Present: Hamoodur Rahman, C. J., Sajjad Ahmad and Salahuddin Ahmed, JJ

Nawab Syed RAUNAQ ALI ETC.-Appellants

Versus

CHIEF SETTLEMENT COMMISSIONER AND OTHERS-Respondents

Civil Appeals Nos. 109 of 1966. 4, 6, 9, 16, 24, 42, 51, 54, 68, 69, 70, 71 of 1967 and 8 of 1968, decided on 19th March 1973.

(On appeal from the judgments and orders of the High Court of West Pakistan, Lahore, dated the 10th June 1964 in Writ Petitions Nos. 1827-R, 2263-R, 2650-R, 2647-R. 2707-R, 2462-R. 2516-R, 2106-R, 2497-R, 2589-R, 2505-R, 877-R, 2659-R and 2660.8 of 1963).

JUDGMENT

HAMOODUR RAHMAN, C. J.-These fourteen appeals arise out of two judgments of the former High Court of West Pakistan. The first was delivered by a Division Bench at Lahore dismissing thirteen Writ Petitions and the other was delivered by a learned Single Judge at Karachi in Writ Petition No. 8 77/R of 1963 dismissing the writ petition in limine.

These appeals which raise common questions of law and are based on more or loss similar facts were heard in three batches at Lahore and Karachi, as different sets of learned counsel appeared for the appellants in these appeals. As the questions of law raised are the same, these appeals will be disposed of by this judgment in which I propose first to deal with the common questions of law and then apply the conclusions reached by me on these common questions to the facts of each case.

The appellants in all these cases were formerly residents of the State of Hyderabad (Deccan) but they migrated to Pakistan on different dates and filed claims here under the Registration of Claims (Displaced Persons) Act (III of 1956). The object of this Act was to provide for the registration and verification of claims of displaced persons in respect of the properties left behind by them in India. The Act, therefore, empowered the Central Government to appoint, by notification in the official Gazette, Claims Commissioners, Additional Claims Commissioners, Deputy Claims Commissioners and Claims Officers to act under the general superintendence and control of the Government and to discharge the duties imposed upon them by or under the Act (vide section 3).

The scheme of this Act was that claims were to be first registered with a Registering officer appointed under the Act and then they were to be verified by holding an enquiry by a Claims Officer or a Deputy Claims Commissioner in the first instance. Thereafter an appeal was provided from an order of a Claims Officer to the Deputy Claims Commissioner and from the order of a Deputy Claims Commissioner to the Additional Claims Commissioner. Then a general power was given to the Claims Commissioner to suo motu call for the record of any case decided by a Claims Officer a Deputy Claim a Commissioner or an Additional Claims Commissioner, in order to satisfy himself as to the correctness, legality or propriety of the order, but he could not revise or modify the same without first giving an opportunity to the person affected of being heard. The Claims Commissioner and the Additional or the Deputy C13ims Commissioner were also given the power to review their own orders within the prescribed period after giving notice to the patties. Subject to these provisions, however, subsection (5) of section 7 of this Act gave finality to the orders of the Claims Commissioner, the Additional Claims Commissioner, the Deputy Claims Commissioner and the Claims Officer and granted them immunity from being called in question in any Court.

By section 12, the jurisdiction of the civil Courts was also taken away with respect to any matter, with regard to which the Claims Commissioner or any of his subordinate officers was granted power to take action under the Act. In fact, all actions taken under the Act in good faith by any authority or any Government were saved by section 13 from any kind of challenge by any kind of suit, persecution or other legal proceeding.

Under subsection (3) of section 2 of this Act, a "claim" was defined as "the assertion of a right to the ownership of, or to any interest in, property which has been treated as evacuee property or of which a displaced person has otherwise been deprived, under any law for the time being in force in India or in any area occupied by India, except Assam, West Bengal, Tripura and Manipur".

By subsection (2) of this section, "property" was defined as follows :-

"(2) "Property" means-

(2) Any immovable property situated within the limits of a Corporation, a Municipal Committee, a Notified Area Committee, a Town Area Committee, a Small Town Committee, a Sanitary Committee and a Cantonment as those limits existed on the 15th August 1947;

(b) Industrial concerns such as factories slid workshops outside the limits referred to in clause (a) above and sites there of;

(c) Land situated outside the limits referred to in clause (a) above and occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture including-

(i) The sites of buildings and other structures on such land;

(ii) A share in the profits of an estate or holding;

(iii) Any dues or any fixed percentage of land revenue payable by an inferior land-owner to a superior land-owner;

(iv) A right to receive rent; and

(v) Any right of occupancy;

(d) Substantial houses, shops and godowns outside the limits referred to in clause (a) above, provided their present value in each case is not less than rupees ten thousand; and

(e) Any other property or class of property which the Central Government may, by notification in the official Gazette, declare to be property for the purposes of this act."

Under the rules framed under section 18 of this Act, Forms were provided for submission of claims, and these Forms were of five different kinds set out in five Schedules. The First Schedule related to properties in urban areas other than industrial Concerns, the Second related to properties in rural areas, the Third related to industrial concerns, the Fourth related to agricultural lands and gardens in urban areas, and the fifth related to agricultural properties in areas other than Punjab, Delhi, etc.

All the appellants claimed inter alia to have left behind in, India Jagirs of various kinds comprising agricultural lands said to have been granted to them by the Nizam which, according to them, came within the definition of "property" given under the Act (III of 1956) and filed claims under Schedule V. The Claims Authorities were doubtful about the correctness of this contention. Hence, on the 7th of April 1958, a notification was issued adding a new Schedule V-A in the proviso to sup-rule (2) of the Registration of Claims (Displaced Persons) Rules, 1955. This Schedule V-A was to the following effect :-

"SCHEDULE V-A

(For Jagirs/Fauji Jagirs with or without Muafi benefits or Jagirs and Muafees in the form of hereditary assignment of land revenue or rent and maintenance allowance payable by rte Ruling Princes or their Governments to their dependents).

Situation-

(a) Village.
(b) Police Station.
(c) Tehsil/Taluka.
(d) District.
(e) Province/State.

Whether it was:

(a) jagir with proprietary rights in land with or without Muafi benefits, or

(b) Fauji Jagir consisting of land with or without Muafi benefits, or

(c) Hereditary assignments of rent or land revenue, or Maintenance allowance payable by the Ruling Princes/ State Governments to their dependents."

The appellants, who had already filed their claims, thereafter got their claims under Schedule V converted into claims under Schedule V-A and those who had not filed any claim under Schedule V filed their claims under

Schedule V-A. Unfortunately, further complication was created a little later when Martial Law was imposed in the Country in October 1958. Soon after came provisions for land reforms in the shape of Martial Law Regulation No. 64 which was promulgated on the 7th of February 1959, and gazetted on the 3rd of March 1959. By paragraph 21 of this Regulation, all Jagirs, of whatever kind and by whatever name described, subsisting immediately before the commencement of this Regulation, stood abolished and the right, interest or estate granted, assigned, released, created or affirmed by such Jagirs reverted to Government free from any encumbrance or charge. Sub-paragraph (6) of this paragraph also provided that no Jagir shall be created after the commencement of this Regulation. After the promulgation of Martial Law Regulation No. 64, the Claims Commissioner, it is said, issued a circular in May 1959, advising all Claim Officers to treat claims filed under Schedule V-A as claims under Schedule V and to verify the same, accordingly, although the last date for the filing of claims had expired, even according to the appellants, on the 30th of September 1958.

The Government itself, on the 25th of September 1959, issued another Notification being S. R. O. 466 dated 25th of September 1959, which was gazetted on the 2nd of October 1959, rescinding the earlier Notification No. F. 2(12)/55 Clms. dated 7th April 1958, whereby Schedule V.A had been added to Rule 3 of the Registration of Claims (Displaced Persons) Rules, 1955. But before this rescission was gazetted, the claims of the appellants were verified by the Deputy Claims Commissioners and entitlement certificates were issued to them.

