Union Of India & Anr vs Avtar Singh & Anr on 4 April, 1984

Equivalent citations: 1984 AIR 1048, 1984 SCR (3) 391, AIR 1984 SUPREME COURT 1048, 1984 PUNJ LJ 479, (1984) 1 LANDLR 627, 1984 (3) SCC 589

Author: D.A. Desai

Bench: D.A. Desai, A.P. Sen, V. Balakrishna Eradi

PETITIONER:
UNION OF INDIA & ANR

Vs.

RESPONDENT:
AVTAR SINGH & ANR.

DATE OF JUDGMENT04/04/1984

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
SEN, A.P. (J)
ERADI, V. BALAKRISHNA (J)

CITATION:
1984 AIR 1048 1984 SCR (3) 391
1984 SCC (3) 589 1984 SCALE (1)822

ACT:
Punjab Refugees (Registration of Land Claims) Act, 1948-s. 33-Revisional power of Central Government-Scope of-Whether can be exercised repeatedly.

HEADNOTE:
One Harnam Singh, father of the respondents, was owner of some agricultural land in the erstwhile Sind Province now forming part of Pakistan. After the partition of the country he along with his wife and three sons migrated to India. As displaced person, he lodged a claim on March 15, 1948 in respect of his entire holding on Pakistan. On the introduction of the Punjab Refugees (Registration of Land Claims) Act, 1948, on April 3, 1948 the said Harnam Singh, his sons and his wife filed separate claims alleging that in 1946 there was an oral partition of the land which originally belonged to Harnam Singh. The claims were

verified and allotments were made in favour of each claimant. The Chief Settlement Commissioner rejected a reference from the department and by his order dated August 21, 1961 held the allotments to be valid. Apprehending that the claim of ownership of land in Sind and the partition between himself, his sons and his wife and the allotment of land was being re-examined, on March 13, 1962 Harnam Singh submitted a representation to the Government of India for issuing a direction under s. 33 of the Act that the matter be treated as finally settled. On this representation, Shri N. P. Dube, Joint Secretary to the Government of India, Department of Rehabilitation wrote a D. O. letter dated May 31, 1963 to Shri J. M. Tandon, Deputy Secretary to the Government of Punjab, Rehabilitation Department, saying, inter alia. "that there is no point in waiting any more and the matter should be finalised on the basis of the judicial findings arrived at in the case. We also feel that there are no reasons to differ from those judicial pronouncements at this stage. The record received from the Punjab Government is, therefore, returned with the request that the case may be finalised as mentioned above". It appears that the Managing Officer of the Rehabilitation Department, Punjab Government submitted a note to move the Central Government under s. 33 of the Act for reopening and cancellation of the order of the Chief Settlement Commissioner dated August 21, 1961. The reopen a notice was issued to the allotees calling upon them to show cause why the order of the Chief Settlement Commissioner dated August 21, 1961 should not be set aside and allotment in favour of each of them should
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not be cancelled. The allotees contended that since the power of revision conferred by s. 33 of the Act had already been exercised by the Central Government, the same power of revision could not be repeatedly exercised particularly when no fresh material against the allotees was produced after the earlier decision. Ultimately a Joint Secretary to the Government of India exercising power of revision conferred by s. 33 by his order dated March 15, 1965 quashed and set aside the order of the Chief Settlement Commissioner dated August 21, 1961 and further directed that the allotment of land favour of Harbans Singh his sons and his wife be cancelled and that a fresh allotment be made on the footing that Harnam Singh alone was the owner of the land situated in Sind. The validity of the order dated March 15, 1965 of the Joint Secretary was challenged in the High Court by two sons of Harnam Singh, respondents in this appeal. Broadly agreeing with the view taken by a learned single Judge, a Division Bench while dismissing the Letters Patent appeal in the High Court, held that the D. O. Letter of the Joint Secretary dated May 31, 1963 conveyed the decision of the Government of India in exercise of powers under s. 33 and therefore, the power of revision against the order of the Chief Settlement Commissioner was exhausted because a quasi-

judicial tribunal had no power to revise or review its earlier decision on merits even if the earlier decision was wrong on facts or law. Accordingly, the High Court held that the impugned order of the Government of India dated March 15, 1965 was without jurisdiction and was invalid and of no legal efficacy. Hence this appeal.

