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considerations are kept in view, no doubt is left in my mind that the purchase of raw groundnut oil for the manufacture of vegetable ghee is acquisition of goods for use in the manufacture of goods for sale within the meaning of section 2(ff) of the Act.

For the reasons given above, I am of the view that there is no merit in this petition. The same fails and is dismissed, but there will be no order as to costs.

Pandit, J.

PANDIT, J.—I have gone through the judgment of my learned brother and I agree with him that this writ petition should be dismissed with no order as to costs.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and Harbans Singh, JJ.

GULAB SINGH,—*Appellant.*

versus

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

Letter Patent Appeal No. 211 of 1963.

1964

April, 1st

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 10—Allotment of land made to a displaced person on the basis of entries in the copies of Jamabandis received from Pakistan—Such displaced person disputing the correctness of such entries and requesting the Department for comparison with the original record at Wagah border—Department refusing such comparison unless the displaced person deposits the purchase price for the extra land claimed by him—Whether justified.

Held, that where a displaced person disputes the correctness of the entries in the copies of the *jamabandis* received from Pakistan, it is only fair that his claim should

be checked from the best evidence that may be available. The best evidence would be the entries in the original revenue records. Such evidence cannot be produced by the displaced person but the same can be made readily available to the Department. Best evidence being thus available to the Department, the Department would not be justified, under the cloak of departmental instructions, which have no force of law, to refuse to look at the same unless the claimant performs the onerous conditions of depositing the purchase price for the area of the land to which the claimant considered himself to be entitled. Under the law promulgated by the State Legislature and then by the Parliament, a displaced person is entitled to the allotment of land in India in lieu of that abandoned by him in Pakistan and all rules of procedure have been laid down with a view to achieve that end. It is only fair that all possible evidence that may either be made available by the displaced person or that is available to the Department should be looked at before turning down the claim of the displaced person. There is no legal justification whatever for the Department presuming that the claim made by the displaced person is wrong and asking him to deposit the price of the additional land claimed by him, before taking into consideration the evidence that may be made available by having the so-called "Wagha comparison" with the original records.

J. S. CHAWLA, H. S. WASU, B. S. WASU, H. L. SARIN AND R. K. SAINI, ADVOCATES, for the Appellants.

NEMO, for the Respondents.

JUDGMENT

HARBANS SINGH, J.—This order will dispose of six appeals filed under clause 10 of the Letters Patent against the orders of learned Single Judges. Out of these four appeals Nos. 211 to 214 of 1963 are against the judgments of Shamsher Bahadur, J., and the facts therein are identical. Letters Patent Appeal No. 372 of 1963 is against the judgment of Gurdev Singh, J., dismissing Civil Writ No. 1490 of 1961. Letters Patent Appeal No. 379 of 1963 is against the

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judgment of Mahajan, J., who dismissed the same on the short ground that the same was concluded by the decision of this Court in Civil Writ No. 1647 of 1962. The facts of these two appeals are slightly different, but the main point involved in all these six appeals is the same.

With regard to the Letters Patent Appeals Nos. 211 to 214 it would be sufficient to give the facts in the Letters Patent Appeal No. 211, *Gulab Singh* v. *Chief Settlement Commissioner and others.* Gulab Singh like the other three appellants in the connected appeals, is a displaced person from Bahawalpur State where he owned agricultural land in Chak No. 4, Roshan Bet and Kot Mahtab, tehsil Sadaqabad, district Rahim-yar-Khan. In lieu of the land so abandoned by him, he put in a claim and was allotted 31 standard acres and 6½ units of land in village Sherpur, tehsil Samrala. It may be mentioned here that allotments of agricultural land were made to displaced persons in Punjab under two notifications. The allotments made under notification No. 4892/S, dated 8th of July, 1949, were known as quasi-permanent allotments, and these were given to those displaced persons in respect of whom copies of *jamabandis* had been received from Pakistan authorities in pursuance of an agreement between the two dominions to exchange such records. The other displaced persons, *jamabandis* in respect of whom had not been so received, were allotted land on oral verification and such allotments were made under notification No. 4891/S, dated 8th of July, 1949, and these were known as temporary allotments, which were to be made quasi-permanent or subsequently converted into full proprietary rights on receipt of records from West Pakistan or on production of some other proof. Gulab Singh and the other