Then came Martial Law Regulation No. 84 of 1950 on the 28th of December 1960. Under this Regulation, all displaced persona, who had submitted a claim, were required to file a written statement relating to all the true facts of such claims and such statements were thereupon to replace their original claims. Further verification or re-verification of claims was stopped and the Chief Settlement Commissioner was to prepare a fresh scheme for verification or re verification of claims on the basis of the record, and on such re-verification, under this Scheme, fresh allotments would be made and earlier allotments were to stand cancelled or modified. Transfers made in respect of allotments already made were declared void to the extent of the area which, on verification or re-verification under the Scheme prepared under this Regulation, were found to be in excess of the entitlement of the person.

This contemplated that records will be available from India for the purposes of verification, but unfortunately this did not happen A Scheme was, however, prepared by the Chief Settlement Commissioner which unfortunately did not contemplate compensating any displaced person in respect of jagirdari nights. The highest rights proposed to be compensated under Martial Law Regulation No. 84 were zamindari rights.

As Records-of-Rights ultimately were not made available by India, Martial Law Regulation No. 84 was amended by Martial Law Regulation No. 89. The claims contemplated to be re-verified under both these Regulations were claims filed under Schedules IV and V under the Registration of Claims (Displaced Persons) Rules, 1955, and by this last Regulation a graduated scale of entitlement was laid down. In other words, all persons having claims of more than 1500 produce Index units were to receive only a portion of their claims ranging from 30% to 10% in accordance with the magnitude of the produce index units claimed. The higher the claim, the lower was the percentage of entitlement. Fresh entitlement certificates were to be issued on this new scale and fresh allotments were to be made on the basis thereof. Excess areas were to be surrendered, and to vest in the Government. This Regulation, however, did not, by reason of the provisions of paragraph 13 thereof, apply to claims in respect of the lands situated in the territories of the States of Jammu & Kashmir, Hyderabad, Junagarh, Manavadar, Mangrol, Sardargarh, Bantva and Sultanabad then in occupation of India.

Lastly came Martial Law Regulation No. 91 on the 25th of September 1961, which further amended Martial Law Regulations Nos. 84 and 89. The amendments brought in by this Regulation are not relevant for the purpose of these appeals, as the exclusion of the provisions of the Regulation No. 89 for scaling, down were not applicable to the appellants who had filed claims in respect of lands situated In the territories of the State of Hyderabad. The original Martial Law Regulation No. 84 was applicable and they had all filed written statements in accordance with that Regulation.

It was in this state of affairs that on various dates in 1963 the Officer on Special Duty, Central Record Office, Lahore, issued notices to each of the appellants to show cause as to "why the entitlement certificate issued in your favour be not cancelled". The ground given for the issuance of such notices was that the verification orders in these cases verifying the claims of the appellants under Schedule V were, according to Notification No. S. R. O. 466, dated 25-9-1959, without jurisdiction, as, after the cancellation of the Notification of the 7th of April 1958, the scope of the term "property" could not be extended to cover cases of Jagir and muafee lands.

Most of the appellants showed cause in writing and maintained that their claims related to interests in land which had been treated as evacuee property In the State of Hyderabad and, therefore, they were entitled under the Registration of Claims (Displaced Persons) Act (III of 1956) to lodge such claims and to have the same verified in accordance with law. They called upon the Officer un Special Duty to withdraw the said notices, but as he failed

to do no, they invoked the extraordinary jurisdiction of the High Court under Article 98 of the Constitution of 1962.

The main contention put forward on their behalf was that, since their claims had been duly verified in accordance with the procedure laid down by the Registration of Claims (Displaced Persons) Act (III of 1950, entitlement certificates had been issued by the Central Record Office and allotments of land made on the basis of such certificates, the verifications had acquired a finality under the provisions of the said statute and they could not now be reopened by anyone-certainly not by the Officer on Special Duty as he had no power to sit on appeal over the decisions of the Claims Authorities.

They further maintained that, since their verifications had been completed before the rescission of the notification of the 7th of April 1958 by SRO-466 published is the Gazette, Extraordinary on the 2nd of October 1959°, the rights that had already vested in them could not be taken away retrospectively by another notification.

According to them, the verifications were also in accordance with law, because, Jagirs, whatever their nature might be in other parts of the Indo-Pakistan Sub-Continent, were of such a nature in Hyderabad State that they certainly conferred very valuable interests in land which were also transferable as well as heritable subject only to the formal approval of the Nizam.

On behalf of the Officer on Special Duty, on the other hand, it was argued that he had every jurisdiction under paragraph 8 of the Supplementary Rural Scheme No. 1, framed under the Pakistan Rehabilitation Act (XLII of 1956), to verify and check entitlement certificates issued by the Central Record Office even after their issuance and to cancel the same if It is found that the certificates had not been lawfully issued. According to the Officer on Special Duty; the Claims Commissioner had no jurisdiction, after the promulgation of Martial Law Regulation No. 64, to direct that the claims filed under Schedule V-A should be treated as claims under Schedule V and verified accordingly. Such verification was, accordingly, a nullity in the eye of the law and he was entitled to ignore such verification and cancel all entitlement certificates issued on the basis of such an incompetent verification.

It is furthermore contended on behalf of the Officer on Special Duty that it is manifest from the notification issued on the 7th of April 1958, that claims in respect of Jagirdari rights could not have been preferred under Schedule V. It is for this precise reason that Schedule V-A was added and, therefore, when Jagirs of all kinds, no matter how created or by what name described, were abolished by Martial Law Regulation No. 64, the Claims Commissioner had no jurisdiction at all to say that nevertheless jagirdari rights were rights or interests in the land which could be verified under Schedule V.

The High Court entered upon an examination of the nature of Jagirdari rights in Hyderabad State and came to the conclusion that the rights conferred by the Nizam did not create any interest in the land itself. It was merely a grant of a personal right to receive certain profits from the laud and no more. They were not heritable, for, after the death of each grantee, the grant as resumed and a re-grant was made to one of the heirs, only if one was found to be worthy of holding the grant. The Jagir did not, however, descend according to the law of succession, for, it was open to the ruler not to renew the grant in favour of an heir who was not, according to the ruler, deserving of the grant.

The High Court also upheld the contention of the Officer on Special Duty that the verifications were wholly without jurisdiction after the promulgation of Martial Law Regulation No. 64 on the 7th February 1959 and, therefore, a nullity in the eye of law. The Claims Commissioner was held not to be entitled to direct the verification of claims filed under Schedule V-A as claims under Schedule V. All the Writ Petitions were, accordingly, dismissed.

Leave was granted in these cases to consider whether the High Court was right in taking the view that the orders passed by the Claims Commissioners' Organization verifying the claims of the appellants were a nullity in law, or could be said to have been made without jurisdiction, in view of the findings of the Claims Commissioners' Organization that the Jagirs, in respect of which claims were filed, came within the extended definition of "property" under the Notification of the 7th of April 1958.

Learned counsel appearing on behalf of the appellants have contended that Martial Law Regulation No. 64 only abolished Jagirs situated in Pakistan but did not, and. could not, have the effect of abolishing Jagirs left behind in India. The appellants were not given Jagir rights in Pakistan in lieu of Jagirs left behind in Hyderabad but were allotted lands like other displaced persons coming over from India. Martial Law Regulation No. 64 would not, therefore, have the effect of automatically cancelling the Notification of the 7th of April 1958, which was issued in exercise of the powers conferred by sub-clause (e) of clause (2) of section 2 of the Registration of Claims (Displaced Persons) Act, 1956, and read as follows :-

"No. F. 2(12)/55-Clms., 7th April 1958 (Gazette Extra-ordinary, 9th April 1958).-In exercise of the powers conferred by sub-clause (e) of clause (2) of section 2 of the Registration of Claims (Displaced Persons) Act, 1 956 (III of 1956), the Central Government is pleased to declare the following classes of property to be property for the purpose of the said Act, namely :-

(1) Jagirs consisting of proprietary rights in land with or without muafi benefits.

(2) Fauji Jagirs consisting of land with or without muafi benefits.

(3) Jagirs and Muafees in the form of hereditary assignments of rent or land revenue granted by the Government.

(4) Assignments of rent or land revenue.

(5) Maintenance allowances payable by the Ruling Princes or their Governments to their dependents."

This clause (e), quoted earlier, gave power to the Central Government to enlarge the definition of "property" given in the above-mentioned Act by declaring under a notification in the official Gazette "any other property or class of property" which should be dealt with as "property" for the purposes of this Act. Martial Law Regulation No. 64 did not say that Jagirs left behind In India were not to be treated as property in Pakistan.

