Prem Singh And Ors. vs Deputy Custodian General, Evacuee ... on 24 May, 1957

Equivalent citations: AIR1957SC804, (1958)0PLR53, AIR 1957 SUPREME COURT 804, 1958 SCJ 29, 60 PUN LR 53, ILR 1957 PUNJ 1884

JUDGMENT

S.R. Das, C.J.

1. The appellants have filed this appeal on a certificate of fitness granted on 25th May 1956, by the High Court of Punjab under Article 133 of the Constitution. The appeal is directed against the judgment and order of the said High Court pronounced on 18th October 1955. By that order the said High Court dismissed the application made by the appellants to the said High Court under Article 226 praying for a writ in the nature of a writ of certiorari to call for the records and to quash the order of the Deputy Custodian General passed on 18th August 1953, whereby he cancelled the allotment of lands in the village of Ratauli, Tehsil Jagadhari, District Ambala, made to the appellants on 7th June 1950.

2. The events which led up to the present. appeal may now be briefly stated. The appellants are refugees from Rawalpindi. On the partition of the country the appellants migrated to India abandoning 273 acres 6 kanals of first grade land irrigated by perennial canals situate in Chalk No. 205/R-B., Tehsil Jaranwala, District Lyalpur. In 1947 the appellants were given two units of lands in two villages, Todarpur and Naharpur, in Tehsil Jagadhari, District Ambala on a temporary basis. At the time of quasi-permanent allotment in November 1949, the appellants were given 133 acres 15 1/4 units of land in two villages Khandua and Naharpur, which lands were of the second grade.

On 20th February 1950 the appellants allotment in Khandua was cancelled and the whole of 133 acres 15 1/4 units of land was allotted to them in village Naharpur. In order to accommodate a group of people known as Brij Lal group in village Naharpur the allotment made to the appellants was cancelled on 6th June 1950, and the appellants were directed by the Director General, Relief and Rehabilitation (Additional Custodian), hereinafter referred to as the Director General, to be shifted from village Naharpur to the villages of Jaurian and Kottarkhans in Tehsil Jagadhari in the District of Ambala, where the lands were of the first grade.

It appears that on 7th June 1950, the appellants went post-haste to the head quartets of the Relief and Rehabilitation department protesting against their eviction from Naharpur in view of the improvements alleged to have been made, by them in that village and prayed that they should be retained there. In this application the appellants did not pray for an allotment of land in village Ratauli. The Director General directed the Revenue Assistant to make a report on that application.

On the same date the Revenue Assistant promptly reported that the appellants were sitting allottees of village Naharpur, which was a village of second grade, that the appellants were entitled to first grade lands and that consequently they had been ordered to be shifted from the second grade village to the first grade villages of Jaurian and Kotarkhana in Tehsil Jagadhari. With these remarks he concluded the report with the word "submitted."

In the margin of this report, however, the following words were endorsed: "Area also is reserved for Railway Workshop in village Ratauli. If approved Prem Singh and Narain Singh may be allotted land in the village." It is not easily understandable how, if the land in village Ratauli was reserved for Railway Workshop, such reserved land could be recommended for allotment to the appellants. There is an endorsement by the Director General of the owed "Approved" on the same date.

The extreme expedition with which the order of 6th June 1950 was cancelled and a fresh allotment was made in favour of the appellants in village Ratauli, which they did not ask for, evidently created some doubts in the mind of the Deputy Custodian General as to the regularity of the procedure when he made his order on 18th August 1953. Be that as it may, he did not decide the matter on the strength of such doubts.

After the Director General had "approved" the report sand was issued on 13th July 1950, in favour of the appellants in respect of 133 acres 15 1/4 units of land in village Ratauli and the appellants claim to have been put in possession of this land on 15th July 1950.

3. The respondent NO. 2 (N.R. Basra) is the grand son of one Rai Sahib Maya Bhan Batra (since deceased) who had migrated from Phularwan, Tehsil Bhahval in the District of Shahapur leaving behind about 543 acres of first class land irrigated by canal in the District of Sargodha. On 15th December 1947 36 acres of land were allotted to Rai Sahib Maya Bhan Batra in village Ratauli on a temporary basis. This temporary allotment of 36 acres was, however, reduced to an allotment of 12 acres, for at that time no single allotment was being made for more than 12 acres.

The Rehabilitation Department having, later on issued instructions that persons, who had left large holdings in Pakistan, could be allotted more than 12 acres, Rai Sahib Maya Bhan Batra on 5th June 1918, applied to the Director General for the allotment in he same village of Ratauli of the balance of the lands to which he was entitled. Rai Sahib Maya Bhan Batra died on 29th June 1948, leaving certain heirs of whom the respondent No. 2, N.R. Batra, is one.

