APPELLATE CIVIL.

Before A. N. Bhandari, C.J. and S. S. Dulat, J.

BARA SINGH,—*Appellant.*

versus

JOGINDER SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 160 of 1958.

Displaced Persons (Compensation & Rehabilitation) Act, (XLIV of 1954)—Section 52—Chief Settlement Commissioner—Power of to cancel allotment and transfer of proprietary rights—Extent of—Grant of Sanad—Nature and effect of—Chief Settlement Commissioner, whether can cancel the Sanad.

1958

Nov., 3rd

Held, that Parliament has given certain powers to the Chief Settlement Commissioner under Section 24 of Act 44 of 1954 to correct the errors of his subordinates and these powers are exercisable by him alone. So where a Managing Officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in exercise of his power of revision; correct the error; and; similarly where a managing officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse the order and annual the transfer.

Held, that the grant of a Sanad is the last step required to be taken under the rules but it has no special significance or sanctity attaching to it. It is a formal act which follows the actual determination of the question whether the property should or should not be permanently transferred to the claimant, and once the decision is reached that the property should be permanently transferred, the grant of Sanad follows, there being no act of judgment intervening between the decision and the grant. The important thing is the decision to transfer ownership rights and the Sanad is merely a formal document evidencing that transfer, and, if the decision itself is found to be wrong, the Sanad which is founded on that decision must go with it. Under the Act, the Chief Settlement Commissioner can

always reverse an order transferring any property to a claimant, and the Sanad will fall with it. This power cannot be affected by the circumstance that even otherwise the President can, in certain circumstances, resume the grant.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Gurnam Singh, dated 9th April, 1958, in C. W. No. 661 of 1957.

B. D. MEHRA, for Appellant:

H. S. GUJRAL AND S. M. SIKRI, for Respondents.

JUDGMENT

S. S. Dulat, J.

Dulat, J.—Joginder Singh and his brother Harbans Singh had a third brother named Gurdip Singh, who was killed in Pakistan during the disturbances, and when Joginder Singh and Harbans Singh came to India they put in claims in respect of their properties as well as in respect of the property of Gurdip Singh as his heirs. Each of them was allotted some agricultural land and also one house, and, over and above this, allotment was made in the name of Gurdip Singh of some agricultural land and one house No. 50 situated in Adampur in the Jullundur District. The date of the allotment of this house was the 6th of October, 1950. In due course, this property was acquired by the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and on the 6th of December, 1955, the Managing Officer concerned transfered this house (No. 50) to Joginder Singh and Harbans Singh, and granted a *sanad* as required by the rules made under the Act of 1954. It appears that one Bara Singh was interested in this house and claimed to be in its occupation and he, therefore, moved the Assistant Settlement Commissioner to cancel the

allotment made in the name of Gurdip Singh. The Assistant Settlement Commissioner, however, felt that he could not do so as, the proprietary, rights in the house had been already transferred to Joginder Singh and Harbans Singh, and on this view he rejected the prayer. Bara Singh then went in revison to the Chief Settlement Commissioner, and that officer considered the whole matter and found that the allotment of this particular house in the name of Gurdip Singh was unjustified as Gurdip Singh had never settled in any rural area in India, having died in Pakistan, and he went on to conclude that the proprietary rights in this house ought not to have been transferred to Joginder Singh and Harbans Singh. On these findings the Chief Settlement Commissioner cancelled the order of the Managing Officer dated the 6th December, 1955, granting the *sanad* to Joginder Singh and Harbans Singh in respect of this house and also cancelled the order of the 6th October, 1950 by which the allotment of the house had been originally made. This led to a writ petition by Joginder Singh and Harbans Singh seeking a direction from this Court to quash the order of the Chief Settlement Commissioner. The petition was heard by Gurnam Singh, J., who formed the opinion that the Chief Settlement Commissioner was not competent either to cancel the *sanad* granted to the petitioners transferring the proprietary right to them, nor competent to cancel the order of allotment made on the 6th of October, 1950. The writ petition was, therefore, allowed and the order of the Chief Settlement Commissioner set aside. . Against the order of the learned Single Judge, Bara Singh has filed an appeal under clause 10 of the Letters Patent, and it is supported by the Advocate-General on behalf of the Chief Settlement Commissioner.

Bara Singh
v.
Joginder Singh and others

S. S. Dulat, J.

The entire argument in this case turns on the powers of the Chief Settlement Commissioner under the Displaced persons (Compensation and Rehabilitation) Act, 1954 (Act 44 of 1954). The learned Single Judge holds that once a *sanad* was granted to the claimants, namely Joginder Singh and Harbans Singh, it was not open to the Chief Settlement Commissioner to cancel the transfer because the order transferring the property had merged in the *sanad*, and, thereafter, the grant could be resumed only by the President in occordance with the conditions of the *sanad* and it is this argument which has been pressed for our acceptance on behalf of the respondents. To appreciate it, it is necessary to go into some of the provisions of the Act of 1954. The Act was designed for acquiring certain property to be transferred to displaced persons in satisfaction of their claims regarding property left by them in Pakistan. Section 10 of the Act, on which considerable reliance seems to have been placed by the learned Single Judge, directs that any immovable property leased or allotted to a displaced person by the Custodian must be allowed to remain in the possession of that person on the same terms and conditions, and that the Central Government may, for the purpose of payment of compensation to such displaced person, actually transfer such property to him. It is sought to be concluded from this provision that in no circumstance could such property allotted to a displaced person by the Custodian be taken away from him. Actually, however, it is not so because section 19 of the Act gives wide powers to a managing officer appointed under the Act to cancel or terminate any such allotment, notwithstanding any contract or any other law, the only limitation being that such cancellation must proceed in accordance with the rules made under the Act. The learned Single Judge admits this but goes on to