Allowing the appeal,

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HELD : The contention that the power of revision cannot be repeatedly exercised and finality must attach to the orders would necessitate an examination in depth of the nature and extent of power conferred by section 33 of the Punjab Refugees (Registration of Claims) Act, 1948 which enables the Central Government to revise and reopen any proceeding under the Act and to pass any order in relation thereto as in the opinion of the Central Government the circumstances of the case require and as is not inconsistent with any of the provisions contained in the Act or the Rules made thereunder. But in the facts of the present case it is not necessary to undertake this exercise. The Court would proceed on the assumption that section 33 of the Act does not provide reservoir of power from which revisional jurisdiction can be exercised more than once in respect of the same order or the same proceeding. [403E-F]

In the instant case the question which would squarely arise is whether on an earlier occasion, the Central Government had exercised any revisional power conferred by section 33 in respect of the order dated August 21, 1961 of the Chief Settlement Commissioner. In other words, whether, as contended by the appellants, the letter of Shri N. P. Dube, Joint Secretary dated May 31, 1963 is a decision recorded by the Central Government in exercise of the power conferred by section 33 ? The letter of Mr. Dube dated May 31, 1963 does not record any decision of the Central Government. It merely says that it is not necessary to wait any more for response to the queries addressed to authorities in Pakistan and

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the matter should be finalised on the basis of finding arrived at in the case. It further proceeds to aver that there is a feeling that there is no reason to differ from those judicial pronouncements at `this stage'. Such expression of feeling could hardly tantamount to a decision of the Central Government under Sec. 33. By this letter the Central Government informed the Government of Punjab that the record is returned with the request that the case may be finalised as indicated in the letter. The revisional power is the power is the Central Government and not of the Punjab Government. There decision was left to the Punjab Government. There was nothing pending with the Punjab Government for finalisation Therefore, the High Court was clearly in error in treating the letter of Shri Dube dated May 31, 1963 as a decision of the Central Government in

exercise of the power conferred by Sec. 33. There was no occasion for the Central Government to exercise power under Sec. 33 and therefore, it is not possible to agree with the High Court that the letter records the decision of the Central Government under Sec. 33. If the letter of Shri Dube is not a decision of the Central Government under Sec. 33 of the Act, as a necessary corollary, the impugned decision must be treated as one renderer for the first time in exercise of the revisional power under Sec. 33 and therefore, it cannot be said to be one without jurisdiction. [403 G; 404 A; F-G; 405 B-E]

D. N. Roy and S. K. Bannerjee & Ors v. State of Bihar & Ors. [1971] 2 S.C.R. 522.

If every litigant in whose favour a competent authority has made an order can still approach the higher authority for the affirmance of the order without any rhyme or reason, the whole gamut of power of revisional jurisdiction would become a play thing for already successful party who may foreclose the decision and when needed can successfully urge that the power of revision is exhausted. [404 E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 503 of 1971.

From the Judgment and Order dated 22.5.1969 of the Punjab & Haryana High Court in L.P.A. No. 384 of 1966.

M. M. Abdul Khader and Ms. A. Subhashini for the appellants.

P.P. Rao for the Respondent No. 1 and R.S. Bindra and Harbans Singh for respondent No. 2.

The Judgment of the Court was delivered by DESAI, J. Avtar Singh and Dr. Kartar Singh two sons of S. Harnam Singh filed Civil Write No. 1242 of 1965 against their father S. Harnam Singh, respondent No. 2 and Union of India and Tehsildar cum Managing Officer, respondents Nos. 1 and 3 res-

pectively questioning the correctness and validity of an order dated March 15, 1965, Annexure `G' to the petition.