Again the Notification No. SRO-466, although dated the 25th of September 1954, was not published in the Gazette till the 2nd of October 1959, and, therefore, carne into effect from that date. It could not possibly cancel the Notification of the 7th of April 1958, with retrospective effect and, therefore, all verifications made before that date acquired finality by reason of the provisions of section 7 of the Act of 1956 and could only be revised, altered, modified or cancelled thereafter by a Claims Commissioner under tile provisions of subsection (3) of section 7 of the said Act. In the present cases, the verification orders were made by a Deputy Claims Commissioner. An appeal lay from this order to an Additional Claims Commissioner, but no such appeal was taken. Entitlement certificates, according to the verification orders, were issued and in some case even allotments were made before the cancellation of the Notification published on the 2nd of October 1959. If any doubt was felt even thereafter with regard to the validity of these verification orders, revisions could have been taken before the Claims Commissioner and mistakes, if any, corrected; but the Officer on Special Duty, it is contended, could not sit on appeal over the Claims Authorities.

The Officer on Special Duty is nit an officer specified either tinder the Pakistan Rehabilitation Act (XLII of 1956) or the Registration of Claims (Displaced Persons) Act, 1956 or the Rehabilitation Settlement Schemes framed under the Pakistan Rehabilitation Act, 1956. His name appears for the first time in the Supplementary Rural Scheme No. 1 in 1957 when allotments were decided to be made to displaced persons in lieu of claims verified under Schedule V of the Registration of Claims (Displaced Persons) Act, 1956. The procedure adopted then was that the Rehabilitation Commissioner, West Pakistan would first invite applications within a specified period for allotment of lend under this scheme in Form QPR-1 from claimants whose claims had been verified. The claimants were required to attach a certified copy of the order of verification passed by an officer of the Claims Organization along with their applications for allotment. On receipt of such applications, they were to be sorted out district wise and linked with the relevant Interim Relief Scheme Entitlement slips in Form IR-IV and then entered in the Entitlement Register in Form QPR-1V. Thereafter, a third "checking of the details" mentioned in the applications and the relevant verification orders wall to be made, and only after that Entitlement Certificates In Form QPR-V were to be issued In triplicate. In cases where the verification order was silent about the nature of any of the rights of the claimant over any land, the details furnished in the application of the claimant in that behalf were to be accepted. Then, if the verified claim was in excess of 20,000 produce index units, it was to be reduced by 50 percent and in no case was any allotment to be made in excess of 36,000 produce index units. Now, in this connection, paragraph 8 of Part 11 of the Supplementary Scheme No. 1 provided that the Form QPR-V was to be signed by an officer not below the rank of Tehsildar and the Officer on Special Duty (Central Record Office) was to check some of these certificates "before or after issue" and initial the office copy of the same in token of his having done so. Then followed instructions for determining the scales of allotment in respect of different kinds of rights, the method for determining the produce index units per acre of soil left in India, the classification of the soil, the conversion of the verified area abandoned into standard acres in accordance with the procedure prescribed by the Rehabilitation Commissioner and then conversion of the standard acreage according to the classification of the soil into produce index units in accordance with the tables laid down and the entering thereof in Form QPR-V after taking into, consideration the maximum scale of allotment prescribed.

If any claimant was dissatisfied with the area given to him in the QPR-V Form, he was given the right, by paragraph 15-A, to file an objection along with the Entitlement Certificate issued in his favour to the Officer on Special Duty for re-verification. In this connection, the provisions of paragraph 17 of the Supplementary Rural Scheme No. 1 are significant. This paragraph reads as follows: --

"In the case of a claim under Schedule V of the Registration of Claims (Displaced Persons) Act, 1956, which is totally rejected, or where the area verified is less than 25 percent of the area claimed, the Claims Commissioner shall be required to forward to the Officer on Special 'Duty (Central Record Office) a certified copy of the order within 15 days of the passing thereof. This order will be entered in register in Form QPR-VII and will be linked up with the relevant entry in the register in Form IR-III. The Officer on Special Duty (Central Record Office) will take immediate action to get IR-IV back from the local authorities of the district concerned, who will also be required a Form QPRV-II, or QPK-IX, as the case may be, to cancel or reduce; the allotment already made. In the case of cancellation, Form IR-IV will be returned to the Central Record Office with a note to that effect for record. In the case of reduction in the area, the local authority concerned will record a note to th.3t effect on the relevant Form IR-V and after due reduction his been effected, will intimate the Officer on Special Duty (Central Record Office) the fact of his having complied with the above instructions.

All instructions from the Central Record Office under the provisions of this paragraph shall be complied with by the local authorities within one month of the receipt thereof."

It will be observed from this that the Officer on Special Duty (Central Record Officer) had no right to cancel an allotment, for, after getting the IR IV Form back, he had to send out QPR-VII and QPR-IX Forms to the District Rehabilitation Authorities concerned to cancel or reduce the allotment already made. The District Authorities, after making the cancellation or the reduction, as the case may be, were then to intimate to the Officer on. Special Duty the fact of their having complied with the above: instructions.

Paragraph 25 of this Scheme further shows that the Officer on Special Duty has no power even to transfer a claim from one district to another, but he is to be only informed of the transfer made so as to enable him to make the necessary entries in the relevant registers.

Reading these provisions as a whole, the question does arise as to whether the provisions of paragraphs 6 to 8, on which reliance has been placed on behalf of the Officer on Special duty, did vest the Other on Special Duty with the power either to correct a verification order or to cancel it or even to treat it as a nullity. The Officer on Special Duty, even if equal in status to a Claims Commissioner, could not normally have the right to sit on appeal over another authority having exclusive and final jurisdiction in the matter, as had been given by the Registration of Claims (Displaced Persons) Act, 1956 to the hierarchy of Verifying Officers appointed thereunder. I can find nothing in the Supplementary Rural Scheme No. I to vest the officer on Special Duty with such a power. All that the Officer on Special Duty could perhaps do, in such circumstances, was to refer the case back to the Claims Commissioner to consider whether he would, in exercise of his powers under subsection (3) of section 7, revise the verification order.

In this connection, reference is made to the decision of a learned Single Judge of the Lahore High Cow t in the case of Nawaz Khan v. O. S. D., Central Record Office, Lahore (P L D 1967 Lab. 42), where after examining the provisions of the Rehabilitation-settlement Scheme (Punjab), it was held that the Officer on Special Duty of the Central Record Office, under the Rehabilitation Resettlement Scheme (Punjab) and the Punjab Refugees (Registration of Land Claims) Rules, 1949, was "merely a reporting agency" and that be was "not a Court or a quasi judicial authority in any sense" The proper and final word was that of Settlement & Rehabilitation Authorities who were to give a verdict on the lis involved.

Reference is also made to a decision of this Court in the case of Syed Abdul Rehman v. Settlement, Rehabilitation & Claims Commissioner (P L D 1966 S C 362), where it was observed as follows: -

"Similarly under the Scheme framed under Martial Law Regulation No. 84 he was required to file a written statement in Form M. R.-1. along with the Form QPR-V and after due checking an Entitlement Certificate was issued under Form M. R.-V. The entitlement of a claimant was worked out thus under the schemes. In other words they provided machinery for the purpose of allotment of land verified under Schedule V of the Act. The officers under the Scheme have no power to question the legality or propriety of the verification order. It therefore cannot be said that by mere issue of an Entitlement Certificate the verification order would become final."

This observation was made, because, a revision from the Verification Order itself, was pending before the coming into force of Martial Law Regulation No. 84. Hence, since the Entitlement Certificate was to be issued on the basis of the Verification Order and the Verification Order was under challenge, the mere issuance of an Entitlement Certificate in the meantime did not give a finality to the Verification Order, even under the Martial Law Regulation No. 84, because, the said Regulation was "never intended to confer any finality on such orders which were under appeal or revision."

