Hoshnak Singh vs Union Of India & Ors on 27 February, 1979

Equivalent citations: 1979 AIR 1328, 1979 SCR (3) 399, AIR 1979 SUPREME COURT 1328, 1979 (3) SCC 135 (1979) 3 SCR 399 (SC), (1979) 3 SCR 399 (SC)

Author: D.A. Desai

Bench: D.A. Desai, P.N. Shingal

PETITIONER:
HOSHNAK SINGH

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT27/02/1979

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
SHINGAL, P.N.

CITATION:
1979 AIR 1328 1979 SCR (3) 399
1979 SCC (3) 135
CITATOR INFO :
RF 1981 SC 960 (12)
D 1984 SC 463 (5)

ACT:
Displaced Persons (Compensation & Rehabilitation) Act, 1954-Ss. 10 & 12-Scope of.
Res judicata-Principles analogous to res judicata when could be invoked.

HEADNOTE:
A part of the land allotted to the appellant on quasi-permanent basis as a displaced person from West Pakistan was acquired by the Government. When the question of payment of compensation in respect of the land acquired was pending, the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was passed which enabled holders of quasi-permanency rights to obtain permanent settlement pursuant to which permanent settlement in respect of acquired land was made in

favour of the appellant.

Alleging that the land allotted to the appellant was not allottable on a permanent basis, the Chief Settlement Commissioner, by his order dated 17th March, 1961, cancelled the allotment. The appellant's petition questioning the correctness of this decision was dismissed by the High Court in limine.

Thereupon the appellant preferred a petition under s.33 of the Act to the Joint Secretary to the Government of India, Rehabilitation Department, challenging the order of the Chief Settlement Commissioner. By his order dated 29th September, 1964 the Joint Secretary rejected the petition pointing out that the cancellation of the appellant's permanent settlement rights in the land was in accordance with law and that no interference was called for.

The appellant filed a writ petition in the High Court. In rejecting the appellant's writ petition impugning the order dated 29th September, 1964 the High Court was of the view that it was barred by principles analogous to res judicata because if that petition were allowed, it would in effect, amount to cancellation of the order dated the 17th March, 1961 which became final as against the appellant on dismissal of his first petition.

Allowing the appeal,

^

HELD: 1(a) Where a petition under Art. 226 is dismissed in limine without a speaking order, such a dismissal would not constitute a bar of res judicata to a subsequent petition on the same cause of action. When a petition is dismissed on the ground that the petitioner has an alternative remedy by way of appeal or revision under a statute and on failure to get relief after pursuing the remedy by way of appeal or revision, he moved the High Court, it would be incorrect to dismiss the petition on the ground that the order made by the revisional authority had the effect of merging the original order with the order of the revisional authority, and that the challenge on the fresh cause of action to the order of the revisional authority would of necesity be a challenge to the original order also and that therefore the petition would be barred by principles analogous to res judicata as the first order had become final. [407C-E]

400

Daryao & Ors. v. State of U.P. & Ors. [1962] 1 SCR 574; Virudhunagar Steel Rolling Mills Ltd. v. The Govt of Madras, [1968] 2 SCR 740; Tilokchand Motichand & Ors. v. H. B. Munshi & Anr., [1969] 2 SCR 824; referred to.

In the instant case in the first writ petition the appellant questioned the correctness of the order of the Chief Settlement Commissioner dated 17th March, 1961 without claiming therein any compensation for the land acquired. That having been dismissed in limine he invoked the revisional jurisdiction under s. 33 of the Act. When that

petition was dismissed by the revisional authority he preferred the second writ petition. What he prayed in the second petition was a direction quashing the order dated 29th September, 1964 of the Joint Secretary to the Government of India. The High Court was, therefore, in error in rejecting the second petition on the sole ground that the order of 17th March, 1961 merged into the order of 29th September, 1964 and in substance the challenge was to the order dated 17th March, 1961 which had become final. [408 A-B]

(b) Secondly, if the claim for compensation was not raised in the first petition but was specifically raised in the second, it would not be dismissed on the ground that it was barred by principles analogous to res judicata. [408 D]

2(a) It has been well established by a long line of decisions of this Court that after July 22, 1952 the Custodian had no authority to cancel or modify quasi-permanent allotment, that the allottes of these rights could not be dispossessed at the whim or caprice of the Custodian, that the quasi-permanent rights were heritable and that the holders were entitled to permanent settlement by issuance of sanad. Added to this was the fact that r. 14(6) of the Administration of Evacuee Property (Central) Rules, 1950 as amended from July 22, 1952 restricted the power of the Custodian to resume or cancel quasi-permanent rights of the allottees except in the circumstances mentioned in the subrule and no material is placed on record to show that the Custodian had exercised his power under r. 14(6) of the Rules. [411 D-E]

P. D. Sharma v. State Bank of India, [1968] 3 SCR 91; Amar Singh v. Custodian, Evacuee Property, Punjab, [1957] SCR 801; State of Punjab v. Suraj Prakash Kapur, etc., [1962] 2 SCR 711; Joginder Singh & Ors. v. Deputy Custodian General of Evacuee Property, [1962] 2 SCR 738 at 740; referred to.