S. Harnam Singh was the owner of agricultural land comprised in Deh No. 100 as also a portion of the land included in Deh No. 99 situated in District Nawab Shah, in erstwhile Sind Province now forming part of Pakistan. Harnam Singh had three sons : Avtar singh, Dr. Kartar Singh and Harbans Singh. Smt. Tej Kaur was the wife of Harnam Singh. It was alleged that in the year 1946 Harnam Singh effected a partition of agricultural land between himself, his three sons and his wife Smt. Tej Kaur each being given an almost equal share. It was alleged that intimation of the alleged partition

was sent to the revenue authorities of Sind Province with a request to effect necessary mutation in the revenue records showing land as having been given in the partition to the particular person. After the partition of the country S. Harnam Singh his three sons and his wife migrated to India and they claim to be displaced persons. Harnam Singh lodged a claim on March 15, 1948 in respect of the entire land including the land belonging to the heirs of Ch. Attar Singh who was his father-in-law. Later on, on April 21, 1948 Harnam Singh intimated to the Rehabilitation Authorities that out of a total claim of 300 acres of land lodged by him, about 75 acres of land was of the ownership of Ch. Attar Singh and confined his claim to the total area of 225 acres of land. It may be mentioned that in the claim lodged on March 15, 1948 there was no reference to the partition effected by Harnam Singh between himself his sons and his wife. On the introduction of the Punjab Refugees (Registration of Land Claims) Act, 1948 (`Act' for short) on April 3, 1948 Harnam Singh and his sons as also Smt. Tej Kaur filed separate claims on the basis of the partition of the land which originally belonged to S. Harnam Singh. It was alleged that these claims were verified and allotments of land were made to the extent of 21-8 standard acres in favour of each claimant on temporary basis. On October 5, 1953, Harnam Singh and his sons approached the authorities in the Rehabilitation Department to convert temporary allotment into quasi-permanent allotment. Deputy Registrar Land Claims accepted the request of Harnam Singh and his sons, both with regard to the ownership of the land as well as partition thereof amongst various members of the family. However, it was recommended that on the basis of the revised calculations, each claimant would be entitled to 19-11 1/2 S.A. of land instead of 21-8 S.A. and the excess allotment should be cancelled This recommendation was approved by the competent authority vide its order dated October 28, 1953 as also by the Deputy Custodian of Evacuee Property as per its order dated November 11, 1953. Consequently excess allotment of 8-14 1/2 standard acres in respect of five claimants was cancelled and the remaining allotment was ordered to be made on quasi-permanent basis. It was alleged that later on proprietary rights were conferred on each claimant in respect of the land allotted to him by the Managing Officer. Some time in 1960, a notice was received by the allottees from the Chief Settlement Commissioner, Punjab calling upon them to show cause why their allotment should not be cancelled. In view of the notice, it became necessary for the allottees to establish not only the ownership of land in Sind but the partition thereof amongst themselves. The allottees claimed that they offered the necessary proof which satisfied the Chief Settlement Commissioner who had issued notice on the basis of Jamabandi entries received from Pakistan. Accordingly the Chief Settlement Commissioner by his order dated August 21, 1961 confirmed the allotment, directed conferment of quasi- permanent status and rejected the departmental reference. Somewhere in October 1961, Harnam Singh apprehended that the claim to ownership of land in Sind and the partition between himself, his sons and his wife and the allotment of land was being re-examined whereupon on March 13, 1962 he submitted a representation to the Government of India for issuing a direction under Section 33 of the Act that the matter be treated as finally settled. It is alleged that on this representation, the Government of India sent for the record of the whole case, called for the comments of the Punjab Rehabilitation Department which led Land Claims Officer to forward his note dated October 27, 1961 to the Government of India alongwith the whole record of the case. It is alleged that the case was examined and the Joint Secretary to the Government of India, Ministry of Rehabilitation, one Shri Dube, conveyed the decision of the Government of India to the Deputy Secretary to the Government of Punjab, Rehabilitation Department, Jullundur vide his D.O. Letter No. 13(66) L & RO-62 dated May 31, 1963 with certain observations which it is alleged tend to show