It has to be pointed out that the Officer on Special Duty. Central Record Office, again, came into the picture under a Scheme framed, under Paragraph 5 of Martial Law Regulation No. 84 of 1960, for the verification and

re-verification of claims, in January 1961. Under thin Scheme, the "Officer on Special Duty was the Officer in charge of the Central Record Office (Rural) attached to the Settlement & Rehabilitation Organization, or any officer specially empowered by the Chief Settlement and Rehabilitation Commissioner in this behalf". Again, the Officer on Special Duty was required to verify the written statements filed by claimants and r the Martial Law Regulation No. 84 with the records prepared by his officers, then work out the entitlement, enter the written statements in Form MR-IV register and issue an Entitlement Certificate in Form MR-V. II on such verification a claimant was not found to be entitled to any land, then also a nil certificate had to be issued and copies of such certificates were to be sent to the Districts in which the claimants held allotments, to be adjusted there by the District Authorities, i.e the Deputy Settlement Commissioners in the Districts.

If anyone was dissatisfied with the result of the verification given In Form M R-V, he was entitled to file an objection before the Officer on Special Duty within six months of the filing of the written statement or three months of the issuance of Form MR-V, whichever was later. Such objections were to be entered in register MR-VI and acknowledged in Form MR-III. Any claimant, who did not receive the acknowledgment in M R-III, was to inform the Chief Settlement Commissioner in writing within fourteen days of the date on which the objection was sent by him. The claimant could, in such circumstances also apply to the Settlement Commissioner dealing with the objection for the issuance of an interim status quo order, and then the objections were to be heard "by one or more senior officers of the rank of Settlement Commissioner" and after such hearing, the result of the scrutiny was to be sent to the Officer on Special Duty, if a re-calculation became necessary. A supplementary Entitlement Certificate in Form MR-V, had to be issued if the entitlement was increased. On the other hand, if the entitlement was reduced as a result of the scrutiny, then the Officer on Special Duty was required to collect the original copies of Form MR-V from the claimant concerned and the Districts concerned and then to cancel the same including the copy kept in his office and issue a revised certificate in Form MR-V. The finality under this scheme attached again to the order of the Settlement Commissioner on the objection.

This too will show that the Officer on Special Duty was merely an officer entitled to check the details and to see that the Entitlement Certificate conformed to the Verification Order. He had no jurisdiction to correct, alter or modify the Verification Order itself or to cancel any allotment of land. The claim of the respondent, therefore, that the power to verify and check given by Paragraph 8 of the Supplementary Rural Scheme No. 1 or Martial Law Regulation No. 84 also empowered the Officer on Special Duty to check the correctness of the Verification Order itself, does not appear to be well-founded. The power to verify and check was a subsidiary funct on entrusted with the Officer on Special Duty in order to insure that the elaborate schemes for the classification of the soil and the working out of the produce index units had been properly carried out by the officers of the Central Record Office in accordance with the Verification of orders and the applications and/or written statements filed by the claimants for allotments.

On principle too it would be an unusual proposition that In spite of the fact that the law gave exclusive jurisdiction to another set of officers or authorities to decide a question finally, yet the finality attached by law to such a decision could be taken away by another officer or authority of a subordinate or even of equal status indirectly in the guise of implementing the orders which had already received finality.

If authority is needed for this proposition, one may refer to a decision of the Court of Appeal in England in the case of The Queen v. The Commissioners for Special Purposes of the Income-tax (L R (1888) 21 QBD 313) This was an appeal from an order of the Queen's Bench Division discharging a Rifle calling upon the Commissioners fur Special Purposes of the Income-tax to show cause as to why a mandamus should not issue commanding them to make orders for re-payment to the Cape Copper Mining Company Limited, of certain overpaid income-tax. What had happened In that case was that in March 1887, the company had applied to the Income-tax Commissioners for the City of London for certificates under the Income-tax Statutes for the repayment of Income-tax alleged to have been overpaid during the assessment years 1883-84, 1884-85 and 1885-86. The Income-tax Commissioners enquired into the claim and granted a certificate for each year. The Company then went up to the Commissioners for Special Purposes for the order of repayment. The latter refused to issue the repayment orders for the years 1883-t4 and 1884-85 on the ground that the certificates for those years had been granted "without jurisdiction". The Divisional Court discharged the Rule; but on appeal, the decision of the Divisional Court was reversed, the Rules was made absolute and a mandamus was directed to be Issued to the Commissioners for Special Purposes to issue the orders of repayment. Lord Esher, Master of the Rolls, enunciated the principle thus: -

"When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will he held that they had acted without jurisdiction. But there is another state of the things, which may exist. The Legislature may intrust the tribunal or body with a jurisdiction, which includes the

jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislatures are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the faces, including tie existence of the preliminary facts on which the further exercise of' their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

It will be observed that the learned Master of the Rolls took the view that, since the Commissioners for the City of London bad been given the jurisdiction finally to determine whether the discovery and proof of the profits have fallen short of the sum computed within the period specified in the section of the law, that decision bad to prevail and the Commissioners for Special purpose could not go behind it.

In the same case, Lindley, L. T. took the view that the Commissioners for the City of London by whom the as assessment was made having granted the certificate under the relevant section of the law, the onus of showing that such discovery and proof were not made within the period mentioned in the law and that the certificate was, therefore, invalid rested on the Commissioners for Special Purposes, and this onus they hid not discharged by showing that the application for the certificate was not made before the date when it was made.

The ratio of the decision, therefore, appears to be that where finality is given to the decision of a certain body which has also the jurisdiction to decide finally facts upon which is own jurisdiction is founded, that decision cannot be called in question it any other collateral proceeding by another tribunal or body of limited jurisdiction.

On behalf of the respondent, reliance has been sought to be placed on another decision of the Court of Appeal in England in Re: Ripon (Highfield) Housing Order, 1938 ((1939) 3 A E R 548). This matter, came before the Court by a special proceeding under section 2(if) of Schedule It of the Housing Act, 1935, for the quashment of an order of confirmation granted by the Minister concerned in respect of a compulsory acquisition of lands by a local authority. Under this provision, such an order could be called is question only on the ground that it was not within the powers given by the Act. Section 75 of this Act provided as follows: -

> Nothing In this Act shall authorise the compulsory acquisition-----of any land which . . . . . forms part of any park, garden or pleasure ground, or is otherwise required for the amenity or convenience of any house."

'The property sought to be acquired in that case consisted of a large house with 35 acres of land surrounding it. The owner of the property known as "Highfield House" contended that the land proposed to be acquired formed part of a park land, garden, and pleasure ground and was required for the amenity or convenience of Highfield House. It was, therefore, not acquirable under section 75 of the Housing Act of 1936. The Divisional Court took the view that since there was evidence upon which the Minister could have arrived at his decision, there was no usurpation of jurisdiction and the proceeding must, therefore, fail. The Court of Appeal, however, took a different view and quashed the order of the Minister after re-considering the, evidence and holding that the land was a part of a park within the meaning of section 75 of the Act of 1936. Luxmoore, L. J. observed as follows: -

"The first and most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact, for, unless the land can be held not to be part .of a park, or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order. In such a case, it seems almost self-evident that the Court, which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which depends the existence of the jurisdiction relied upon. If this were not so, the right to apply to the Court would be illusory. There is, however, ample authority that the Court is entitled so to act, for the point has been considered in a number of cases. It is sufficient to refer to Bunbury v. Fuller (1853) 9 Exch. III. In that case Coleridge, J. delivering the judgment of the Court of Exchequer Chamber, said,

------it is a general rule that no Court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars making up together that subject-matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, ,yet upon this preliminary question its decision must always be open to inquiry in the superior Court. Then, to take the simplest case-suppose a Judge with jurisdiction limited to a particular hundred, and a matter is brought before him as having arisen within it, but the party charged contends that it arose in another hundred, this is clearly a collateral matter independent of the merits. On its being presented, the Judge must not immediately forbear to proceed, but must inquire into that preliminary fact and for the time decide it, and

either proceed or not with the principal subject-matter according as he finds on that point; but this decision must be open to question, and if he bas improperly either forborne or proceeded on the main matter in consequence of an error on this, the Court of Queen's Bench will issue its mandamus or prohibition to correct his mistake.

> As in Bundbury v. Fuller, and also in R. v. Bradford (1908)1 K B 365, so also in the present case, the decision on the question whether or not the particular land is part of a park preliminary to the exercise of the jurisdiction to make and confirm the order conferred by the Housing Act, 1936, section 75, and is, therefore, open to review in this Court."