(b) Nor again is there any material to show that the Custodian had the power to cancel the allotment under the State Rules. It was not shown that the State Government had framed any re-settlement scheme and that the allotment was cancelled for that purpose. [412 H]

3 (a) Under the Evacuee Property Act, 1950 property which was declared us evacuee property vested in the Custodian and was allotted to displaced persons on a quasi-permanent basis. To obviate difficulties caused by continued unextinguished title of the evacuee, the 1954 Act was passed, under s. 12(2) of which the right, title and interest of any evacuee in the evacuee property specified in the notification issued under the section stood extinguished and the evacuee property would vest absolutely in the Central Government. Evacuee property acquired in this manner formed part of the compensation pool. Therefore, the appellant's property which was acquired in 1953, much before the coming into force of the 1954 Act, could not have become

part of the compensation pool. [413 G-H]
401

(b) Even assuming that though the property was taken over by the Central Government in 1953 evacuee interest in it had not been extinguished till a notification under s. 12 of the 1954 Act had been issued and that on the issue of the notification it became part of the compensation pool, the consequence envisaged by s. 10 of the 1954 Act must ensue. It is that so long as the property remained vested in the Central Government it shall continue in possession of the person to whom it was allotted on the same conditions on which he held the property immediately before the date of acquisition. [914 C-D]

In the present case if the property had been taken over by the Central Government much before the 1954 Act came into force neither s. 12 of the 1954 Act nor r. 49 would be attracted. If on the other hand the evacuee interest in the property came to be extinguished on the issue of a notification under s. 12, s. 10 would be attracted and the appellant would be entitled to hold the property till it continued to vest in the Central Government under s. 12. In other words in either event he would be entitled to compensation. [415 C-D]

(c) Nor again is it correct to say that it was a fresh allotment under s. 10 of the 1954 Act. The land was allotted in 1949 and s. 10 does not purport to make a fresh allotment. [415 A]

4(a) The whole of chapter VIII of the 1955 Rules (which includes rr. 49 to 69) would not apply because the land allotted was agricultural land and the allotment was made under the notification of the Government of Punjab dated 8th July, 1949. [416 C]

(b) Once chapter VIII of the 1955 Rules and especially r. 49 which provides for payment of compensation in the form of land is out of the way, there is nothing in the Act which would debar a quasi-permanent allottee asking for compensation in cash and the Govenment paying it. Moreover on the former occasion the appellant was paid compensation in cash for a part of the land acquired from him. [417 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2082 of 1969.

Appeal by Special Leave from the Judgment and Order dated 14-2-1969 of the Punjab and Haryana High Court in L.P.A. No. 103/68.

R. S. Narula, S. K. Mehta, T. S. Doabia, P. N. Puri and K. R. Nagaraja, for the Appellant.

Girish Chandra for Respondent No. 1.

Hardev Singh and R. S. Sodhi for Respondents 2-5. The Judgment of the Court was delivered by DESAI, J.-This appeal by special leave arises from the dismissal of the Civil Writ Petition filed by the present appellant by a learned single Judge of the Punjab & Haryana High Court as also dismissal in limine of the Letters Patent appeal preferred by him.

Appellant is a displaced person from West Pakistan. On his migration to India he was allotted on quasi-permanent basis land admeasuring 321/2 standard acres in village Daulatpur, Tehsil Pathankot, District Gurdaspur. First respondent Union of India acquired land admeasuring 1243 canals, 5 marlas which included 15 acres of land alloted to the appellant, for constructing a railway line. According to the appellant he was paid cash compensation for the same. First respondent further acquired in 1950 some land for construction National Highway from Jammu to Jullundur and the acquistion included a portion of the land allotted to the appellant and along with other allottees he was paid cash compensation for the same. First respondent wanted an open plot of land for setting up a housing colony for rehabilitating some refugees from Mirpur (Kashmir) and in all it took possession of land comprising 7.88 acres of non-evacuee land and 6.64 acres of evacuee land. This acquisition included land admeasuring 1 standard acre and 151/2 units of land allotted to the appellant. Possession of the land including the land of the appellant was admittedly taken over in July 1953. Since then the appellant has been requesting the first respondent and other competent authorities for payment of compensation for the same. In the mean time after the introduction of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, ('1954 Act' for short), allotment of land to appellant which was till then on quasi permanent basis was converted into permanent basis. As the appellant was clamouring for compensation for the land taken from him, the Chief Settlement Commissioner, Punjab, made an order on 17th March 1961, Annexure 'C', whereby a reference made from the Evacuee Property Department was accepted and the permanent settlement rights conferred on the appellant in respect of 1 standard acre and 151/2 units of land were cancelled on the ground that there already existed houses over that portion of the land and the land was described as ghair mumkin abadi and was not allottable on permanent settlement, as agricultural land against the verified claim of the appellant. The appellant questioned the correctness of this order in Writ Petition No. 559/61 in the High Court which was dismissed in limine on 22nd March 1961 and which has led to a contention on behalf of the respondents that the subsequent writ petition from which the present appeal arises is barred by the principles analogous to res judicata. After the dismissal of the aforementioned writ petition the appellant approached the Financial Commissioner (Rehabilitation Department), Chandigarh, as per his representation Annexure 'D' dated 15th March 1963 requesting him to pay cash compensation for the land taken over by the first respondent which till such taking over was held by the appellant on quasi permanent allotment. On receipt of this representation the appellant was directed as per Annexure 'E' dated 25th April 1963 to appear before the Financial Commissioner (Taxation) on 16th March 1963 at Chandigarh. The appellant accordingly appeared before the Financial Commissioner (Taxation) and represented his case for cash compensation. Subsequent thereto, Secretary to the Government of Punjab, Rehabilitation Department, wrote to his counterpart in the Central Government requesting the first respondent to concur with the decision of the Punjab Government for payment of cash compensation to the appellant adding that the land held by the appellant on quasi permanent basis