that the power of revision under Sec. 33 was exercised and both, the holding of the land in Sind, partition thereof between Harnam Singh, his sons and his wife and the allotment of land to them as displaced persons in India were considered as valid and finally settled. It appears that the Managing Officer of the Rehabilitation Department, Punjab Government submitted a note dated November 5, 1963 to move the Central Government under Sec. 33 of the Act for cancellation of the order of the Chief Settlement Commissioner dated August 21, 1961. Thereupon the Chief Settlement Commissioner issued a notice dated May 21, 1964 to the allottees calling upon them to show cause why allotment in favour of each of them should not be cancelled. The allottees appeared and submitted their objections to the re-opening of the case inter alia contending that the power of revision conferred by Sec. 33 of the Act cannot be repeatedly exercise and it having been earlier exercised and the allotment having been held to be valid as per the letter of Shri Dube dated May 31, 1963, the Central Government had no jurisdiction either to revise or review its previous decision more particularly when no fresh material against the allottees is produced after the earlier decision. Ultimately the Joint Secretary of the Government of India exercising power of revision conferred by Sec. 33 by his order dated March 15, 1965 Annex. G to the writ petition quashed and set aside the order of the Chief Settlement Commissioner dated August 21, 1961 and further directed that the allotment of land in favour of Harnam Singh, his sons and his wife be cancelled and that a fresh allotment be made on the footing that Harnam Singh alone was the owner of the land situated in Sind. In other words, the claim that each sons of Harnam Singh had acquired land on partition was rejected as untenable. Thereupon, two sons of Harnam Singh, Shri Avtar Singh and Dr. Kartar Singh filed Civil Writ Petition in the High Court of Punjab at Chandigarh.

An affidavit in opposition was filed on behalf of respondent Nos. 1 and 3 by one A. G. Vaswani, Settlement Commissioner (A) & Ex-Officio Under Secretary to the Government of India, Ministry of Labour Employment & Rehabilitation inter alia contending that in April 1948 when for the first time Shri Harnam Singh lodged his claim as displaced person against the loss of his land and property in Pakistan, he had categorically stated that 225 acres of land situated in Sind belonged to him and there was no express or implied, overt or covert reference or even a whisper of a partition between himself and his sons and wife before he migrated to India. It was also contended that the claim lodged by Harnam Singh in April, 1948 was attested by Shri Harnam Singh, then Deputy Custodian of Evacuee Property, East Punjab and at the relevant time Judge of the Punjab High Court. It is alleged that on the basis of the alleged partition, separate claims were lodged for the first time in June 1948 each claiming 48 acres of land which was reduced to 32 acres. It was specifically contended that the separate claims on the basis of alleged oral partition were an after thought and were submitted to escape a higher graded cut under the Quasi-permanent Allotment Scheme. Other averments in the affidavit are hardly relevant. With respect to the D. O. Letter of Shri Dube, it was stated that the opinion expressed in it was not a judicial decision in exercise of the revisional jurisdiction under Sec. 33 of the Act nor could it constitute an exercise of power under Sec. 33 of the Act. It was submitted that the revisional power was exercised for the first time when the allotment was cancelled and a direction was given for fresh allotment on the basis that Harman Singh alone was the owner of the land situated in Sind.

The writ petition came up before a learned Single Judge of the High Court. The learned Judge by his Judgment and order dated October 4, 1966 made the rule absolute and quashed the order dated

March 15; 1965.

The Union of India preferred Letters Patent Appeal No. 384 of 1966 which was heard by a Division Bench of the Punjab and Haryana High Court. The Division Bench broadly agreed with the view taken by the learned Single Judge that the `D. O. letter of Shri Dube dated May 31, 1963 conveyed the decision of the Government of India in exercise of powers under Sec. 33 and therefore, the power of revision against the order of the Chief Settlement Commissioner was exhausted because a quasi-judicial tribunal has no power to revise or review its earlier decision on merits even if the earlier decision is wrong on facts or law'. Accordingly, while dismissing the L.P. Appeal the High Court held that the impugned order of the Government of India dated March 15, 1965 was without jurisdiction and was invalid and of no legal efficacy. Hence this appeal by special leave by the Union of India.

Mr. Abdul Khader, learned counsel for the appellant urged that the High Court was in error in treating D. O. letter No. 33 (66)/ L & RO-62 of Shri N. P. Dube dated May 31, 1963 as a decision reached or recorded in exercise of the power conferred by Section 33 so as to exhaust the power of revision. Consequently, it was urged that the High Court was in error in holding that the decision of the Central Government dated March 15, 1965 was without jurisdiction.