three appellants were given only temporary allotments because the records from Bahawalpur had not been received. It appears that subsequently copies of the *jamabandis* of the villages concerned wese received by the Department and according to the entries therein, out of the area shown in the name of the appellant, less area was shown as nehri than in the originaly claim put in by him, and on the basis of which the allotment was made to him. By his order dated the 28th of September, 1961, the Managing Officer, calculating the area to which the appellant was entitled on the basis of the *jamabandi* so received, made 15 standard acres and 5½ units of land as permanent and cancelled the balance to the extent of 15 standard acres and I unit. It appears that the appellant, thereafter, made an effort and brought from Pakistan copies of the *jamabandis* of the villages duly authenticated by the High Commissioner for India in Pakistan and these copies showed more area as *nehri* than was indicated in the *jamabandis* said to have been received by the Department. On the basis of these documents an appeal filed by the appellant before the Settlement Commissioner against the order of the Managing Officer was accepted and the case was remanded to be re-examined in the light of the copies of the *jamabandis* with the appellant.

On remand, the Managing Officer, while rejecting the claim did not rely on the copies of the *jamabandis* produced on behalf of the petitioner. The grounds would be clear from the following extract from his order Annexure A:

> "Copy of the jamabandi of Chak No. 4 has been examined. This copy is of jamabandi for 1948-49 duly attested by the High Commissioner on 20th October, 1961

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Copy of the *jamabandi* of village Kot Mehtab, Tehsil Sadaqabad, attested by the High Commissioner on 20th October, 1961, relates to the year, 1947-48. Both these copies cannot be acted upon because the Rehabilitation Department can give benefit of the area to the allottee on the basis of *jamabandi* for the year 1946-47 received from Pakistan. Both the aforesaid copies were prepared after the *girdawari* of Rabi, 1947."

On appeal to the Assistant Settlement Commissioner, he *vide* his order in Annexure B, dated the 6th of August, 1962, also observed to the same effect as follows:—

"The copy of the *jamabandi* produced for the year 1947-48 contains the entries of the crops for *kharif*, 1947 and *rabi*, 1948 and the kind of soil entered in it does not necessarily prove that all the land was *nehri* before partition."

The difficulty that has arisen by different entries in the *jamabandi* received by the Department and those produced by the petitioners could proprely be resolved by the comparison at Wagha with the original records of *khasra girdawari* in Pakistan for *kharif*, 1946 and *rabi*, 1947, However, as a condition precedent for this it was ordered by the Department that the petitioner should deposit price of the area of which had tentatively been found to be in excess in accordance with the *jamabandi* received by the Rehabilitation Department, and the request of the petitioner that the case should be listed for comparison without such deposit was repelled on the ground that instructions of the Department were to the contrary. On the

matter being taken to the Chief Settlement Commissioner, this view of the subordinate officers was confirmed, He also stated '.....we are to take the class of land as it existed in Rabi, 1947, These *jamabandis* show the Class of land as it existed in *rabi*, 1948 and *kharif*, 1948, As such no reliance can be placed on the copies. Under the rules, the Wagha comparison can be affected provided the petitioner purchases the excess that has been found according to the prescribed rates which amount, according to rules, is to be refunded if the Wagha comparison report is found favourable for the allottee." As mentioned in the order of the Managing Officer, the purchase price is to be calculated at the rate of Rs. 800 per standard acre for the first two standard acres, Rs 1,000 per standard acre for the next three standard acre, Rs 1,250 per standard acre for the next five standard acres, and Rs 1,500 per standard acre for the remaining five standard acres.

Against these orders of the Chief Settlement Commissioner, four writ petitions were filed. *Inter alia* it was urged that once it was admitted that it was a case fit for comparison at Wagha, the imposition of the onerous condition that the petitioner must first deposit a huge amount of Rs 18,500, calculated at the above rates for 15 standard acres and 1 unit tentatively found in excess, was not warranted by law, and was a condition which virtually deprived the petitioner appellant of his right to property. It was further urged that the two *jamabandis* produced indicate the nature of the land as it existed for some period prior to the final preparation of the *jamabandis* and, therefore, reflect the true state of affairs as they existed at the time of the partition. The learned Single Judge dismissed the petition on the ground that there was no legal right vested in the appellant to

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have the "Wagha comparison" and, consequently, there was nothing wrong in the Department imposing any conditions for carrying out such a comparison. This judgment is being challenged in the four appeals, mentioned above.