Learned counsel for the respondent has no doubt relied on this case for the proposition that a Court of limited jurisdiction like that of a Claims Authority could not give itself juris4 diction on a point collateral to the merits of the case upon, which the limit of its own jurisdiction depended. In such circumstances, in spite of the finality given to its decision, it mush always be open to enquiry in a superior Court (the underlining is mine). What the learned counsel, however, overlooks is that this right is given only to a superior Court and not to another Court or tribunal of limited jurisdiction. Therefore, this decision does not support the proposition that the Officer on Special Duty could have treated the Order of Verification passed by the Claims. Organization as a nullity in the eye of the law.

Tribunals, which either act in an administrative capacity or do not possess inherent jurisdiction are not competent to disregard any order passed by them even on the ground that it was obtained by fraud. Vide All Iqtidar Shah v. Custodian (P L D 1964 Lah. 274). It follows that such tribunals of limited jurisdiction cannot also treat the order of another tribunal of limited but exclusive jurisdiction as a nullity.

It was, however, open to the High Court, if the Verification. Order was itself challenged there, to go behind the order and to see whether the jurisdictional facts had been correctly determined by the Claims Organization, namely, as to whether the claim filed was in respect of property or that it was a claim at all because, unless it was a claim in respect of property within the meaning of the Registration of Claims (Displaced Persons) Act 1956, the Claims Organization could certainly have no jurisdiction to verify the claim. But this the Officer on Special Duty could not do. If the latter felt that the Claims Organization had overlooked any particular fact upon which its own jurisdiction, depended, then it could only refer the matter back to the Claims Commissioner to revise or review the order as the case may be, if considered fit. The Officer on Special Duty, however, could not himself sit on judgment over the verification order and decide for himself as to whether it should been effect to or not by the issuance of an appropriate Entitlement Certificate. I am, therefore, in agreement with the learned counsel appearing on behalf of the appellants that the officer on Special Duty clearly acted in excess of his jurisdiction. But this does not mean that the High Court in the Writ Jurisdiction could not have considered the validity of the verification itself, because, even if the Officer on Special Duty acted in excess of his jurisdiction, the High Court in its discretion, could have refused to intervene on the ground that the Verification order itself was without jurisdiction and a nullity in the eye of the law.

The appellants have, on the other hand, contended, firstly, that the High Court could not do so in a proceeding in which the verification order was itself not directly under challenge and, secondly, because the order of the, Claims Organization was not; without jurisdiction.

In support of the first contention, reliance is sought to be placed on the observations of this Court in the case of The Chittagong Chamber of Commerce and Industry v. C. S. Limited (PLD1970SC132) which are to the following effect: -

> "The learned counsel for the appellant has argued that then order of the High Court, dated 28th June 1963 is a nullity Inasmuch as it confirmed a special resolution by which certain conditions in the Memorandum of Association were changed contrary to the provisions of sections 10 and 12 of the Companies Act. We are unable to accept this contention. Even assuming that the resolution was passed in contravention of sections 10 and 12 a distinction has to be made between an illegal decision and a void decision. By no stretch of imagination, even if the contention of Mr. Abdullah that the order was contrary to the provisions of sections 10 and 12 of the Companies Act were to be accepted, it can be urged that: the order is a nullity. At the highest it is an illegal order but not a void order. The Court had jurisdiction to confirm the deletion of the original clauses 4 and 7 of the objects and if in so doing it either misinterpreted or ignored any provision of the law, the order cannot be said to be void. An illegal order has to be avoided by challenging it in proper proceedings and until it is set aside, it cannot be ignored."

This is no doubt correct, but it is also now well-established that where an inferior tribunal or Court has acted wholly without jurisdiction or as Rubinstein puts it in his book on "jurisdiction and Illegality" taken any action "beyond the sphere allotted to the tribunal by law and. therefore, outside the area within which the law recognizes a privilege to err", then such action amounts to "usurpation of power unwarranted by law" and such an act is nullity: that is to say, "the result of a purported exercise of authority which has no legal effect whatsoever". In

such a case lit is well-established that a superior Court is not bound to give effect to it, particularly where the appeal is to the latter's discretionary jurisdiction. The Courts would refuse to perpetuate, in such circumstances, something which would be patently unjust unlawful.

An order in the nature of a writ of certiorari or mandamus is a discretionary order. Its object is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it cures a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked.

This principle has been followed consistently in England both In the case of a Writ of mandamus as well as a Writ of mandamus. As stated in Halsbury's Laws of England, Third Edition, Volume 11, at page 106 "the Court will not, by mandamus, order something which is impossible of performance by reason of the circumstances that the doing of the act would involve a contravention of law" nor will a mandamus issue "in order to effect what amounts to an evasion of a statute".

Relying on this principle, the Court of Appeal in England, in the case of Reg v. Eastbourne Corporation (1900) 83 L T R 338), refused to grant a mandamus to compel a local authority to approve plans of a proposed building, because, the plans clearly contravened the provisions of the Public Health (Buildings in Street) Act, 1888, and obedience to the mandamus "would be the approval of plans which would be In contravention of the law of the land".

Similarly, in the case of The Queen v. The Eastern Counties Railway (1843) 12 L J R 271), Coleridge, J. refused to issue a mandamus to direct a Railway company to issue a fresh precept for the summoning of another jury to asses damages, because, on an earlier precept, a jury had already been summoned and damages assessed under a law which provided that the verdict of the jury was to be "final and conclusive". The learned Judge was of the view that in such circumstances, to direct the company to issue a fresh precept, would amount to an evasion of the statute.

The same principle is followed in the case of a certiorari. The English Courts have refused to grant this writ even where grounds are made out for its issuance if or) benefit could arise from granting it. Thus in the case or The Queen v. Lord New-borough ((1869) L R 4 Q B 585) Lush, J. observed: -

"It is in the discretion of the Court to grant or to refuse a certiorari, and it is not a matter of right. As the order has been acted on, the money paid, and the account allowed, we think we ought not to do anything to re-open these proceedings."

The law has been summed up well by H. M. Seerval in his book on the "Constitutional Law of India" at page 618, where he says that "even where a Court has the power to issue a writ of mandamus or certiorari, the Court will not do so, if, to grant these writs works injustice in a broad sense".

Acting on this principle, a writ of certiorari has been refused by the Courts in the following cases because to grant it would have bad the effect of allowing the technicality of the law to cause unjust enrichment which it was the policy of the law to avoid or would have resulted in the confirmation of a certificate obtained wrongly be suppressing material facts or would have sustained an order of allotment which the petitioner had obtained by suppression of material facts within his knowledge or would have resulted in perpetuating an injustice which bad been done to the respondents by an incorrect order passed against them or would result in perpetuating a manifestly illegal order or would debar the taxing authorities from initiating proceedings because the requisite time for such initiation had expired.

It is unnecessary to refer to all the suthoritie4 cited by the learned author in support of the above illustration, but I may refer to one; namely in the case of Abdul Majid v. The State Transport Appellate Authority (A I R 1960 Pat. 333) where the position was in pan material. The Court refused to grant relief under Article 226 of the Indian Constitution and refused to set aside au impugned order of an Appellate Authority, because, that order had itself set as, be an earlier order, which had no validity due to want of jurisdiction as by setting aside the subsequent order the Court would be "countenancing and perpetuating an illegal act".

In the same manner, in the instant cases, if the High Court, in its extraordinary jurisdiction under Article 98 of the Constitution of 1962, came to the conclusion, as it has in fact cone, that the orders of the Deputy Claims Commissioners verifying the claims of the appellants were illegal and without jurisdiction, it could legitimately refuse to set aside the order of the Officer on Special Duty, even though the latter was clearly without jurisdiction.

This brings me to the consideration of the next question, namely, as to whether the orders of the Claims Authorities verifying the claims of the appellants were without jurisdiction and nullities. The High Court has

found them to be so, firstly, because, in the opinion of tie High Court suit, the Claims Commissioner bad no jurisdiction to direct Claims Officers to treat claims filed under Schedule V-A as claims under Schedule V and to verify the same accordingly, after the last date for filing of the Forms under Schedule V had expired; and, secondly, because, the High Court took the view that Jagirs were not rights or interests in property at all and, therefore, under the Registration of Claims (Displaced Persons) Act III of 1956, no claims in respect of Jagirs could have been at all verified.