Chronology of events and the assertion and counter assertion would reveal that controversy centres round the nature and character of the letter dated May 31, 1963 of Shri N. P. Dube, Joint Secretary to Shri J. M. Tandon, Deputy Secretary to the Government of Punjab, Rehabilitation Department, Jullundur. More specifically the question is whether it was an inter- departmental communication or it was the decision recorded in exercise of the power conferred by Sec. 33 of the Act? If it was not a decision recorded by the Central Government in exercise of the power conferred under Sec. 33 the judgment of the High Court would be unsustainable.

The Act as its long title shows was enacted to provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith. Consequent upon the partition of the country, there was migration of population both the ways. Large number of residents of area now forming part of Pakistan migrated to India and there was also a flow in the reverse direction. Those who migrated under those tragic, traumatic and compulsive circumstances were forced to leave their properties at the place they were settled for generations. Both India and Pakistan were faced with a huge problem of settling persons thus displaced. In order to compensate such displaced persons who were uprooted out of their abodes, the Act was enacted.

Sec 2 (b) defines `displaced person' to mean `any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the first day of March, 1947, left, or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been tendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, and also includes the successors-in-interest of any such person.' `Evacuee property' has been defined in Sec. 2 (c) to mean `any property which has been

declared or is deemed to have been declared as evacuee property under the Administration of Evacuee Property Act, 1950.' Sec, 14 of the Act envisages constitution of a compensation pool which shall consist of evacuee property both in cash and kind. Sec. 4 requires all displaced persons having a verified claim to make applications for the payment of compensation. Sec. 7 casts a duty on the Settlement Commissioner to make an enquiry in such manner as may be prescribed and having due regard to the prescribed scales of compensation, the nature of the verified claim and other circumstances of the case, to ascertain the amount of compensation to which the applicant is entitled. After following the procedure prescribed in several sub- sections of Sec. 7, the Settlement Commissioner has to make an order determining net amount of compensation, if any, payable to the applicant. Sec. 8 prescribes the form and manner of payment of compensation. Compensation can be paid in cash, in Government bonds, by sale to the displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him etc. Sec. 22 provides for appeal against the order of the Settlement Officer or a Managing Officer to the Settlement Commissioner as the case may be, in such form and manner as may be prescribed. Sec. 23 provides for an appeal against the orders of the Settlement Commissioner or the Additional Settlement Commissioner or an Assistant Settlement Commissioner to the Chief Settlement Commissioner in such form and manner as may be prescribed, with this proviso that no appeal shall lie from any order passed in appeal under Sec. 22. The next important section material for the present appeal in Sec. 33 which reads as under:-

> "33 : The Central Government may at any time call for the record of any proceeding under the Act and may pass such order in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in the Act or the rules made thereunder."

Having noticed the relevant provisions, certain facts may be reiterated. Harnam Singh a displaced person submitted a land claim on March 15, 1948 at Delhi for an area of 300 acres said to have been abandoned by him in Nasrat Tehsil, district Nawabshah in Sind. He filed another claim at Jullundur on April 1, 1948, reducing his claim to 225 acres. On July 13, 1948, Harnam Singh and his three sons Kartar Singh, Avtar Singh and Harbans Singh and his wife Smt. Tej Kaur lodged separate claims each for 48 acres of land in lieu of land alleged to have been abandoned by each one of them in Pakistan. There was a modified claim submitted on February 22, 1949. The difference between the first and the second claim arises from the altered stand adopted by the claimants. Initially Harnam Singh claimed to be the exclusive owner of 225 acres of land but when separate claims were submitted by his three sons and his wife it was alleged that there was orapl artition of the property belonging to Harnam Singh between himself his wife and his three sons. Each one of the five claimants verified his own claim, whereupon each was allotted 21-8 S. A. of land. Upon their request to convert temporary allotment into quasi-permanent allotment, their cases were examined by the Managing Officer who found that there was an excess allotment of 1-12 1/2 standard acres in case of each of the claimants and with their consent the excess area of 8-14 1/2 standard areas was cancelled. A little while after the officer in-charge (Land claims) Jullundur examined the case of each of the claimants and made a reference to the Chief Settlement Commissioner on September 2, 1960 recommending that 48-14 standard acres was in excess of the entitlement of the five claimants in view of the entries in Jamabandi and the excess allotment be cancelled. A further enquiry

revealed that the claim of Harnam Singh that there was partition between himself and his sons was untenable and that except Harnam Singh, the other claimants did not have any land of their ownership and therefore the entire allotment deserved to be cancelled. The Chief Settlement Commissioner rejected the reference by his order dated August 21, 1961. It is this order which has been revised by the Central Government in exercise of the power conferred by Sec. 33 by the impugned order dated March 15, 1965.