observe that this power to cancel an allotment is given by the Act to a managing officer alone and concludes that it could not be exercised by the Chief Settlement Commissioner. The power of the Chief Settlement Commissioner is defined by section 24 of the Act. This says—

> "24. The Chief Settlement Commissioner may at any time call for the record of any proceeding under this Act in which Settlement officer, an Assistant Settlement Commissioner, an Additional Settlement Commissioner, a Settlement Commissioner, a managing officer or a managing corporation has passed an order, for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he think fit."

It is, therefore, obvious that in any case where a managing officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in exercise of his power of revision, correct the error, and, similarly where a managing officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse the order and annul the transfer. Mr. Gujral had to concede that the power of the Chief Settlement Commissioner is extremely wide, and that he can act in every case where a subordinate authority has failed or omitted to make a proper order. His contention, however, is that this power of the Chief Settlement Commissioner is confined only to the revision of orders made under the Act which might include an order transferring a particular property to a

Bara Singh
v.
Joginder Singh and others

S. S. Dulat, J.

claimant, but does not, according to learned counsel include the grant of a *sanad*. A distinction is thus sought to be made between an order directing the transfer of proprietary rights and the actual grant of a *sanad* in respect of those proprietary rights. The first, according to Mr. Gujral, is merely an order under the Act and may possibly be upset but the second, namely, the actual grant of a *sanad*, is a more important step which passes the property to the claimant irrevocably, and once that step is taken the matter passes beyond the statute and cannot be reversed. This was apparently the view of the learned Single Judge also. To appreciate the point of this argument, it is necessary to understand the precise significance of a *sanad* granted in such cases. Section 10 of the Act lays down the procedure for payment of compensation in certain cases like the present. Section 40 of the Act authorises the Central Government to make rules for carrying out the purposes of the Act and specifically mentions certain matters regarding which rules may be made, and these include the manner in which compensation is to be paid. The Central Government has framed rules, and those related to section 10, that is payment of compensation under that section, are rules 71 to 76. Rule 72 concerns enquiries where the allottee has no verified claim, while rule 73 deals with enquiries where he has a verified claim. In both cases, the rules require an enquiry into the allotment already made in favour of the claimant, and in case the allotment is found to be in order the rules direct the transfer of permanent ownership of the allotted property to the allottee. Thus sub-rule (2) of rule 72 says—

> "If the Settlement Officer is satisfied that the allotment is in accordance with the *quasi*-permanent allotment scheme, the

may pass an order transferring the land allotted to the allottee in permanent ownership as compensation and shall also issue to him a *sanad* in the form specified in Appendix XVII or XVIII, as the case may be, granting him such rights."

There is a similar provision in rule 73 for the transfer of permanent ownership to the allottee and the grant of a *sanad* in the form specified in Appendix XVII or XVIII. The Act itself, that is Act 44 of 1954, does not make any mention of any *sanad,* and it is only these rules that do, and the form of the *sanad* is contained in the two appendices. Mr. Gujral is quite right when he says that the grant of a *sanad* is the last step required to be taken under the rules, but is not right, in my opinion, in maintaining that it has any special significance or sanctity attaching to it. It is a formal act which follows the actual determination of the question whether the property should or should not be permanently transferred to the claimant, and it is plain that once the decision is reached that the property should be permanently transferred the grant of a *sanad* follows, there being no act of judgment intervening between the decision and the grant. I am, in the circumstances, unable to appreciate the submission that, while an order deciding that the allotment is proper and the allotted property should be permanently transferred to the allottee can be reversed by the Chief Settlement Commissioner, the grant of the *sanad* which must necessarily follow that decision cannot be reversed. On the other hand, it appears to me that the *sanad* or its grant being founded solely on the decision to transfer permanent ownership, that *sanad* must necessarily fall with

Bara Singh
v.
Joginder Singh and others

S. S. Dulat, J.

the reversal of the decision on which it is based. It was said in the course of arguments that the *sanad* is a deed of title and cannot be lightly upset, but obviously a title deed ceases to have any content if the transaction, which is the basis of that title deed, is itself invalidated. It seems to me, therefore, an idle claim that, although the order of the Managing Officer deciding to transfer permanent ownership of the disputed house to the respondents was capable of being reversed by the Chief Settlement Commissioner, the actual grant of the *sanad* could not be upset by him. Nor is there any force in the suggestion that the order itself could not be reversed by the Chief Settlement Commissioner because it was followed by the grant of the *sanad*. As I read the Act and the rules, the important thing is the decision to transfer ownership rights and the *sanad* is merely a formal document evidencing that transfer, and, if the decision itself is found to be wrong, the *sanad* which is founded on that decision must go with it.