The learned counsel for the appellant urged before us that the Department as well as the learned Single Judge have not approached the case from a proper angle. He urged that the allotments made to the displaced persons in lieu of the land abandoned by them in the area now in Pakistan, were made in pursuance of an Act of the Punjab Legislature and notification by the State Government under the Administration of Evacuee Property Act. Subsequently, these rights were altered to permanent proprietary rights by virtue of an Act of Parliament (Displaced Persons) (Compensation and Rehabilitation) Act, 1954. Such allotments cannot, therefore, be treated as mere *ex gratia* gifts being made by the department. The displaced persons, who held land either as owners or occupancy tenants etc., in the area now in Pakistan were invited to submit their claims in respect of the land abandoned by them. Such displaced persons were desired to be settled on the land abandoned by the Muslim evacuees. In paragraph 19 of Chapter 1 at page 8 of the Land Resettlement Manual by Tarlok Singh (hereinafter to be referred to as the Manual), it is stated as follows:

> "The resettlement of land in East Punjab and Pepsu was envisaged as an operation likely to confer in due course rights of a permanent character."

For this, an elaborate procedure was evolved by which the claims submitted by the displaced

persons were to be checked up and the total area abandoned by them together with the quality of the land, etc., was to be determined in the first instance. The total area abandoned was converted in terms of standard acres, which in turn depended on the quality of the abandoned land and its productivity. After imposing certain cuts—because the evacuee land available for allotment was not sufficient to meet the claims of the displaced persons in full—the displaced persons were allotted land in proportion to the land found abandoned by the displaced persons.

As mentioned in paragraph 11 of Chapter II at pages 34-35 of the Manual, the claims submitted by the displaced persons were to be verified in one or more of the methods given below, in that order of precedence:—

(1) entries in the *jamabandi* or other revenue record; or

(2) entries and references in any registered document;

(3) entries or references in other documents of unquestionable genuineness; and

(4) oral evidence of reliable persons present at the verification.

Thus, no hard and fast rules were laid down that *jamabandis* alone will be taken into consideration for verifying the correctness or otherwise of the claims submitted by displaced persons. The obvious reason was that at that time there was no certainty that copies of the records left in Pakistan would be available. The circumstances and the suddenness in which the migration of the population had taken place, made it impossible for the

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majority of the displaced persons to bring documentary evidence with them. However, later on, by an agreement between the two Dominions copies of *jamabandis* and other documents were exchanged between the two Governments and the bulk of claims of displaced persons were assessed on the basis of the entries in the copies of the *jamabandis* received from West Pakistan Government, and the allotments to such persons were made on quasi-permanent basis, while with regard to others the allotments were made in the form of leases or what were called temporary allotments. It is, however, common ground that the idea was to determine the extent and value of the land abandoned by a displaced person as on the date of the partition, and, *inter alia*, even copies of the loose mutations entered before 15th of August, 1947,—whether decided or pending--were also exchanged between the two dominions. (See page 46 of the Manual). The main idea behind all this was that the Department wanted to verify the claim made by the displaced persons by getting copies of the revenue records from the other Dominion or by scrutinising other relevant documentary or oral evidence that may be available.

It is thus clear that the foundation of the claim, on the basis of which land is allotted to a displaced person, is the ownership of land by him in Pakistan as on the date of the partition. Entries in the *jamabandis, prima facie,* provide an important piece of evidence of the extent of such ownership. However, entries in the *jamabandis* cannot be taken to be the only proof of this fact and the departmental instructions and procedure, as reproduced above, recognised this. For example, mutations entered, and the transfer deeds registered prior to the date of the partition but after the date to which the *jamabandis* relate, would certainly

supersede any entries *qua* ownership in the *jamabandis* to the contrary. Similarly entries in the *khasra girdwaris* would also take precedence over the *jamabandis* entries as regards the question whether the land was under cultivation or received irrigation at the date of the partition. If, for example, a *jamabandi* relates to the year 1945 and a well was sunk in 1946, in the *Khasra girdawari* the land which is commanded by the well would be mentioned as *chahi* although there cannot possibly be any mention of such a fact in the *jamabandi*. Furthermore, the Rehabilitation Department obtained from Pakistan not the original records but copies prepared from the same and the chances of mistakes creeping in such copies are fairly great taking into consideration the great speed with which this stupendous task had to be finished.