Before any allotment could be made in favour of the heirs of Rai Sahib Maya Bhan Batra, a notification, was issued on 9th September 1949 at the instance of the Northern Railway reserving the lands in certain villages including the village of Ratauli for the purpose of construction of a Railway Workshop. In view of the fact that there was no land available in the village of Ratauli, in consequence of the reservation of the lands for the Railways, an area of 112.7 acres was on 11th November 1949, allotted in the name of Rai Sahib Maya Bhan Batra in the village of Mussambal Mussalmanan. In February, 1950 there was a ramous that the Rehabilitation Department had decided that no single allottee would be allowed to have more than 60 acres of land.

In view of this rumour the heirs of Rai Sahib Maya Bhan Batra became apprehensive that the allotment of 112.7 acres in the single name of Rai Sahib might be reduced and so B.L. Batra, a son of the Rai Sahib, made a representation on behalf of all the heirs of the Rai Sahib to the Director General that as they were three brothers and the share of each in 112.7 acres was only about 37 acres, their allotment of 112.7 acres should not be cancelled and that if the allotment for any reason was cancelled they should be accommodated in village Ratauli.

In February or March, 1950, the heirs of Rai Sahib Maya Bhan Batra were allotted lands in three villages, Mussambal Mussalmanan (64 acres 14 3/4 units), Kotarkhana (44 acres 10 3/4 units) and Chahju Nagla (2 acres 13 1/2 units).

4. Respondents Nos. 3 and 4 -- Hargobind and Jai Kishan are the sons of L. Devan Chand Suri, who arc also refugees from Rawalpindi. They were entitled to an allotment of 175 acres in lieu of the lands they had left behind in Pakistan. They applied for allotment in the District of Karnal as unsatisfied claimants. After allotting 133 acres 15 1/4 units of land in village Ratauli there remained a balance of 93 acres still available in that village for allotment.

On August 31, 1950, the Director General allotted those 93 acres of land to Respondents NOS. 3 and 4 and the balance of 82 acres were allotted to him in two other villages Mahalanwali and Habibpur.

5. It appears that after the Railways had abandoned the project of building a workshop on the lands reserved for them, the Officer on Special Duty (AMBALA) wrote to the Director General Relief and Rehabilitation asking him to reserve the lands released by the Railways for accommodating those who had been ousted from Chandigarh, the new capital of the Punjab.

On October 28, 1950, the Director General replied stating that the allotment that had been made in favour of the appellants should stand and that he had no objection if the allotment made in favour of other persons were cancelled. Accordingly the allotment of 93 acres to respondents 3 and 4 in village Ratauli was cancelled. The above cancellation, however, was rescinded and the land was restored to them.

6. It appears from a letter dated April 28, 1950, from the Chief Administrative Officer (Engineering) E. P. Railway, Delhi to the Chief Engineer (Development) Punjab P. W. D. Buildings and Roads Branch. Simla that owing to the stringency of funds the project for construction of the Railway Workshop had been abandoned and that the notification for acquisition of the lands might not be published in the Punjab Government Gazette.

It is not clear at all that this information was passed on to the Relief and Rehabilitation Department at any time prior to September 1950. It appears that the application made by B.L. Batra on February 20, 1950 for allotment of land to them in village Ratauli where they originally had temporary allotments, was followed up by another application by the heirs of Rai Sahib Maya Bhan Batra on March 23, 1951.

The fact of this application is admitted by the Additional Custodian in his written Statement but he stated that it was not forthcoming, presumably meaning that it had been mislaid in the office. A remainder appears to have been sent on August 1, 1951. Not having received any response from the office of the Director General, the respondent No. 2, N.R. Batra, one of the heirs of Rai Sahib Maya Bhan Batra, on December 10, 1951, made a like representation to the Financial Commissioner Relief and Rehabilitation hereinafter referred to as the Financial Commissioner, who was the Custodian.

On July 17, 1952, the Financial Commissioner as custodian rejected the application of Respondent No. 2. The Respondent No. 2 thereupon went in revision under Section 27 of the Administration of Evacuee Property Act (Act XXXI of 1950) Hereinafter referred to as the Act. This application was dealt with and disposed of by the Deputy Custodian General, who held that under the circumstances, the allotment in favour of the appellants in village Ratauli could not be allowed to stand.

