the Arbitration Act and refusing the prayer for the stay of the respondent's suit, a valuable right had accrued to the respondent, inasmuch as the order of the trial court had become final and he could get his rights determined by a civil court and not through arbitration.

In view of what I have said above, I would hold that the present appeal has not been properly instituted and the same is, therefore, dismissed on that ground. In this view of the matter, it is needless to go into the merits of the case.

The parties are, however, left to bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J

HARI KRISHAN,—*Appellant*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

L.P.A. No. 16 of 1966

February 27, 1968

Words and Phrases—Chahi Mushtar land—Meaning of—Mortgaged land having no well—Mortgagee irrigating it from the well in his own land—Such mortgaged land—Whether becomes Chahi Mushtar *land—Land having no well nor entitled to be irrigated from another well as of right—Whether can be termed as* Chahi.

Held (per Mehar Singh, C.J.), that *Chahi Mushtar* land means land which is jointly well-irrigated or well-irrigated together by the voluntary agreement of the owners of the adjoining lands on some consideration. Where however, a mortgagee takes advantage of the mortgage and irrigates the land mortgaged with him which has no well of its own, from a well in his own land, it is not a case of land irrigated as *Chahi Mushtar*. The mortgagor has no say in the matter. After redemption of the mortgage he cannot insist under any right,

contractual or otherwise, to have the land irrigated from the well in the adjoining land of the previous mortgagee. So that what is thus temporarily irrigated on account of the peculiar position in which the mortgagee holds his rights in regard to the land irrigated cannot be placed at par with what is irrigated voluntarily with consent and under some kind of a contract or agreement by a person from a well in another man's land. As soon as redemption in the case of a mortgaged land takes place the nature and character of the land immediately reverts to its original nature and character. If it was *barani* or unirrigated land before, it remains to be so after redemption.

Held (*per Narula, J.*), that land which has neither any well in it nor is entitled to be irrigated by well-water obtainable from some neighbouring land or from anywhere else as a matter of right either on account of some binding contract or grant or some other valid and subsisting arrangement of a lasting nature cannot be classed *chahi.*

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice A. N. Grover passed in Civil Writ No. 2601 of 1964 on 10th November, 1965.

RAM RANG, ADVOCATE, for the Petitioner.

G. C. MITTAL, ADVOCATE, for the Respondents.

ORDER

MEHAR SINGH, C. J.—This is an appeal under clause 10 of the Letters Patent from the judgment and order, dated November 10, 1965, of a learned Single Judge whereby he dismissed a petition under Articles 226 and 227 of the Constitution by the appellant, Hari Kishan.

The facts are really not a matter of controversy in this appeal. The appellant is a displaced person. He was allotted 4 standard acres and 11 standard units of land in village Ucha Gaon in 1958. The evacuee owner of the land had mortgaged it and the mortgagees had irrigated it from a well in his own land. Consequently the land in the revenue papers was shown as *chahi ayaytan;* meaning temporarily well irrigated. However, after the land had vested in the Custodian, the evacuee interest was separated under the provisions of the Evacuee Interest (Separation) Act, 1951 (Act 64 of 1951). The result was that the land went out of the possession of the mortgagee

and obviously ceased to be irrigated by the well in the mortgagee's own land. The appellant claimed that the land was *barani* or unirrigated. The Managing Officer made a reference to the Deputy Commissioner of Gurgaon whether the land, as it was shown in the revenue records as *chahi ayatan,* it is to be treated as *chahi,* that is well-irrigated, or otherwise. He received instructions from the Deputy Commissioner that it was to be treated as well-irrigated land. On a representation by the appellant the matter was gone into by the Revenue Authorities as to the valuation of the land and when the Tehsildar (Assistant Collector) made report that it should be evaluated on the basis of it being *barani* (unirrigated) land, the Deputy Commissioner (Collector) agreed with him. Consequently the additional area of one standard acre and 1¼ standard units was allotted to the appellant in village Mewla Maharajpur on June 29, 1959. He also acquired the title deed in regard to the proprietary rights in that land on May 2, 1961.

On March 16, 1964, the Tehsildar (Sales) of Palwal again referred the case to the Chief Settlement Commissioner, Punjab, for cancellation of the last-mentioned additional allotment of one standard acre and 1¼ standard units of land to the appellant on the ground that the land initially allotted to the appellant having been classified as *chahi ayaytan* was, according to the instructions of the Rehabilitation Department, to be evaluated at the rate of well-irrigated land and not unirrigated land. The Chief Settlement Commissioner accepted that reference on June 4, 1964, and cancelled the additional area from the allotment of the appellant, who failed to obtain redress further in revision.

With the return of the respondents to the petition of the appellant an order, copy Annexure R. I., of April 28, 1948, of Mr. Tarlok Singh, Director-General of Rehabilitation and Resettlement, was produced, which says—

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

In the return on behalf of the respondents it was stated that as *chahi mushtar* land was evaluated and treated by the Rehabilitation Department as well-irrigated, so there was no reason why *chahi ayaytan* land should not have been evaluated and treated as well-irrigated,

because both types of land were capable of being irrigated by borrowed water from some adjoining well. The learned Judge dismissed the petition of the appellant on the ground that the Chief Settlement Commissioner had jurisdiction to cancel the allotment having regard to rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules 1955, and in this respect the learned Judge relies upon clause (d) of that rule that the cancellation of an allotment may be for any other sufficient reasons to be recorded in writing.