was taken over for the purpose of the first respondent and that as the area involved was less than 2 acres, the decision to pay cash compensation in respect of such area arrived at in the meeting held between the officers of the Punjab Government and the Ministry of Rehabilitation on 27th August, 1957 would govern the case. Presumably in response to this communication from the Punjab Government the then Home Minister wrote a demi official letter to the then Chief Minister of Punjab in which it was admitted that the land allotted to the appellant was in rural areas and a part of it was required later on for public purpose and that in view of the decision arrived at the meeting on 27th August, 1957 the appellant would be entitled to cash compensation and requested the Chief Minister to process the case accordingly. Thus, even though both the Governments agreed in their inter-departmental communications that the appellant would be entitled to cash compensation, nothing tangible came out with the result that the appellant preferred a petition under s. 33 of the 1954 Act challenging the order dated 17th March 1961 of the then Settlement Commissioner cancelling the permanent settlement rights conferred upon the appellant. This application was rejected by the Joint Secretary to the Government of India observing that the cancellation of the permanent settlement rights was in accordance with law and no interference was called for. Thereafter the appellant filed the writ petition from which the present appeal arises.

After the writ petition was filed and rule nisi was issued, a return was filed as per the affidavit of one R. C. Aggarwal, Under Secretary to Government of Punjab, Rehabilitation Department, presumably on behalf of all the respondents which undoubtedly amongst others, include the Union of India, the first respondent, and the State of Punjab, the second respondent. It must be specifically mentioned that the Union of India did not file any separate return and accepted the return filed by and on behalf of the State of Punjab and other officers of the Punjab Government. There are certain averments in this return which must be noticed. Appellant is a displaced person and he was allotted 32-1/2 standard acres of land on quasi permanent basis is in fact admitted. It is equally admitted that the land which was taken over for setting up a colony for rehabilitation of some families from Kashmir included one standard acre and 15-1/2 units of land which was till then held by the appellant and that the land was taken over in July 1953. It was contended that when land is allotted on quasi permanent basis, the allotment can be cancelled and the land can be resumed and that when such a resumption takes place the allottee is only entitled to compensation in the form of land and not in cash. It was also contended that the cancellation of the permanent settlement rights was just and legal because the conferment was the result of a fraud between the appellant and some officers of the Punjab Government and proceeded on the erroneous assumption that the land was used as agricultural land though in fact it can be appropriately described as ghair mumkin abadi. The manner in which the preliminary objection was raised at the hearing of the writ petition that in view of the dismissal of the earlier petition bearing on the same subject the present petition is barred by the principles of res judicata was not in terms taken up in the return filed on behalf of the respondents. The High Court, however, appears to have permitted the respondents to raise that contention.

The learned single Judge held that the effect of dismissal of the earlier petition filed by the present appellant was that the order dated 17th March, 1961 by which permanent settlement rights conferred on the appellant were cancelled became final and if the present petition is allowed the only thing the court would have to do would be to cancel the order dated 17th March, 1961 which has

become final against the appellant and, therefore, the petition is barred by the principles analogous to res judicata.

Mr. Girish Chandra for the first respondent and Mr. Hardev Singh for the remaining respondents urged that the appeal must fail for the same reason for which the earlier petition of the appellant was dismissed inasmuch as the cause of action for both the petitions being the same, the subsequent petition would be barred by the principles analogous to res judicata.