It would appear from the mere recital of the facts that the Chief Settlement Commissioner who rejected the reference as per its order dated August 21, 1961 held the allotment in favour of the five claimants to be valid, legal and correct.

If the decision of the chief Settlement Commissioner dated August 21, 1961 is wholly in favour of Harnam Singh and his sons and wife, they could, by no stretch of imagination, be said to be persons aggrieved by the decision of the Chief Settlement Commissioner. Harnam Singh and his sons contended that the allotment was valid and that the reference made by the Officer-in-charge (land claims) department must be rejected. The Chief Settlement Commissioner accepted this submission of Harnam Singh and his sons and rejected the reference. Can it ever be said that a decision wholly in favour of Harnam Singh and his sons is one adverse to them or that they are aggrieved by the decision ?

It is now necessary to turn to an intervening event. It appears that the Chief Settlement Commissioner while rejecting the reference and accepting the allotment in favour of Harnam Singh and his sons on the basis of holding and oral partition as legal and valid observed in para 12 of the order as under :

> "Further in the terms of the proprietary rights Sanad if any, evidence comes to the notice of the department which establishes any of the facts mentioned in the clause below, the Central Govt. can at any time resume whole or any part of the property."

After converting temporary allotment into quasi-permanent allotment a Sanad was issued to each claimant. One condition in the Sanad was that if it appears at any time that the grant or allotment of land described in the Sanad, is obtained by fraud, false representation or concealment of any material fact, it shall be lawful for the President to resume the whole or any part of the said property so allotted.

In view of the aforementioned observations and in absence of any document evidencing partition of the property as claimed by Harnam Singh, the Punjab Government made a reference to the Pakistan authorities for the necessary verification of entries in the Government record. A similar request was also addressed to the Central Government which led to a query being addressed to the High Commissioner for India in Pakistan to obtain documentary evidence if any in this behalf. Nothing concrete emerged from these queries. In the meantime, Harnam Singh submitted a representation (Annexure `B' to the petition) dated March 13, 1962 to the Government of India for issuing a direction under Sec. 33 of the Act that the matter be treated as finally settled. Some correspondence ensued between the Union Government and the Government of Punjab which ultimately led to Shri

N.P. Dube, Joint Secretary, Ministry of Rehabilitation sending a letter dated May 31, 1963 to the Deputy Secretary to the Government of Punjab, Rehabilitation Department, Jullundur which reads as under :

"N.P. Dube, Regd. A.D.
Joint Secretary. D.O. No. 13 (66)/L&R/62
W.H. & R.
(Department of Rehabilitation)
31st May, 1963

My dear Tandon,

Please refer to Balmukand Sharma's D.O. letter No. 422/SINGH dated the 29th August, 1962, in connection with the representation filed by Shri Harnam Singh P.C.S (Retd). The High Commissioner for India in Pakistan was also addressed by Secretary in August, 1962, to get the required information but the Pakistan Government have not been able to supply it so far. The matter has, therefor, been considered in this office and it is felt that there is no point in waiting any more and the matter should be finalised on the basis of the judicial findings arrived at in the case. We also feel that there are no reasons to differ from those judicial pronouncements at this stage. The record received from the Punjab Government is, therefore, returned with the request that the case may be finalised as mentioned above.

Yours sincerely, Sd/-

N.P. Dube 1.6.63 Shri J.M. Tandon Deputy Secretary to the Government of Punjab, Rehabilitation Department, Jullundur."