Where a displaced person, therefore, disputes the correctness of the entries in the copies of the *jamabandis* received, it is only fair that his claim should be checked from the best evidence that may be available. Where, as in the cases before us, a displaced person does not claim any right under any subsequent deed or transaction but merely suggest that the entries in the copies received are wrong either *qua* the area actually owned by him or *qua* the quality of the land, the best evidence would be the entries in the original revenue records. Such evidence cannot be produced by the displaced person but the same can be made readily available to the Department. Best evidence being thus available to the Department, the Department would not be justified under the cloak of departmental instructions, which, it was fairly conceded, have no force of law, to refuse to look at the same unless the claimant performs the onerous condition of depositing the purchase price for

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the area of the land to which the claimant considered himself to be entitled. These proceedings before the Rehabilitation Department are obviously not in the nature of a suit filed by the displaced person where the burden of proving his claim would be on him. As already indicated, under the law promulgated by the State Legislature and then by the Parliament, a displaced person is entitled to the allotment of land in lieu of that abandoned by him and all rules of procedure have been laid down with a view to achieve that end and it is only fair that all possible evidence that may either be made available by the displaced person or that is available to the Department should be looked at before turning down the claim of the displaced person particularly when, on preliminary verification, the same has been accepted and he has been in possession of the land for a number of years and in all probability, effected improvements therein.

It is further to be seen that the balance of convenience is also in favour of this procedure to be adopted. In case, after comparison with the original records, the claim of the displaced person is not found to be correct, the Department suffers no loss. The land can be taken back unless paid for at the rates fixed by the Department, and for the entire prior period during which he had been in possession of the additional area of land to which he was not, in fact, entitled, he is bound to pay damages for its use of occupation as determined by the Department in accordance with the rules. On the other hand, if the displaced person is made to deposit the price, then apart from the difficulty that he is bound to face in collecting such a huge amount, he will get no compensation for this money being locked up with the Department till the verification is made, if ultimately his claim is found

to be justified. There is no rule for the Department paying any damages or paying any interest on the amount of money deposited with it. Thus; whereas the procedure that is sought to be followed by the Department in view of the so-called instructions, works very great hardship on the displaced person, there is no corresponding hardship on the Department in comparing the entries with the original records in case of doubt.

In the cases before us the claimants even have taken the trouble of bringing from Pakistan copies of the *jamabandis* for the year 1947-48 in one case and 1948-49 in the other, duly authenticated by the High Commissioner for India. It was further urged that the Department was wrong in placing reliance on the *jamabandis* for the year 1946-47 in order to determine the condition of the land as it stood on 15th of August, 1947 and not placing reliance for the same on the *jamabandis* for the year 1947-48. Obviously *jamabandis* for the year 1946-47 cannot at best represent the state of the land as it was up to *kharif*, 1946 and rabi, 1947. *Khasra girdawari* for *rabi*, 1947, would be done in the month of March. Therefore, it is not correct to say that *jamabandi* for 1946-47 does necessarily represent the condition of the land as on 15th of August, 1947. On that day *kharif* harvest of 1947 would be standing on the lands and there is greater likelihood of the correct state of affairs as on 15th of August, 1947, being represented in the *jamabandi* of 1947-48. In any case, it is not necessary to elaborate this point because possibly the real state of affairs can be best gathered by looking at the original revenue records including *jamabandis* and *khasra girdwaris*, etc.

In view of the above, therefore, we are definitely of the opinion that there is no legal justification whatever for the Department presuming that

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the claim made by the displaced person is wrong and asking him to deposit the price of the additional land claimed by him, before taking into consideration the evidence that may be made available by having the so-called "Wagha comparison" with the original records. These appeals are, consequently, accepted, the orders of the learned simgle Judge set aisde and the impugned orders are quashed to the extent to which they direct the appellants to deposit the price of the additional land claimed. The appellants will have their costs against the Department here as well as before the learned Single Judge.

The other two appeals raise similar points. There is one additional feature which makes the cases of the appellants in those appeals still stronger. In both these appeals Nos. 372 and 379 of 1963 the Department had originally directed comparison with the original revenue records to be made at the Wagha border. Subsequently this order was reviewed and deposit of purchase price was added as a condition precedent. In view of the Full Bench decision of this Court in C.W. 1302/61 *Deep Chand, etc., vs. Additional Director,* dated 19th December, 1963, the Department has no power to review its own order and on this ground too, the subsequent order cannot stand. There appears to be force in this contention but it is not necessary to go into it because the appeals have to be accepted in view of the discussion relating to the above-mentioned four appeals. These two appeals are also accepted, the orders of the learned Single Judges set aside and the impugned orders directing the deposit of the money quashed. The appellants will have their costs in this Court as well as before the learned Single Judge.

K.S.K.