In the earlier petition the appellant questioned the correctness of the decision dated 17th March 1961 by which permanent settlement rights conferred on the appellant for the land held by him on quasi permanent basis, including the land admeasuring 1 standard acre and 15-1/2 units taken over by the first respondent in Joly 1953, and the appellant in the earlier petition did not claim any cash compensation for the land taken over by the first respondent. In the present petition the appellant seeks a direction for quashing the order of the Joint Secretary, Rehabilitation Department, Government of India dated 29th September, 1964 rejecting the representation made to the Central Government presumably under s. 33 of the 1954 Act question-

ing the correctness of the order dated 17th March 1961. Under s. 33 the Central Government has power to call for the record of any proceeding under the Act and to 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. Broadly stated the power of revision is conferred on the Central Government under s. 33. Appellant invoked this revisional jurisdiction under s. 33 against the order dated 17th March 1961 which he challenged in the first petition. After the dismissal of the first petition he preferred revision application under s. 33 and when this revision petition was dismissed he preferred the second petition. The High Court was of the view that the order dated 17th March 1961 merged into the order dated 29th September 1964 passed by the Central Government while dismissing the revision application of the appellant and, therefore, if now the petition is allowed it would have the effect of setting aside the order dated 17th March 1961 which in view of the dismissal of the earlier petition of the appellant had become final. The High Court is clearly in error in reaching this conclusion.

The earlier petition was dismissed by a non-speaking, one word, order 'dismissed'. The High Court may as well dismiss the petition in limine on the ground of delay or laches or on the ground of alternative remedy. The second petition after pursuing the alternative remedy would not be barred by the principles analogous to res judicata. More often a petition under Article 226 is dismissed on the ground that before invoking the extraordinary jurisdiction of the High Court, if the petitioner has an alternative remedy under a statute under which the right is claimed by the petitioner, the Court expects the petitioner to exhaust the remedy and in such a situation the petition is dismissed in limine.

If after preferring an appeal or revision under the statute under which the right is claimed by the petitioner a petition under Article 226 is filed irrespective of the fact that the revision or appeal was dismissed and the original order which was challenged in the first petition had merged into the appellate or revisional order, nonetheless the second petition in the circumstances would not be

barred by the principles analogous to res judicata because the cause of action is entirely different and the merger of the order cannot stand in the way of the petitioner invoking the jurisdiction of the High Court under Article 226.

In the leading case of Daryao & Ors. v. State of U.P. & Ors.(1) this Court in terms said that if the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it then the dismissal of the writ petition would not constitute a bar to the subsequent petition under Art. 32 except in cases where the facts found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order says that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar except in cases indicated in the judgment. Then comes an observation which may better be quoted:

> "It the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all, but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art. 32".

In Virudhunagar Steel Rolling Mills Ltd. v. The Government of Madras,(1) rejecting the contention that if the petition under Art. 226 is dismissed without issuing a notice to the other side though by a speaking order such a dismissal would not bar the subsequent petition for same cause of action or for the same relief, it was observed that this Court in Daryao's case(2) did not mean to lay down that if the petition is dismised in limine without notice to the opposite side it would not bar a subsequent petition. This Court only ruled that if the petition is dismissed in limine but with a speaking order which order itself indicates that the petition was dismissed on merits, the absence of notice to other side by itself would not be sufficient to negative the plea of res judicata in a subsequent petition in respect of the same cause of action. However, while negativing the contention on the facts of the case this Court reaffirmed that if the petition is dismissed in limine without passing a speaking order than such a dismissal cannot be treated as creating a bar of res judicata. Similarly in Tilokchand Motichand & Ors. v. H. B. Munshi & Anr.,(1) a majority of the Judges affirmed the ratio in Daryao's case (supra) that if a petition under Art. 226 is dismissed not on merits but because an alternative remedy was available to the petitioner or that the petition was dismissed in limine without a speaking order such dismissal is not a bar to the subsequent petition under Art.

32. It must follow as a necessary corollary that a subsequent petition under Art. 226 would not be barred by the principles analogous to res judicata. Re-affirming the view taken on this point in Daryao's case, in P. D. Sharma v. State Bank of India(2) the preliminary objection about bar of res

judicata was negatived. It is, therefore, incontrovertible that where a petition under Art. 226 is dismissed in limine without a speaking order such a dismissal would not constitute a bar of res judicuta to a subsequent petition on the same cause of action, more so, when on the facts in this case it appears that the petition was dismissed presumably because the petitioner had an alternative remedy by way of a revision petition under s. 33 of the 1954 Act which remedy he availed of and after failure to get the relief he moved the High Court again for the relief. It would be incorrect in such a situation to dismiss the petition on the ground that the order made by the revisional authority dismissing the revision petition had the effect of merging the original order against which the revision was preferred with the order made by the revisional authority and, therefore, the challenge on the first cause of action to the order made by the revisional authority would of necessity be a challenge to the original order also and the petition would be barred by the principles analogous to res judicata as the rest order had become final. The High Court was clearly in error in dismissing the petition on this short ground.