On November 5, 1963, the Managing Officer, Rehabilitation Department, Government of Punjab submitted a note inter alia pointing out that the story of partition alleged by Harnam Singh and his sons is a myth and consequently, except Harnam Singh, no other claimant was entitled to any allotment and therefore, the decision of the Chief Settlement Commissioner dated August 21, 1961 requires to be reopened under Sec 33 and allotment upheld by him should be cancelled. Upon this note a reference was made to the Central Government. Thereupon a notice dated May 21, 1964 was issued to Harnam Singh and his sons, his wife Smt. Tej Kaur having died in the meantime, calling upon them to show why the order of the Chief Settlement Commissioner dated August 21, 1961 should not be set aside and the allotment in favour of each allottee be not cancelled. Ultimately, the impugned order was passed.

Undoubtedly, the impugned order is made under Sec. 33 which confers a wide power of revision on the Central Government. The power of widest amplitude for revising and reopening any proceeding under the Act and to pass any order in relation thereto as in the opinion of the Central Government the circumstances of the case require and is not inconsistent with any of the provisions contained in the Act or the rules made thereunder is conferred on the Central Government. This is undoubtedly a power of revision. It is not even hedged in by any concept of limitation. Such power of wide plenitude had to be conferred on the Central Government to set right any illegal unfair, unjust or

plainly untenable order because the proceedings under the Act were not adversary in form and character which may lead to the one or the other party approaching the Central Government to set right the matter. If a displaced person obtains allotment from the compensation pool, to which he was not entitled, certainly the Central Government would hardly come to know in the absence of any opposite party or adversary drawing attention of the Central Government to such unjust enrichment. Therefore, Parliament conferred a very wide power of revision on the Central Government to reopen any proceeding or order under the Act. This was hardly disputed.

It was, however, contended that a power of revision cannot be repeatedly exercised and there must be attached finality to the orders. This submission would necessitate an examination in depth of the nature and extent of power conferred by Sec. 33. But in the facts of the present case we consider it unnecessary to undertake this exercise. We would proceed on the assumption that Sec. 33 does not provide a reservoir of power from which revisional jurisdiction can be exercised more than once in respect of the same order or the same proceeding. In this view of the matter the decision in Everest Apartments Co-operative Housing Society Ltd. v. State of Maharashtra and Ors. (1) is hardly of any assistance.

The question that would squarely arise is : whether on an earlier occasion, had the Central Government exercised any revisional power conferred by Sec. 33 in respect of the order dated August 21, 1961 by the Chief Settlement Commissioner by which the departmental reference was rejected and the Chief Settlement Commissioner had upheld the allotment of land in favour of Harnam Singh and his sons.

Mr. P.P. Rao, learned counsel for the respondents strenuously urged that the letter of Shri N.P. Dube dated May 31, 1963 is a decision recorded by the Central Government in exercise of the power conferred by Sec. 33 in respect of the proceeding in which allotment made in favour of Harnam Singh and his sons was upheld by the Chief Settlement Commissioner and therefore, the order of the Chief Settlement Commissioner dated August 21, 1961 became final and could not be the subject matter of a revision second time, under Sec. 33 of the Act. There is no substance in this contention.

It needs to be recalled that the decision of the Chief Settlement Commissioner dated August 21, 1961 was wholly in favour of Harnam Singh and his sons. Atleast Harnam Singh and his sons could not be said to be persons aggrieved by the order so as to move the Central Government invoking its revisional power under Sec. 33. Mr. Rao however, contended that the representation Annexure `D' dated March 13 of Harnam Singh reveals that he apprehended that the case may be reopened and therefore, by his representation he moved the Central Government to affirm or confirm the decision of the Chief Settlement Commissioner dated August 21, 1961. We remain unimpressed. If every litigant in whose favour a competent authority has made an order can still approach the higher authority for the affirmance of the order without any rhyme of reason, the whole gamut of power of revisional jurisdiction would become a play thing for already successful party who may foreclose the decision and when needed can successfully urge that the power of revision is exhausted. Further, assuming Harnam Singh made the representation apprehending danger to his allotment, the letter of Mr. Dube dated May 31, 1963 does not record any decision of the Central Government. It merely says that it is not necessary to wait any more for response to the queries addressed to authorities in