With regard to the first ground on which the High Court has held the Verification Orders to be without jurisdiction, learned counsel for the appellants have contended that the High Court has not kept in mind the distinction between acts done wholly without jurisdiction and the mistaken application of law in the exercise of its jurisdiction. It is contended that the Claims Officers had the jurisdiction to pronounce upon the validity of claims flied asserting a right to the ownership of, or to any interest in, property which bad been treated as evacuee property in India or of which a displaced person had otherwise been deprived under any law for the time being in force in India.

As to what is "property" is defined in the Act Itself. Clause (e) of subsection (2) of section 2 gives to the Central Government the right to add to the definition by declaring any other property or clans of property not specified in the earlier Clauses of this subsection to be property for the purposes of this Act by a notification in the official Gazette. This notification was issued on the 7th of April 1958. including Jagirs and muafis within the category of properties defined in the Act, and until this notification was cancelled on the 2nd of October 1759 it was not open to anyone to say that Jagirs are not property within the meaning of the Act. Up to the cancellation of the aforesaid notification, the claims others had, therefore, every jurisdiction to verify the claims head by the appellants, and even it they had done so erroneously or misinterpreted the law in doing so, it cannot be said that they had acted without jurisdiction.

In the cases now under consideration, all the verifications, aft is claimed, had been made before the cancellation of the notification of the 7th of April 1958, and, therefore, the appellants had further more acquired a vested right under these Verification Orders, of which they could not be deprived retrospectively by the cancellation of the notification, because, a notification can never operate retrospectively.

As regards the circulars of the Claims Commissioner, issued in April and May 1959, the Circular Letter No. Jagirs/59/13616 issued by the Claims Commissioner, Pakistan on the 10th of September 1959 (vide page 114 of the Paper Book in Civil Appeal No. 9/67), it is pointed out, clearly explains that these circulars merely directed that claims in respect of Zamindari or tenancy rights filed under Schedule V-A should be treated as claims under Schedule V and should be verified as such, "leaving other rights in the nature of Jagirs or muafis in the form of assignment of rent or land revenue". There was noting irregular or illegal in this circular, and it cannot be said that the acts of the Claims Authorities in so treating the claims were a nullity, because, zamindari and tenancy rights did, in any event, come within the definition of "land" given in clause (c) of subsection (2) of section 2 of the Act of 1956 (Act III of 1956).

In support of the contention that there is a clear distinction between an incorrect decision and a void decision, reference is made to several decisions of this Court wherein the legal consequences of this distinction have been indicated. Thus in the case of Muhammad Ayub Khuhro v. Pakistan (P L D 1960 S C 237) it was pointed out that "a judgment is incorrect if it is not wrong in law or fact it is void if it is pronounced by an incompetent Tribunal".

In Badrul Haque Khan v. The Election Tribunal, Dacca (P L D 1963 S C 704) this Court took the view that admission of inadmissible evidence or the improper allocation of onus or even misinterpretation of the provisions of a statute would not necessarily render the Impugned order without lawful authority, because, "the proposition is indisputable that when there is jurisdiction to decide a particular matter then there is jurisdiction to decide it rightly or wrongly and the fact that the decision is incorrect does not render the decision without jurisdiction"

Again in Muhammad Swaleh v. United Grain & Fodder Agencies (P L D 1964 S C 97I) it was laid down this "by merely showing therefore that an order passel was in violation of some provision of law or procedure the conclusion that the order is a nullity would not follow, It shoal: further be shown that there was such a violation of some statutory provision or principle of natural justice as would render the proceedings coram non judice."

It is no doubt true that there is a clear distinction between an act wholly without jurisdiction and an act done in the improper exercise of that jurisdiction. Where there is jurisdiction to decide, then as it has often been said there is jurisdiction to decide either rightly or wrongly, and merely a wrong decision does not render the decision without jurisdiction. To amount to a nullity, an act must be non-existent in the eye of lain; that is to say, it must be wholly without jurisdiction or performed in such a way that the law regards it as a mere colourable exercise of jurisdiction or unlawful usurpation of jurisdiction. In the present cases, the Verification Orders cannot be said to be without jurisdiction and a nullity in this sense, inertly because of the circulars of the Claims Commissioner, Pakistan, directing the Claims Officers to treat claims for zamindaris and tenancy Interests in claims filed under

Schedule V-A as claims under Schedule V, leaving out Jagirs and muafis. If the Claims Officers had misinterpreted these instructions or misapplied them and treated even Jagirs and moats as claims in respect of properties under Schedule v, then they had no doubt decided wrongly but not without jurisdiction. I am, therefore, unable to agree that on this ground the Verification Orders could be treated as a nullity.

The next ground, however, is more substantial. If, as pointed out in the circular of the 10th of September 1959, the verification of claims under Schedule V-A had been totally suspended by Circular No. Jags/59/1510 dated 19th January 1959, then the verification of claims in respect of Jagirs not involving zamindari, or tenancy rights in the face of this bar would be clearly beyond the jurisdiction of the Claims Officers, even though the notification of the 7th of April 1958 enlarging the definition of "property" under section 2 of Act III of 1956 had not been cancelled till then. The Claims Officers below the claims Commissioner had to work under the general superintendence and control of the Claims Commissioner. They could not, therefore, disregard his instructions. If they did so or gave themselves jurisdiction by wrong interpretation of those instructions the High Courts would be entitled to go behind their decisions as pointed out earlier and declare them to be null and void even though another tribunal of limited jurisdiction was not entitled to treat such decisions as nullities.

The High Court was, therefore, in my view, in any event entitled to consider whether the Jagirs, in respect of which the claims had been verified, were confined to claims filed under Schedule V-A in respect of zamindari or tenancy rights in land. The High Court has come to the conclusion that Jagir rights are not rights in rem at all but rights in personam simpliciter arid, therefore, unless it was objectively established that the claims were in respect of lands or interests in land, they could not have been verified at all under Act III of 1956. This was a jurisdictional fact, in respect of which the Claims Authorities could not claim any final jurisdiction. They could not, by an erroneous decision, give themselves jurisdiction to verify such claims, as, a purely administrative tribunal, which is empowered to pass an order if certain circumstances exist, has no jurisdiction to determine those circumstances, because, the objective existence of those circumstances is an essential condition of the validity of its order, as was pointed out by this Court in the case of Muhammad Jamil Asghar v. The Improvement Trust (P L D 1965 S C 698). It was held in the said case that the orders of the Settlement Officers transferring a property would be without jurisdiction "if the property was in fact not evacuee property and was not vesting in the Central Government". In such circumstances, the Settlement Authorities could not grant to themselves any jurisdiction to deal with it by merely holding that it was evacuee property. Such orders would always be liable to challenge in Courts of general jurisdiction and certainly in superior Courts on the ground that they had no jurisdiction with regard to the property transferred at all.

On the same reasoning a Claims Commissioner or a Claims Officer could not give himself jurisdiction to verify a claim by wrongly holding that the claim was in respect of property within the meaning of Act III of 1956.

Learned counsel for the appellants have contended that even if this be so, the High Court was wrong in taking the view that a Jagir in the State of Hyderabad, Deccan, was not "property" within the meaning of clause (c) of subsection (2) of section 2 of the said Act. This necessarily necessitates an examination into the nature of such Jagirs in Hyderabad, Deccan.

The High Court, relying on the classification given in the report on the Administration of His Exalted Highness the Nizam's Dominions for the year 1331 Fasli (October 1921 to October 1922), compiled by Hyder Nawaz Jang the then Finance Member of the Nizam, and published by the Nizam's Government in May 1925, took the view that, since none of the appellants In these cases held Paigah or Al-Tamgha Jagirs, tie Jagirs held by them were non-hereditary and conferred no right on them other then the enjoyment of the usufruct for life only.

Thereafter, referring to The Imperial Gazetteer of India) Volume XIII, and the decision of the Bombay High Court in the case of Ramchandra Mantri v. Venkatrao (1 L R 6 Bom. 598), the High Court came to the conclusion that, since no other authority to the contrary had been shown, Jagirs of the kinds held by the appellants created "no permanent or quasi-permanent interest in the land whether it was in possession of cultivators or tae Jagirdars themselves." Therefore, the verification of the claims of the appellants under Schedule V in accordance with the instructions issued by the Claims Commissioner for the transference of claims filed under Schedule V-A to Schedule V and their verification as such were without lawful authority and a "complete nullity in law", as the Claims Commissioner had no power either to enlarge the definition of "property', or to admit a claim after the expiry of the last date for the submission of claims.