There is yet another fallacy in the approach of the High Court while dismissing the petition as being barred by the principles analogous to res judicata because the second relief claimed by the appellant in the second petition was never claimed in the first petition and is an independent and separate relief which the High Court was invited to grant if the appellant was otherwise entitled to it. The appellant, by prayer (b) of the petition, sought a direction that the respondents be ordered to pay cash compensation to the appellant for the area of land which had been taken over by the respondents. It is nobody's case that such a prayer was ever made in the first petition. In the first petition the grievance of the appellant was that the order dated 17th March, 1961 made by the Chief Settlement Commissioner cancelling the permanent settlement rights conferred on the appellant in respect of his land was illegal and invalid. There was no claim for compensation. A claim for compensation was being separately pursued by the appellant and he did not invoke the jurisdiction of the High Court praying for a direction to pay him compensation. In the second petition from which this appeal arises there is a specific prayer for compensation and Mr. Narula, learned counsel for the appellant, stated that the appellant is not interested in the first prayer questioning the validity of the order made by the Joint Secretary to Government of India dated 29th September 1964 affirming the order dated 17th March, 1961 which was the subject-matter of the first petition. Now, if claim for compensation was not raised in the first petition and if it is specifically raised in the second petition on the allegation that as the land of the appellant has been taken over by the Government for its own use, if compensation is not paid it would be deprivation of property without compensation and would be denial of fundamental right to hold property, it is unthinkable that the present petition for this particular relief can ever be dismissed in the facts of this case on the ground that it is barred by the principles analogous to res judicata. For this additional reason the order of the High Court is unsustainable.

And now to the facts of the case. The appellant is admittedly a displaced person to whom 32-1/2 standard acres of land was allotted and the allotment admittedly was on quasi permanent basis. It is again an admitted position that in July 1953 the first respondent, Union of India, took possession of 1 standard acre and 15-1/2 units of land from the land allotted to the appellant on quasi permanent basis for its use, viz., for setting up a colony. Appellant contends that he must be paid compensation in cash for the land taken over from him. Respondents on the other hand contend that an allotment

of land on quasi permanent basis could be resumed by the first respondent when the land was required for its own use and on such resumption the appellant would only be entitled to allotment of an equivalent area of land but in no case the appellant would be entitled to compensation in cash.

This necessitates examination as to what is the interest of the appellant in the land allotted to him on quasi permanent basis and when and in what circumstances and for what purpose it can be resumed or allotment cancelled and if so resumed, to what relief the appellant is entitled to.

There has been a flood of enactments on the taking over and administration of evacuee property as also compensation payable to displaced persons. This Court in Amar Singh v. Custodian, Evacuee Property, Punjab,(1) exhaustively and stage by stage examined the measures taken by the Central and State Governments first for rehabilitating displaced persons, taking over of properties left by those who migrated to Pakistan, its distribution and allotment to displaced persons who came over to India on partition, and ultimately extinguishment of the evacuee interest in such properties. To recapitulate them here would be merely adding to the length of this judgment. We would, therefore, only take note of the conclusion reached in Amar Singh's case (supra) with regard to the interest of the displaced persons to whom agricultural land was allotted on quasi permanent basis up to July 22, 1952. Says the Court at page 823:

> "(1) The allottee is entitled to right of use and occupation of property until such time as the property remains vested in the Custodian; (2) The benefit of such right will enure to his heirs and successors;
>
> (3) His enjoyment of the property is on the basis of paying land revenue thereupon and cesses for the time being. Additional rent may be fixed thereupon by the Custodian. If and when he does so, the allottee is bound to pay the same;
>
> (4) He is entitled to quiet and undisturbed enjoyment of the property during that period; (5) He is entitled to make improvements on the land with the assent of the Custodian and is entitled to compensation in the manner provided in the Punjab Tenancy Act; (6) He is entitled to exchange the whole or any part of the land for other evacuee land with the consent of the Custodian;
>
> (7) He is entitled to lease the land for a period not exceeding three years without the permission of the Custodian and for longer period with his consent. But he is not entitled to transfer his rights by way of sale, gift, will, mortgage or other private contract;
>
> (8) His rights in the allotment are subject to the fairly extensive powers of cancellation under the Act and rules as then in force prior to July 22, 1952, on varied administrative considerations and actions such as the following:
>
> ....."

Undoubtedly this Court held that these quasi permanent rights in land would not be property within the meaning of Article 31 of the Constitution and, therefore, if deprivation of property is complained of a petition under Art. 32 would not lie. However, after concluding in this manner this Court summed up the position with regard to the interest of quasi permanent holder in his holding as under :

> "In holding that quasi-permanent allotment does not carry with it a fundamental right to property under the Constitution we are not to be supposed as denying or weakening the scope of the rights of the allottee. These rights as recognised in the statutory rules are important and constitute the essential basis of a satisfactory rehabilitation and settlement of displaced land-holders. Until such time as these land-holders obtain sanads to the lands, these rights are entitled to the zealous protection of the constituted authorities according to administrative rules and instructions binding on them, and of the courts by appropriate proceedings where there is usurpation of jurisdiction or abuse of exercise of statutory powers".