Before the learned Single Judge and also before us reliance was placed on the conditions appearing on the *sanad* in Appendices XVII and XVIII, and assistance was sought from one of the conditions stating that the grant could be resumed by the President in case the Central Government was at any time satisfied and recorded a decision that the transferee or his predecessor-in-interest had obtained the grant or allotment of the property by fraud, false representation or concealment of any material fact, and on this was built the argument that the intention of the rules was that once a *sanad* is granted there can be no resumption of the grant except on the grounds so mentioned in the *sanad*. The argument seems to rest on a misapprehension. As I have already mentioned,

the authority to transfer acquired property to displaced persons in payment of compensation is to be found in section 10 of Act 44 of 1954—which provision authorises the transfer of such property on "such terms and conditions as may be pressribed." Rules 72 and 73 then prescribed the terms and conditions by specifying the form of the *sanad*, so that the condition in the *sanad* which is so much relied upon is merely the exercise of the rule-making power of the Central Government in accordance with section 10 of the Act. It has nothing to do with and can have no effect on the powers of the Chief Settlement Commissioner under section 24 of the Act. It is clear that Parliament has given certain powers to the Chief Settlement Commissioner to correct the errors of his subordinates, and those powers are exercisable by him alone, and equally clear that under the Act he can always reverse an order transferring any property to a claimant, and the *sanad* will fall with it. This power cannot be affected by the circumstances that even otherwise the President can in certain circumstances resume the grant. The unspoken thought behind the argument on behalf of the respondents seems to be that, if an exalted person like the President has only limited powers to resume a grant, it is not proper that the Chief Settlement Commissioner should have wider powers, but here apparently the argument ignores the fact that all power in this connection flows from the will of Parliament as expressed in the Act or that enactment leaves no doubt that the Chief Settlement Commissioner can at any time reverse an order authorising the grant of proprietary rights. I am unable to agree that the grant of a *sanad* is anything more and I cannot, therefore, say that, because a *sanad* had been granted to the respondents, the transfer in their favour could not be upset by the Chief Settlement Commissioner.

Bara Singh
v.
Joginder Singh
and others

S. S. Dulat, J.

It was then suggested that the Chief Settlement Commissioner acted without sufficient cause when he reversed the order of the Managing Officer made on the 6th December, 1955. There is no force in this contention. The Chief Settlement Commissioner has given reasons for setting aside the transfer, the main reason being that the allotment itself was not in order, and that again on the finding that under the rules Gurdip Singh who never came to settle in India was not entitled to the allotment of a house.

The other contention, that the allotment made as long ago as the 6th of October, 1950 could not have been cancelled by the Chief Settlement Commissioner, also rests on the reasoning adopted by the learned Single Judge that the allotment could be cancelled only by the Managing Officer and not by the Chief Settlement Commissioner—which argument I have already dealt with. Rule 102 of the Rules mentions the conditions on which an allotment can be cancelled, and, among other things, the rule authorises such cancellation for "any other sufficient reason to be recorded in writing", the only provision being that reasonable opportunity of being heard is given to the allottee. The learned Single Judge thought at one stage that the proper procedure had not been followed without, however, indicating the defect in the procedure he had in mind, and before us it has not been said that anything which the rules required to be done was not done before the Chief Settlement Commissioner cancelled the allotment and the transfer of proprietary rights to the respondents. It is admitted that the Managng Officer, who granted the *sanad,* had to consider the propriety of the allotment, and, if he wrongly found it in order and, therefore, proceeded to transfer the proprietary rights to the respondents, the

Chief Settlement Commissioner was competent to correct the error and thus cancel the allotment.

No other reason has been shown why in the exercise of our power under Article 226 of the Constitution we should interfere with the order of the Chief Settlement Commissioner which, in my opinion, he was in lawfully competent to make and in respect of which no patent legal error appears to have been committed. I would therefore allow this appeal, set aside the order of the learned Single Judge and dismiss the writ petition but, considering all the circumstances, leave the parties to their own costs.

Bhandari, C.J.—I agree.

K. S. K.

APPELLATE CIVIL

Before A. N. Grover, J.

S. B. BUDH SINGH,—*Appellant.*

versus

MAYA RAM AND OTHERS,—*Respondents.*

First Appeal from Order No. 20/P of 1955.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 21, 29 and 32—Decree passed after the commencement of the Act—Whether liable to be scaled down under Section 32—Section 21(1)—Applicability of.

Held, that the decretal amount on the basis of a decree passed after the commencement of the Displaced Persons (Debts Adjustment) Act, 1951 falls within the definition of "debt" given in the Act. There is no mention in the definition of debt, where the word decree is used that that decree should be such as has been passed prior to the Commencement of the Act as is mentioned in section 21(1).