R. T.

APPELLATE CIVIL

Before Mehar Singh and Shamsher Bahadur, JJ.

JANG SINGH,—*Appellant*

versus

HARDIAL SINGH AND ANOTHER,—*Respondents*

Regular Second Appeal No. 1962 of 1960

1962

August, 13th.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 8-A—Sale of land to tenant jointly with others—Whether exempted from pre-emption.

Held, that the purchase of land made by a tenant from his landlord would be saved from the pre-emptive claim and there is no compelling context in the Act to suggest