It is true that in the earlier decisions starting from 1827, with the case of the East India Company v. Syed Ally and others (7 M I A 555), which dealt with the case of a grant originally made by the, Nawabs of Carnatic as an Al-Tamgha Inam, the Judicial Committee of the Privy Council did hold the view: -

"That although the language of the grants might seem to convey a proprietary interest in the soil, yet tile grantees confessedly possessed no such interest, the subject matter of the grant being a mere Jagir, or portion of public land revenue, together with the Government powers of collecting the same----------

----------the grants, therefore, being of the nature above-mentioned must, according to the character and usage of the Indian Government, be determinable, if not at pleasure, at least upon the death of the granting Sovereign, or the change of dynasty."

The facts of this case were that all grants granted by the Nawabs of Carnatic had been resumed by the East India Company and in some cases perwannahs or sanads were subsequently issued re-granting the jagirs. In these circumstance, in a suit filed by the heirs of a deceased Jagirdar for the declaration of their shares in such a re-granted Jagir, the Privy Council took the view that the re-grant of a Jagir was a sovereign act and that the re-grant, in the case before it, was clearly for life only. Therefore, the other heirs of the original grantee had no right, title or interest in this Jagir, nor could the Courts in Madras enter into an examination of the validity of such a sovereign act.

It is interesting, however, to note that the Privy Council itself in this case conceded: -

"That the laws and usages of Muhammadan States respecting grants of jaghires, the nature of Altumghah grants, the precise estate and interest conveyed by such grants, and the powers of resumption or revocation belonging to the sovereign grantors, were matters respecting which there was no sufficient evidence on which the Court below could make the decrees, appealed against, and that the Court ought to have directed issues, in order to ascertain the facts, and especially the laws and usages of the Carnatic, and ought not to have decided a question of such magnitude and of so much novelty and perplexity without granting such issues."

It will thus be seen that in the above-mentioned case, though there are some general observations with regard to the nature of Jagirs under the Muslim Rulers of India, the matter was not directly in issue, for, the Privy Council proceeded on entirely different considerations.

Next, in 1867, in the case of Krishnara' v Ganesh v. Rangra' v (4 BHCR (ACJ)), while considering as to whether an inamdar could alienate the Land which formed part of his roam for any period exceeding the term of his life, Westropp, J. (as he then was) made the general observation that "Sanadi grants in Inam, saranjam, jagir, wazifa, wakf, devasth'an and sevasth'an, are, generally speaking, more properly described as alienations of the royal share in the produce of land i.e. of land revenue, than grants of land, although in popular parlance, and in this judgment, occasionally so-called",

In the cast before him, the original sanad was granted by Emperor Shah Alam in 1771 A. D. and was an AI-tamgha inam to one Naru Ganesh, the ancestor of the appellant, and his children and their descendants "in lineal succession, for generation after generation, in perpetuity and for ever; and, regarding them as safe, and protected from the misfortunes of transfer and changes". The learned Judge after reviewing a number of decisions took the following view: -

"Upon a review of all of the authorities, I think that lands hold in roam, and especially altamgha roam, such as those the subject of this suit, free from any condition as to prospective service, and unfettered by any religious or charitable or other trust, and not specially restricted to the family of the grantee, are alienable. I cannot hold that the words of inheritance contained in the Farman of 1771 amount to any such restriction, Either express or implied. If it were intended that the inam-i-altamgha thereby granted, and which 1 may observe, seems to have been the highest class of estate known on this side of India, were either to be inalienable, or, if alienated, nevertheless to revert to the imperial grantor or his successors upon the failure of issue male, or general issue of the original grantee, it would have been very easy to say so in the Farman of 1771. I should, however, have been surprised to find any such restriction in a grant of imam-i-altamgha, unburdened by any condition as to service, or by any trust, and solely dictated by a desire to benefit the grantee. It would have been inconsistent with, and in derogation of, the nature of such a grant, which usually confers an estate hereditary, transferable and irresumable. We ought not, unless constrained by force of an overruling context, to endeavour to wrest from language, customarily employed by the natives of India, in their most simple and ordinary conveyances, to import perpetuity of estate a meaning so narrow and so highly technical as that which the appellant asks us to give to the' grant in this case cannot find a syllabic, in the context of the Farman of 1171, indicating that the words of inheritance were employed in any other than their normal sense."

The other learned Judge (Tucker, J.), constituting the Bench did not agree with all these general observations but agreed with the conclusion, as, in his view, "the alienability of land granted as jagir or inam must be governed by the terms of each particular grant; and that no general rule can be laid down with respect to lands granted under these appellations".

Then, in 1875, in the case of Ravi Narayan Mandlik v. Dadaji Bapuji Desal (I L R 1 Bom. 523), Westropp J., who had by then become Chief Justice, reaffirmed his previous view that: "lf words are employed in the grant, which expressly or by necessary implication indicate that Government intends that, so far, as it may have any ownership

in the soil, that ownership shall pass to the grantee, neither Government, nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass."

In the case there under consideration, the sanad had purported to grant a village in inam "including the waters, the trees, the stones and quarries, the mines, and the hidden treasures, but excluding the Hakdars and Inamdars." It was held that the use of these words amounted to a grant of such proprietary right as the grantor had in the soil of the village to the grantee.

Unfortunately, in 1878, in the case of Gulabdas dugjivandas v, The Collector of Surat (I L R 3 Born. 186), the Privy Council, although it conceded that the question before it depended upon the construction of the sanad aided by a consideration of the surrounding circumstances and of the occasion on which it was granted, propounded the general proposition that "a jaghir must be taken, prima fade, to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary".

It is not clear from the judgment as to what was the precise nature of the jagir granted, because, it was under a sanad granted by the Governor of Bombay in the year 1800, on the cession of Surat to the East India Company, to one Najamooddin Khan, who was then the Commander-in-Chief of the forces of the Nawab of Surat. After considering the terms of the sanad granted by the Governor of Bombay the Judicial Committee observed that "having regard to the peculiar character of this grant from the Government under the circumstances, which have been related, and with the objects which it expresses, have come to the conclusion that the Court of Bombay was right in treating it as conferring upon the descendants of Najamooddin who would be entitled under it, an estate for life and for life only".

We come next to the case of Ramchandrar Mantri v Venkatrao; which has been quoted in extenso the High Court judgment. The question that arose in this case was as to whether the grant of a saranjam in respect of the village of Bagni was a grant of the soil, which could be partitioned. The Court came to the conclusion that as the saranjam was originally given for the maintenance of a body of horse, and was, therefore, in its inception a jaghir held for service, it was indivisible, even on the general principles of Hindu Law, as stated by Mayne in his classical treatise on Hindu Law; namely, "that an estate, which has been allotted by Governs eat to a man of rank for the maintenance of his rank, is indivisible, as otherwise the purpose of the grant would be frustrated"

It is in this case that the Bombay High 'Court went a little further than the Privy Council in the case reported in I L R 3 Bom. 186 (P C) and observed that: -

> "the authorities which we have quoted, (and none have been shown to us which support a different conclusion), may, we think, be taken as at least establishing that a grant in jaghir or saranjam is very rarely a grant of the soil, and that the burden of proving that it is any particular case a grant of the soil lies very heavily upon the party alleging it."

In the case of Ramchandra Mantri, it appears that there was no sanad and the nature of the Jagir granted was sought to be ascertained aliunde. Hence the Court went into the, general considerations regarding the nature of Jagirs and saranjams under the Muslim Rulers of India as described in the preface in the list of Saranjams published by Colonel Etheridge in 104, the definitions of saranjams given by Professor Wilson in his Glossary on legal terms and Mr. Steele's book on "Hindu Castes" as also the account given in Mr. Neil Ballie's essay on the "Land Tax of India".

I do not wish to burden this judgment with a repetition of the extracts, which have been fully quoted in the High Court Judgment, because. I find that this view underwent a significant change in course of time as British Courts began to become more familiar with such estates and their essential characteristics, for, in 1919, the Privy Council itself, in the case of Suryanarayana v, Patanna (451 A 209), felt the necessity of pointing out that the Courts in India had been misinterpreting the views of the Privy Council.