He also rejected the contention of the appellants that if anybody were to be evicted iron village Ratauli in order to accommodate the heirs of Rai Sahib Maya Bhan Batra, it should be Respondents Nos. 3 and 4 Hargobind and Jai Kishan, who had obtained their allotment in that village during the pendency of the dispute. The Deputy. Custodian General made the following order on August 18, 1953:

> "The allotment of respondents 4 to 6 (Prem Singh etc. to the extent of 112 S. A. 7 units in village Ratauli is cancelled and the area so made available shall be allotted to the petitioners and Petitioners' allotment in villages Kotarkhana and Chhaju Nangal and Mussambal Mussalmanan shall stand cancelled. The area thus rendered available may be allotted to respondents 4 to 6 unless they desire an allotment elsewhere and area is available. Parties to be informed."

7. The appellants thereupon moved the Punjab High Court under Article 226 of the Constitution praying for a writ quashing the above order of the Deputy Custodian General. The application came up before a Single Judge, who by his order dated September 3, 1954, referred the matter to a Division Bench and the Division Bench in its turn on September 28, 1954, referred the following two questions to a Full Bench for a decision:

> "(1) Whether Rule 14 (6) of the Administration of Evacuee Property Rules made under Section 56 of the Administration of Evacuee Property Act is ultra vires because it goes beyond the rule making power or because it is inconsistent with the other provisions of the Evacuee Property Act?"
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> "(2) Whether Rule 14 (6), even if intra vires, is applicable to it orders cancelling the allotments, if such orders have been made before the date on which the amendments were made?"

The Full Bench answered the first question in the negative and in answer to the second question held that "orders passed by either the Custodian or Custodian General in exercise of their powers

under Section 26 or 27 cancelling allotments in pending cases regarding orders passed before 22nd July, 1952, were valid, even if passed by the Custodian before 13th February, 1952, and by the, Custodian General before 25th August, 1953." The matter then went back to the Division Bench which, in the light of the answers given by the Full Bench, found no ground torn interference and dismissed the appellant's writ petition. The High Court, however, gave a certificate of fitness for appeal to this Court with which the present appeal has been filed.

8. Mr. Harnam Singh appearing in support of this appeal has not questioned the correctness of the answers given to either, of the questions by the Full Bench. He concedes that the Deputy Custodian General, while disposing of the revision petition on August 18, 1953, could exercise the same powers which the Financial Commissioner as the Custodian had on July 17, 1952, when he rejected the application of Respondent No 2. It wi11 be recalled that the order of allotment in favour of the appellants in village Ratauli was made on June 7, 1950.

The application by Respondent No. 2 to the Financial Commissioner for allotment of lands in village Ratauli was made on December 10, 1951. This application was rejected by the Financial Commissioner on July 17, 1952. At that time there was no Sub-rule (6) to Rule 14. Indeed Sub-rule (6) was added to Rule 14 on July 22, 1952. The second provision was added to Rule 14 on February 13, 1953, that is to say, after the Respondent NO. 2 had filed his application for revision under Section 27 to the Custodian General on September 9, 1952.

The second provision was again amended by the addition of the words "or Section 27" after the figure 28 and before the words "of the Act' on August 25, 1953, that is to say, seven days after the Deputy Custodian General made his order in revision under Section 27 Rule 14 (6) being thus acknowledged by learned counsel to be out of the way, it is not necessary at all for us to express any opinion on the correctness or otherwise of the answers given by the full Bench to the question referred to it.

Accepting, without deciding that the Deputy Custodian General's powers in revision under Section 27 of the Act were strictly limited to the powers of the Custodian to cancel an allotment, what we have to do is to ascertain what powers of cancellation the Financial Commissioner, who was she Custodian, had on July 17, 1952, when he rejected the application, for according to learned counsel for the appellants the Deputy Custodian General could only exercise similar powers of cancellation while disposing of the application for revision of the order of the Financial Commissioner as the Custodian.

9. The Administration of Evacuee Property Act, 1950 (Act XXXI of 1950), was passed on April 17, 1950. The Central Government on September 8, 1950 framed rules in exercise of the powers conferred on it by Section 56 of the Act. On that date Rule 14 Consisted of five clauses namely, the present Sub-rule 1 to Sub-rule (5) which, however, is not material for our present purpose.