After re-affirming the position of the quasi permanent allottees as herein quoted, this Court in State of Punjab v. Suraj Prakash Kapur, etc.,(1) held that after July 22, 1952, the Custodian ceases to have any authority to cancel or modify quasi permanent allotment. This enunciation of the interest of the quasi permanent allottees in the land allotted to them should dispel any doubt about their entrenched interest in the land. Nor could it be said that those allottees were at the mercy of the Custodian and can be dispossessed at his whim or caprice. These were heritable rights and the holders were entitled in due course to permanent settlement by issuance of sanads. But even before this situation was reached a fundamental change occurred in the position of the Custodian vis-a-vis the quasi permanent allottees about the right of the former to cancel allotment and resume land. In exercise of the powers conferred by s. 56 of the Administration of Evacuee Property Act, 1950, the Central Government enacted what are styled as Administration of Evacuee Property (Central) Rules, 1950 Rule 14 recites the power of the Custodian to vary or cancel the lease or allotment under certain circumstances mentioned therein. Initially sub-rule (6) was added to this rule and later on it was modified where-

by the power to cancel any allotment or resume evacuee property allotted on quasi permanent basis was circumscribed and was available in the circumstances mentioned in amended sub-rule (6). The amendment effective from 22nd July 1952 had undoubtedly the effect of modifying and thereby restricting the power of resumption or cancellation vested in the Custodian in respect of quasi permanent allottees and the power was confined within very narrow limits. Therefore, subsequent to July 22, 1952, the Custodian of Evacuee Property would have the power to cancel an allotment only upon a ground which falls within the exceptions enumerated in sub-rule (6) (vide Joginder Singh & Ors. v. Deputy Custodian General of Evacuee Property). (1) We need not examine the circumstances in which resumption or cancellation can be ordered under the amended sub-rule (6) of rule 14 because it is not the case of the respondents that the land was resumed in exercise of the power conferred by rule 14 and in one or other of the circumstances mentioned in sub-rule (6) thereof. Suffice it to say that after July 22, 1952, the Custodian had no authority to cancel quasi permanent allotment and resume land except in the circumstances and contingencies mentioned in

sub-rule (6) of rule 14 and that having not been done, it cannot be contended on behalf of the respondents that the land in this case allotted on quasi permanent basis to appellant was resumed by the Custodian. Two fact situations material and necessary for raising this contention are absent in this case. There is no material placed on record, including the counter-affidavit, which would show that the Custodian resumed the land of the appellant in exercise of the power conferred by rule 14 and in one of the circumstances mentioned in sub-rule (6). And secondly, no such order of Custodian is forth-coming even after time was given to produce the file.

Mr. Hardev Singh, however, contended that even though sub-rule (6) of rule 14 as amended up to July 22, 1952 would not enable the Custodian to resume land or cancel allotment granted on quasi permanent basis except in the circumstances mentioned in sub-rule (6), yet the State Government had the requisite power under a rule made by the Punjab State Government on 29th August, 1951. It was contended that in exercise of the powers delegated by the Central Government under sub-s. (1) of s. 55 of the Administration of Evacuee Property Act, 1950, to make rules under clause (i) of sub-section (2) of s. 56, the Punjab Government made the rule, the relevant portion of which reads as under :

> "The Custodian shall be competent to cancel or terminate any lease or allotment or vary the terms of any lease, allotment or agreement and evict the lessee allottee in any one of the following circumstances;
>
> .. ..
>
> (h) that it is necessary or expedient to cancel or vary the terms of a lease/allotment for the implementation of resettlement schemes-and/or-rules framed by the State Government or for such distribution amongst displaced persons as appears to the Custodian to be equitable and proper".

Mr. Hardev Singh contended that presumably the Custodian at the State level cancelled the allotment in respect of the land taken over for resettlement and rehabilitation of refugees from Kashmir and that this cancellation and resumption must be for implementation of resettlement scheme or under the rules framed for such resettlement schemes by the State Government and, therefore, the resumption was one under the Administration of Evacuee Property Act and it was not a case of either acquisition or taking over of the land of the petitioner.

There is no material placed before us to support this submission. In the counter-affidavit on behalf of the respondents not one word has been stated that the Custodian at State level cancelled the allotment and resumed the land. The stand taken in the return filed in the High Court is that evacuee area measuring 7.88 acres was taken over by the Government for construction and development of a colony for rehabilitation of 300 Kashmiri displaced persons and that such land included an area of 1 standard acre and 15-1/2 units of the land allotted to the petitioner. It was further stated that this land of the appellant stood acquired under s. 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954. There is not the slightest suggestion that the Custodian in exercise of the power under the aforementioned rule cancelled the allotment in favour of the

appellant and resumed the land. If such is not the case, the power claimed under the rule cannot help the respondents. Assuming that there was power to cancel allotment and resume land under the State Rules, it must be shown that the State Government had framed a resettlement scheme and for the purpose of the scheme the allotment was cancelled and land was resumed. The fact pleaded is to the contrary that the Union of India took possession of the land for setting up a colony. This also becomes clear from the letter written by the Secretary to Government of Punjab, Rehabilitation Department, Annexure 'F' wherein it was in terms stated that the land in question was not acquired by the State Government but stood acquired by the Central Government in terms of the general notification issued in 1955 and, therefore, the Government should concur in payment of compensation out of the funds allotted for setting up of the colony. From the contents of the letter which have remained uncontroverted the situation that emerges is that the land was acquired by the Central Government for its own use. The Central Government could exercise powers under the Central Rules. It had not asked the State Government to acquire the land. Therefore, the power conferred on the State Custodian under the State Rules would not help the respondents as contended by Mr. Hardev Singh.