Pakistan and the matter should be finalized on the basis of finding arrived at in the case. It further proceeds to aver that there is a feeling that there is no reason to differ from those judicial pronouncements at `this stage'. Such expression of feeling could hardly tentamount to a decision of the Central Government under Sec. 33. It is not for a moment suggested that the decision of the Central Government has to be recorded in any particular form. In D.N. Roy and S.K. Bannerjee & Ors. v. State of Bihar & Ors. (1) a letter addressed by Under-Secretary to the Government of India to a particular person Stating therein `that with reference to the application of the addressee on the subject noted, he was directed to say that after careful consideration the Central Government by the letter rejects the revision application as being time- barred' was treated as a decision of the Central Government. This calls for no comments because the letter is self- explanatory. There is nothing in Shri Dube's letter remotely comparable with the letter in the aforementioned case. On the contrary the Central Government informed the Government of Punjab that the record is returned with the request that the case may be finalised as indicated in the letter. The revisional power is the power of the Central Government and not of the Punjab Government. The decision was left to the Punjab Government. There was nothing pending with the Punjab Government for finalisation. Therefore, the High Court was clearly in error in treating the letter of Shri Dube dated May 31, 1963 as a decision of the Central Government in exercise of the power conferred by Sec. 33. There was no reason for decision nor any occasion for the Central Government to exercise power under Sec. 33 and therefore, it is not possible to agree with the High Court that the letter records the decision of the Central Government under Sec.

33. If the letter of Shri Dube is not a decision of the Central Government under Sec. 33 of the Act, as a necessary corollary, the impugned decision must be treated as one rendered for the first time in exercise of the revisional power under Sec. 33 and therefore, it cannot be said to be one without jurisdiction. In this view of the matter, the appeal will have to be allowed.

Mr. Bindra, learned counsel who appeared for some of the respondents made a strenuous effort to persuade us to look into the equities of the case. In fact, we are wholly disinclined to undertake this exercise of evaluating facts or evidence in a petition for a writ of certiorari. Further in the impugned decision the facts as appearing from the record and submissions made by the learned counsel for claimants are exhaustively dealt with and no case for interference is made out. Only two aspects however may be referred to.

Harnam Singh claimed to be the owner of 225 acres of land situated in erstwhile Sind Province. In the first claim lodged by him, he clearly stated that he was the owner of 300 acres. He then modified it to 225 acres. In neither of the two claims, he ever suggested that there was a partition between him and his sons also giving a share to his wife. The story of partition clearly appears to be an after thought because it is helpful in obtaining higher allotment. No documentary evidence has been placed on record to support the case of partition which clearly appears to have been an after thought. Earlier Jamabandi entries from Pakistan permitted a negative inference that there was no partition. The Central Governments while setting aside the order of the Chief Settlement Commissioner dated August 21, 1961 recorded the finding that : (i) there is no writing or deed of partition : (ii) Revenue records show the name of Shri Harnam Singh alone on the basis of the sale deed in his exclusive name : (iii) there are no receipts indicating separate payment of land revenue

by any one of the respondents after alleged partition; (iv) no objection was taken by the sons at the time of the filing of the claim by the father; (v) there is no mention of individuals share in the claim filed by the father; These are relevant considerations which would certainly throw doubt on the claim of oral partition alleged to have been effected by Harnam Singh. Once the allegation of oral partition is rejected, the respondents are not entitled to any consideration even on equitable grounds.

In the concluding stages of the arguments the respondents contended that Harnam Singh has died and his heirs having not been substituted, the appeal has abated. There is no merit in this contention. Harnam singh was not the petitioner before the high Court. He was respondent No.

2. No relief was claimed against him. Further Harnam Singh was not asked to surrender the land. Petitioners before the High Court were adversely affected by the impugned decision. Death of Harnam Singh would therefore, have no impact on this appeal. Therefore, the contention is rejected.

In view of the above discussion, this appeal is allowed and the judgment and the order of the learned Single judge dated October 4, 1966 in Civil Writ No. 1242 of 1965 as also the judgment and order in L.P.A. No. 384 of 1966 dated May 22, 1969 of the same High Court are quashed and set aside and the decision of the Central Government dated March 15, 1965 is restored with no order as to costs throughout.

H. S. K. Appeal allowed.