In exercise of powers delegated by the Central Government under Sub-section 1 of Section 55 of the Act to make rules under Clause 1 of Sub-section (2) of Section 56 of the said Act, the Punjab Government on August 29, 1951 promulgated, amongst other things the following rule, in

substitution for the previous rules with retrospective effect:

> 1. 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: -
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> (a) that the lease/allotment is contrary to the orders of the Punjab Government or the instructions of the Financial Commissioner, Relief and Rehabilitation, or of the Custodian, Evacuees Property, Punjab;
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> (b) that the lessee/allottee has infringed or intends infringing any of the terms of the lease/allotment;
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> (c) that the lease/allotment was obtained by false declaration or insufficient information;
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> (d) that the area leased/allotted to or occupied by the lessee/allottee is more or less than he was authorised to take on the lease/allotment or occupy under the instructions issued by the Punjab Government or the Financial Commissioner, Relief and Rehabilitation or the Custodian, Evacuees Property, Punjab;
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> (e) that this claims of other parties with respect to the land have been established or accepted by the Custodian or the Rehabilitation authority;
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> (f) that the lessee/allottee has been convicted of an offence under the Act;
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> (g) that the lessee/allottee has failed to take possession of the land within the time allowed by the Custodian or the Rehabilitation authority or, after having taken possession has failed to cultivate the land or any part thereof;
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> (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; or
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> (i) that it is necessary or expedient to cancel or vary the terms of a lease/allotment for the preservation, or the proper administration, or the management of such property or in the interests of proper rehabilitation of displaced persons:
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> It is contended that as the case did not fall within any of the above clauses the Custodian could not have cancelled the appellant's allotment and, therefore, the Deputy Custodian General also could not in revision do so. It may be noted that at nO previous stage did the appellants rely on this rule framed by the Punjab Government. Without prejudice to this general objection learned counsel for respondent No. 2

contends that the order made on August 18, 1958, by the, Deputy Custodian General cancelling the allotment made in favour of the appellants was valid because the Custodian on July 17, 1952, had the power to cancel it under the above Punjab Rule and he relies on Clause (a), (e), (h) and (i).

His contention is that the allotment to the appellants in village Ratauli was against the orders of the Punjab Government or the instructions of the Financial Commissioner as contained in the Land Re-settlement Manual in that the appellants not being colonists of Sahapur District in West Pakistan were not entitled to be settled in Tehsil Jugadhari and that the appellants held no temporary allotment in village Ratauli.

The appellants' counsel repudiates this contention, because the allotment was not contrary to any instruction. Learned counsel for respondent No. 2 contends that the allotment to the appellants could be cancelled under Clause (e), because the claims of respondent No. 2 had been established or accepted by the rehabilitation authorities. He also relies on Clause (h) and Clause (i). All these claims are refuted by the learned counsel for the appellants.

It is not necessary for us to express any opinion on the contention in so far as they are founded on Clause (a) and (e) of the Punjab Rule (1) Suffice it to say that the allotment in favour of the appellants could well be cancelled by the Custodian under Clause (h) and (i). The Deputy Custodian General has given cogent grounds for such cancellation, namely, that "Tehsil Jugadhari was not within the area of sub-allocation scheme so far as the appellants are concerned, that, in the second place, the appellant's never had any temporary allotment in village Ratauli and could not, therefore, be said to be sitting allottees of that village.

Raj Sahib Maya Bhan Batra, on the other hand came from Sahapur and was entitled to be accommodated in Tehsil Jugadhari and, in point of face, ho had a temporary allotment of 30 acres, which was subsequently reduced to 12 acres, in village Ratauli. His allotment was changed only because the lands in certain villages including Ratauli were reserved for the Railway Workshop.

As soon as the Railways had abandoned that scheme, the heirs of Rai Sahib Maya Bhan Batra. asserted their claim to be accommodated in village Ratauli under these circumstances it was only equitable and proper that the heirs of Rai Sahib Maya Bhan Batra should be re-established in that village and the cancellation of the allotment in favour of the appellants was obviously equitable and in the interest of proper rehabilitation of displaced persons within the meaning of Clause (h) and (i).

10. Learned counsel for the appellants next contends that the order of the Deputy Custodian General is obviously wrong and is liable to be quashed by a writ in the nature of certiorari, because of such glaring errors apparent on the face of the record. In Hari Vishnu, v. Ahmad Ishaque, , a Full Bench

of this Court, after referring to the various decisions of the English and Indian Courts, summarised the principles deducible there from in the following words:

> "On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.
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> (4) The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior Court or tribunal is erroneous in law."

Then after referring to the case of Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw, 1951-1 K B 711 (B) and Ors. cases and quoting the following passage from the judgment of Mukherjea J. in T. C. Basappa v. T. Nagappa, .

> "An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on the clear ignorance or disregard of the provisions of law. In other words; it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision."