It was next contended that on the introduction of the 1954 Act and the issuance of Notification under s. 12, all evacuee property was acquired by the Central Government and under sub-s. (4) of s. 12 such acquired evacuee property formed part of the compensation pool. It was further said that if acquisition was under s. 12 of the 1954 Act, the allottee of land on quasi permanent basis would be entitled to compensation as provided by rule 49 of Displaced Persons (Compensation & Rehabilitation) Rules, 1955, and in that event he would be entitled to compensation by allotment of agricultural land but not cash compensation. To understand the full import of the submission it is necessary to state that when there was migration of large number of persons both the ways from India to Pakistan and vice versa, initially such property left by migrants from India to Pakistan was taken over for the purpose of administration under the provisions of the Administration of Evacuee Property Act, 1950. This Act broadly provided for appointment of Custodian General of Evacuee Property and other authorities subordinate to him. The authorities set up under the Act were empowered to declare certain properties to be evacuee property and any property so declared as evacuee property would, under s. 8, vest in the Custodian for the State. The Custodian was empowered to administer the property and the powers and duties of the Custodian were enumerated in s. 10. In exercise of this power the Custodian allotted lands on quasi permanent basis to displaced persons. But this was an unsatisfactory situation because the interest of the evacuee in the evacuee property remained intact and till such evacuee interest was extinguished, the evacuee property could not be settled on permanent basis. In order to obviate this difficulty the Displaced Persons (Compensation & Rehabilitation) Act, 1954, was enacted by Parliament. Section 12 provided for issuance of a notification as hereinabove mentioned and sub-s. (2) of s. 12 amongst others provided that the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances. Evacuee properties acquired in this manner would form part of the compensation pool.

If the scheme of the 1954 Act is as hereinbefore mentioned, we fail to see how the property which was admittedly allotted to the appellant on quasi permanent basis and which was taken over by the Central Government in July 1953, i.e. much before the introduction of the 1954 Act, became property of the compensation pool. Assuming that even though it was taken over by the Central Government in July 1953, the evacuee interest therein having not been extinguished till the issue of a notification under s. 12 of the 1954 Act and, therefore, on the issue of a notification the property became part of the compensation pool, the consequences provided in 1954 Act must ensue, viz., that so long as the property remained vested in the Central Government it shall continue in possession of the person to whom it was allotted on the same conditions on which he held the property immediately before the date of acquisition. In this connection reference to s. 10 of the 1954 Act would be advantageous. The relevant portion reads as under :

> "10. Where any immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published :-
>
> (a) by the notification of the Government of Punjab in the Department of Rehabilitation No. 4891-S or 4892-S, dated the 8th July 1949; or
>
> (b) by the notification of the Government of Patiala and East Punjab States Union in the Department of Rehabilitation No. 8R or 9R, dated the 23rd July, 1949, and published in the Official Gazette of that State, dated the 7th August 1949, and such property is acquired under the provisions of this Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition, and the Central Government may, for the purpose of payment of compensation to such displaced person, transfer to him such property on such terms and conditions as may be prescribed."

Now, indisputably the appellant was allotted the property on quasi permanent basis under the conditions published by the notification of the Government of Punjab in the Department of Rehabilitation, dated 8th July 1949. If he had continued to hold the property on the clate on which the notification under s. 12 of the 1954 Act was issued, by the operation of s. 10 he would be entitled to hold the property till the property remained vested in the Central Government and would be entitled to payment of compensation by transfer to him of such property on terms and conditions that may be prescribed. Therefore, if 1954 Act is not attracted because the property in question was already taken over by the Central Government in July 1953 much before the 1954 Act came into force neither s. 12 nor Rule 49 would be attracted. If on the other hand the evacuee interest in the property came to be extinguished on the issue of a notification under s. 12 of the 1954 Act, its consequences would be as provided in s. 10 and the appellant would be entitled to hold the property till it continues to vest in the Central Government under s. 12. In either event he would be entitled to compensation.