In this appeal what is urged on behalf of the appellant is that the approach of the learned Single Judge was not correct and that there was no jurisdiction with the Chief Settlement Commissioner to treat what was, in the circumstances of the case, temporarily well-irrigated land on the same basis as land jointly irrigated from a well on the basis of a contract or agreement between the owner of the well and the owner of the land, the type of land to which the order, copy Annexure R. 1, applies. In this respect a reference has been made to *Kanshi Ram* v. *Union of India,* (1), a case on which both sides place reliance. The side of the appellant relies on this that in that case the lessee had sunk wells on a part of the leased land. Afterwards the part of the land in which the wells had been sunk by the lessee was purchased from the Rehabilitation Department by the lessee. The wells had, however, been used to irrigate other land also which was left with the Rehabilitation Department. The question then arose whether it was to be treated and evaluated as *chahi* (well-irrigated) or *barani* (unirrigated) land. The learned Judges were of the opinion that "the departmental officers acted in a wholly improper manner and contrary to law in treating the *barani* land as *chahi* land in this case." The appellant relies on this conclusion of the learned Judges. On the side of the respondents reliance is placed in this that *Hari Kishan's case* was cited before the learned Judges and they did not dissent from it but rather distinguished it. The point of distinction given by the learned Judges is that that case proceeded on the basis that the Chief Settlement Commissioner had jurisdiction to decide the matter of cancellation of the allotment according to rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, and he having acted within his jurisdiction, the learned Judge was not prepared to interfere with the case. It is, however, obvious that in *Kanshi Ram's case* the learned Judges were not accepting the proposition that when what is not chahi or

(1) C.W. No. 2054 of 1963 decided an 17th March, 1966.

well-irrigated land, is found on admitted facts to be well-irrigated land, then that is not an error in law which entitles interference of this Court in a petition under Articles 226 and 227 of the Constitution. This case rather speaks in favour of the appellant than in favour of the respondents. In the order, copy Annexure R. I. of Mr. Tarlok Singh, Director General of Rehabilitation and Resettlement, the reference is to land entered in the revenue records as *'chahi mushtar'*, which means jointly well-irrigated or well-irrigated together, and that happens when 'A' has a well in his own land for irrigation of that land and 'B', the owner of the adjoining land, borrows water, on some consideration, and irrigates his land. There the act of 'B' is based on an agreement or contract and is obviously voluntary. In a case like the present, however, where the mortgagee takes advantage of the mortgage and irrigates the land mortgaged with him from a well in his own land, it is not a case of land irrigated as *'chahi mushtar'*. The mortgagor has no say in the matter. After redemption of the mortgage he cannot insist under any right, contractual or otherwise, to have the land irrigated from the well in the adjoining land of the previous mortgagee. So that what is thus temporarily irrigated on account of the peculiar position in which the mortgagee holds his rights in regard to the land irrigated, cannot be placed at par with what is irrigated voluntarily with consent and under some kind of a contract or agreement by a person from a well in another man's land. As soon as redumption in the case of a mortgaged land takes place, the nature and character of the land immediately reverts to its original nature and character. If it was *barani* or unirrigated land before, it remains after redemption to be so. So, there has been a patently wrong interpretation of the order, copy Annexure R. 1, of the Director-General of Rehabilitation and Resettlement, and an utterly wrong application of the order to the facts of the present case. The Chief Settlement Commissioner had no jurisdiction to wrongly interpret and read such an order and to deprive the appellant of his right to the land of which the allotment has been cancelled by the Chief Settlement Commissioner. In this approach, this appeal is accepted, with the result that the order of the learned Single Judge is reversed and the petition of the appellant is accepted quashing the order of the Chief Settlement Commissioner cancelling the allotment of land in his favour. In the circumstances of the case there is no order in regard to costs.

NARULA, J.—The earlier Division Bench judgment of this Court in *Kanshi Ram etc.* v. *The Union of India etc.* (1) fully supports the

view which has commended itself to my lord the Chief Justice in this appeal. I happened to write the judgment of the Division Bench in *Kanshi Ram's case,* the relevant outlines of the facts of which have already been given above in the judgment prepared by my Lord, the Chief Justice. Dua, J., and myself held in that case:—

> "At the time of allotment of *chahi* lands 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."

and again after referring to the instructions contained in Annexure 'R-1' (attached to the written statement of the respondents in the writ petition from which this appeal has arisen) which have already been reproduced by my Lord and which were quoted by Grover, J. in *Hari Kishan* v. *Union of India,* (2) decided on November 10, 1965, it was observed as follows :—

> "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

(2) C.W. No. 2601 of 1964 decided on 10th Nov. 1965.

belonging to the Sarswati 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 someone 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 fallacy in it."

There is nothing in the earlier Division Bench Judgment which can possibly support the respondents in this appeal. I think it is entirely fallacious and devoid of reason to class any land as *chahi* which has neither any well in it nor is entitled to be irrigated by well-water obtainable from some neighbouring land or from anywhere else as a matter of right either on account of some binding contract or grant of some other valid and subsisting arrangement of a lasting nature. On the admitted facts of this case no such facility is attached to the land in dispute. It could not, therefore, be treated as *chahi*. The impugned order of the Chief Settlement Commissioner to the contrary suffers from an error of law in this respect which is apparent on its face. That order must, therefore, be quashed.

I, therefore, entirely agree with the reasoning and findings as well as the order proposed in the judgment prepared by my Lord, the Chief Justice in this appeal.

K. S. K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J,

THE AMBALA BUS SYNDICATE PRIVATE LTD.—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 299 of 1968

March 1, 1968

Motor Vehicles Act (IV of 1939)—Ss. 47, 57 and 62—Grant of temporary stage carriage permits without following procedure prescribed by S. 47—Whether valid—Proviso to S. 57(8)—Meaning of.