This Court held on the fourth point as follows:

> "It may, therefore, be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be a mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any, clear cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on strength of certain observations of Chagla C. J. in Batuk K. Vyas v. Surat Borough Municipality, AIR 1953 Bom 133 (D) that no error could be said to be apparent on the face of the record if it was not self-evident, and if

> it required an examination or argument to establish it. This test might, afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial options also differ and an error that might be considered by one Judge as self evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

Such being the principles governing the power of the court to grant a writ of certiorari on the ground of error apparent on the face of the record, we now proceed to consider whether the contention that in the present case there are errors apparent on the face of the record is well founded or not.

11. Learned counsel has enumerated the following errors, namely: -

> (1) that the Deputy Custodian General in his judgment assumes that, in the application made on March 23, 1951 the case of respondent No. 2 was that he had a preferential claim to allotment in Ratauli and he wants us to refer to that application to see that there was in fact nO such claim. This is obviously not an error of law.
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> (2) that the order proceeds on the assumption that the allotment made to the appellants had not the approval of the Financial Commissioner. In point of fact the allotment to the appellants was made by the Director General, who had the word "approved" endorsed on the report of the Revenue Assistant. The ejection of the application of the respondent NO. 2 for allotment in village Ratauli cannot certainly be regarded as an approval by the Financial Commissioner of the allotment of land in favour of the appellants out of the area of the sub-allotment scheme. In any case this also cannot be said to be an error of law.
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> (3) that on the 7th June, 1950, when allotment was made to the appellants the respondent No. 2 and his relations were not sitting allottees of village Ratauli, for on that date the respondent No. 2 and his relations were settled in three other villages and consequently they could not under the law recorded in the Manual claim any allotment in village Ratauli where they ceased to be sitting allottees and, therefore, there is an error of law apparent on the face of record. The fact is that Rai Sahib Maya Bhan Batra was originally allotted land in village Ratauli. He having come from Sahapur District Jugadhari was the proper Tehsil for re-settling him.

The allotment to him was shifted only because the lands in Ratauli and other villages had been reserved for the Railway workshop. These are matters which could properly be taken into consideration in applying the departmental instructions contained in the Land Re-settlement Manual. There is nothing in the departmental rules which militates against the allotment of lands in Ratauli to the heirs of Rai Sahib Maya Bhan Batra or which takes away the power of cancellation given to the Custodian to cancel the allotment of the appellants.

These departmental instructions, on the appellants own showing in sub-para (viii) of para. 12 of their petition under Article 226, were not inflexible and were not adhered to rigidly and were merely in the nature of procedure and that the rehabilitation authorities had full authority and complete powers to mate allotment without adhering rigidly to the departmental instructions, e.g., the scheme of sub-allocation. It, therefore, does not lie in the mouth of the appellants to say, that these departmental instructions are law and that in the context of these departmental instructions it must be held that there is an error of law apparent on the face of the judgment.

The errors pointed out, if they are errors at all, are mostly errors of fact and even if the errors may by any stretch of argument be said to constitute errors of law, they are nothing more than mere errors of law, which may be corrected by a court of appeal but which do not reader, the order a "speaking order" showing a clear ignorance or disregard of the provisions of the law, so as to be amenable to correction by a writ of 'certiorari. There is, in our opinion, no substance in this contention.

(11a) The last point urged by learned counsel for the appellant is that if anybody is to be ousted from village Ratauli for accommodating the respondent No. 2, there is no reason why the appellants should be ousted and not the respondents Nos. 3 and 4. Learned counsel for the respondents Nos. 3 and 4 urged with considerable force that there are good grounds for not disturbing his clients.

In the first place, the appellants are bigger allottees and if anybody were to be disturbed, it must be the bigger allottees and not the smaller. Reference is made to page 84 of the Land Resettlement Manual and it is claimed that this rule has laid down a rule of equity of general application. In the next place the appellants and the respondents Nos. 3 and 4 both come from Rawalpindi and they can be re-settled in Ratauli only on sanction given by Financial Commissioner and reference is made to page 82, paragraph 7 of Chapter (iv) which lays down the principles of allocation.

It is pointed out that the allotment of land in Ratauli in favour of the appellants were made by the Director General and were never sanctioned by the Financial Commissioner. Further the Rehabilitation authorities charged with the duty of making allotments have exercised their discretion and for cogent reasons state in the Deputy Custodian General's order the allotment to respondents Nos. 3 and 4 were not disturbed.

There is no reason to interfere with that decision on an application under Article 226. None of the pre-requisites for the issue of a writ of certiorari exists and the claim of the appellants as against the respondents Nos. 3 and 4 was therefore, rightly rejected. It was not a proper matter to be decided on a petition under Article 226.

12. For reasons stated above this appear must be dismissed with costs.