Mr. Hardev Singh, however, urged that assuming that the appellant is entitled to compensation for taking over of his land the land having formed part of the compensation pool on the issue of a notification under s. 12 and the allotment in this case being one not under the notification of the Government of Punjab dated 8th July 1949 but a fresh allotment under s. 10, the compensation would only be payable in the form of land under rule 49. There is a two- fold fallacy in this submission. Indisputably the land was allotted to the appellant under the conditions published by the notification of the Government of Punjabs dated 8th July 1949 and s. 10 does not purport to make a fresh allotment. It merely takes note of the earlier allotment and assures that if the displaced person has continued to be in possession of the land allotted, on the issue of a notification under s. 12 and the land becoming part of the compensation pool, such allottee would be entitled to continue in possession of such property on the same conditions on which he held the property immediately before the date of acquisition by issue of notification under s. 12 till the property continues to vest in the Central Government and further he would be entitled to the transfer of such property to him presumably on permanent settlement basis as and by way of compensation. Section 10 does not permit a construction as canvassed for by Mr. Hardev Singh that a fresh allotment could be made under s. 10 Further, rule 49 which provides that compensation shall be in the from of land will have to be read with r. 69 which reads as under:

> "69. Saving-Nothing in this Chapter shall apply to agricultural land allotted in the States of Punjab and Patiala and East Punjab States Union under section 10 of the Act."

It will immediately appear that where allotment was made under the conditions published by the notification of the Government of Punjab dated 8th July 1949, the whole of Chapter VIII of the 1955 Rules which includes Rules 49 to 69 would not apply. In this case appellant was allotted agricultural land and the allotment was under the notification hereinbefore mentioned which has been set out in rule 10(a) and in that situation provisions contained in Chapter VIII of the Rules would not be attracted. Therefore, rule 49 cannot be called in aid by the respondents.

The last contention, however, is that if the appellant is a displaced person and he was being allotted land against a verified claim in respect of agricultural land held by him in Pakistan, ordinarily compensation for land taken over must be in the form of land and not in form of cash. Ordinarily it should be so. But in this connection the experience gained by the Government in disposing of the claims cannot be overlooked. There were allottees of small plots of land. Once allotment is made and thereafter the land is taken over by the Government a fresh allotment cannot be in a compact area and if a small plot of land is allotted at a distant place the allottee would be put to a serious disadvantage. Realising this position, at a meeting between the officers of the Punjab Government and the Ministry of Rehabilitation of the Central Government held on 27th August 1957, a decision was taken which was notified by the Press Note Annexure 'A' of the very date. It provides that there are large number of displaced land allottees whose whole or part of the land were acquired by the Government for various public purposes and their claim for cash compensation is pending. Such of the allottees who have acquired permanent rights and others who are quasi permanent allottees and small pieces of their land are acquired by the Government, should send their applications to the Deputy Secretary to the Government of Punjab, Rehabilitation Department, Jullundur, giving

various details therein. The decision further provided that quasi permanent land allottes whose land exceeding two standard acres have been acquired should apply for alternative allotment to the Land Claims Officer, and those whose land admeasuring less than two standard acres is acquired should apply for payment of compensation in cash. The decision was the decision of the Central Government and the Punjab State Government that displaced persons to whom lands were allotted on quasi permanent basis, part of which was taken over for public purposes by the Government and where the land acquired was less than two standard acres in area, payment of compensation would be in cash and applications were accordingly invited. This decision was affirmed in the letter of the Secretary to Government of Punjab, Rehabilitation Department, addressed to his counterpart in the Central Government wherein after referring to the meeting dated 27th August, 1957 and the decision arrived at it, he requested the Central Government that the appellant would be entitled to cash compensation because the land taken over from him was less than two standard acres and was covered by the decision arrived at, at the meeting and that the Central Govermnent should concur in payment of compensation out of the funds allotted for setting up the colony for which the land was acquired. In the face of this position it is difficult to entertain the contention that compensation in cash was never payable for agricultural land taken over from a quasi permanent allottee. It was said that such a decision which runs counter to the statute cannot be given effect to by the Court. Once Chapter VIII of 1955 Rules and especially rule 49 which provides for payment of compensation in the form of land is out of the way, we see nothing in the statute which would debar a quasi-permanent allottee asking for compensation in cash and the Government paying the same. In fact the appellant has averred in his petition and in his affidavit that on former occasion he was paid compensation in cash and the denial is on the ground of want information which can frankly be styled as a vague one.

Now it is indisputable that the appellant was a quasi permanent allottee and that his land admeasuring 1 standard acre and 151/2 units had been taken over by the Central Government in July 1953. In view of the decision recorded in the Press Note referred to above he would be entitled to compensation in cash which has not been paid to him. The appellant would be entitled to compensation in cash for the interest that he had in the land because land was taken away from him. What is the quantum of compensation will have to be worked out according to law and the modalities of determining the compensation.

This appeal accordingly succeeds and is allowed. The respondents are directed to pay the compensation in cash to the appellant for the land admeasuring 1 standard acre and 151/2 units taken over in July 1953. As there is a delay of nearly 25 years, the respondents should pay the compensation as directed herein within a period of six months from today. Respondents should also pay the costs of the appellant and bear their own costs.

P.B.R. Appeal allowed.