The precise question that arose for consideration was as to whether the grant of a village given by the Reddi King to the predecessor-in-tile of the plaintiffs and subsequently recognized and confirmed by the British Government "was a grant of the revenue only of the village, or was it a grant of the proprietary right in the village that is, of the soil of the villager". The Courts in India had, as point out by the Privy Council, wrongly deduced from its earlier decisions the principle that "it should be presumed, in the absence of the lnam grant under which he held, that the grant was of the royal share of the revenue: only”

Sir John Edge, in delivering the opinion of the Board, therefore, observed:

> "Some of those decisions to which they referred do not, upon an examination of them, support the opinions of those Judges as to the presumption which they applied in these suits. In their Lordships' opinion there is no such presumption of law. But a grant of a village by or on behalf of the Crown under the British rule is

in law to be presumed to be subject to such rights of occupancy, if any, as the cultivators at the time of the grant may have had."

Upon this conclusion, the decrees of the High Court of Madras and of the District Court below, which had both relied upon this presumption, were set aside and that of the Munsif restored.

Again, in 1922, in the case of Chidambara Sivaprakasa Pandara Sannadhigal v. Veerama Reddi (49 1 A 286), the Judicial Committee of the Privy Council reiterated this principle and pointed out that the High Court was wrong in taking the view teat any kind of "initial presumption" was deducible from the earlier decisions of the Judicial Committee. The observations of Lord Cave in the case of Upadrashta Venkata Sastrulu v. Divi Seetharamudu (46 1 A 123), that "each case must therefore be considered on its own facts and in order to ascertain the effect of the grant in the present case, resort trust be had to the terms of the grant itself and to the whole circumstances as far as they can now be ascertained", were reiterated and reaffirmed.

Again later in the same year In the case of the Secretary of State for India in-Council v. Laxmi Bai (50 1 A 49), the Judicial Committee felt the necessity or pointing out that the decision of the Bombay High Court that the grant was one of the royal share of the revenue only and not of the soil was incorrect, and in this connection observed: -

"In reaching this conclusion it is impossible to resist the view that the Judges of the High Court were much influenced by their view that there is a presumption that a grant of Saranjam is a grant of royal revenue only, and accordingly that tile burden of proving that, in any particular case of Saranjam, it is a grant of toe soils lies upon the party alleging it. They relied upon various cases cited and which at that time seemed to establish this proposition. They had not, however, the benefit of two recent decisions of this Board viz., Surayanarayana v. Patanna 45 I A 209 and Chidambara Sivaprekasa Pandara Sannadhigal v. Veerama Reddl 49 I A 286, In both of which it was held that there is no such presumption."

The grant in the latter case before the Privy Council was in recognition of political services; but since one of the earlier documents relied upon expressly purported to grant the kasba concerned "with the whole of the dues and cesses and hidden treasures, exclusive however of the dues of Hackdars and Inamdars, the inference derived was "that the original grunt was a grant of the soil".

From a review of the above decisions, the principle that appears to be deducible is this that a grant of a Jagir or saranjam, under the Muslim or Hindu Rulers of India before the' advent of the British, was not necessarily a grant of the Prince' royal share of the revenue only nor was there any such initial presumption in respect of such grants so as to put the onus of proof of the contrary heavily upon the person alleging the same; for, such grants could take a variety of forms, as they in fact did, and, therefore, where the terms of the original grant were available in the shape of sanads, and perwannahs, they had to be looked to for ascertaining the true intention of the grantor. But even where the original grant was not available, the history of the grant, the purpose for which it was made, the manner in which the lands pertaining to the grant had been dealt with for over a period of years became relevant and had to betaken into account, for ascertaining the true nature of the grant. There was no presumption one way or the other, for, a grant in the nature of a Jagir or a saranjam could well be a grant of the soil as well or create an interest in the soil though of a limited nature, being subject always to resumption. Even according to the earlier decisions, where rights in trees, hidden treasures, stones, quarries and mines, upon or under the land, had also been granted, it was held to be a right in the soil itself and not merely a grant of the royal share of revenues. (Vide I L R 1 Bom. 523).

This is also the contention now being advanced by the learned counsel appearing on behalf of the appellants who have criticized the method adopted by the High Court of making a general survey of the nature of Jagirs given by various Administrators during the British period and then proceeded upon the presumption which was attached by the earlier decisions in such cases without noticing the subsequent decisions of the Judicial Committee of the Privy Council itself pointing out that no such presumption can be drawn.

Learned counsel have also complained that jagirs In the State of Hyderabad, Deccan, ware materially different in character and if they had been given an opportunity of proving the precise nature of their respective grants either by the Officer on Special Duty or by the High Court, they might have been able to satisfy them with regal d to the validity of their respective claims and established that the rights enjoyed by them under their respective grants were rights in the soil itself and not merley grants of revenue. If this opportunity had been furnished they maintain that they would have been able to point out that some of the appellants held al-tamgah Jagirs and prevented the High Court from forming the erroneous impression that no one held a Jagir of this nature.

Learned counsel for the appellants have also placed before us Urdu reports of certain decisions of the Deccan High Court itself in which the nature of some of the Deccan Jagirs came up for consideration. Thus, in the case of Lal Bir v. Raja Sham Raj Bahadur (13 Deccan L R 201), the question arose as to whether a person receiving a Jagir from the ruler himself could make a similar grant or sub-grant to another of the same nature, say, a mukta,

and it was held that although no grantee trout the Ruler could make a grant of such nature yet he could let out the lands on patta, and even if he had purported to make such a grant, that would only be treated as a patta. This decision seems to indicate therefore, that a Jagir-holder from the Ruler could grant pattas on rent.

In an earlier decision in the case of Abbas Mirza v. Hefazat Ali Mirza (2 Deccan L R 182), In which the terms of a zat jagir granted to one Syed Hasan Mirza Khan in 1301 Fasli as a "Kankah ghasta" came up under consideration, and it was held that tie use of these words by themselves implied that this was not a mere grant of a life interest to the person named in the sanad. Therefore, in the case of such a Jagir the heirs of the Jagirdar were entitled to share in the income of the Jagir.

Sub-nomine Mir Momen All v. Mir Akbar All, the Jagir was originally granted to Wahiduddowla Bahadur in 1315 Hijri. Wahiduddowla died in 1363 Hijri. Thereafter, his eldest son, Mokaramjang Bahadur, took possession of the Jagir. The other four sons of Wahiduddowla then filed a suit for their snares of the inheritance in the properties left by their father as also demanded a partition of the Jagir. During the pendency of the proceedings, the sanad was renewed in the name of Mokaramjang and then, after the death of Mokaramjang, in the name of his son Akbar Ali. It was then argued that, since the Jagir had been re-granted to Mokaramjang, the other heirs of Wahiduddowla had no right in this Jagir. The Jagir was a zat jagir together with the "chowth sarkar tanshuda". The Judicial Committee of the State held that, since the re-grant to Mokaramjang had used the words "that the grant was being renewed in accordance with the past practice (Ba dastur ay sadiq our arson)", the idea was not to make a fresh grant in favour of Mokaramjang alone excluding the other heirs of Wahiduddowla and, therefore, it was not a fresh grant but a continuance of the grant for the purposes of the Maashey khandan of Wahiduddowla and, therefore, the other heirs had a right to share in the income of the Jagir.

Reference is also made to another decision In the case of Mir lmdad Ali Khan v. Muhammad Akramuddin Khan and another (19 Deccan L R 56). In this case it was again held that a renewal of a grant in favour of an heir is not necessarily a fresh grant, but justice and the principles of the Islamic Shara' require it to be considered to be a renewal of the grant, because, even Princes when they exercise their sovereign rights should not disregard the principles of policy, custom, equity and justice; and on these principles, the Jagirs should be continued in the same family to which it was granted unless there be some very good reason fir not so doing .

On the basis of these decisions, it has been urged that the tendency in almost all Courts has progressively been towards restricting the unlimited rights of the sovereign and giving to the Jagirdars gradually whit amounts to all intents and purposes, an interest in the soil itself. In any event, the Courts have always leaned towards interpreting a sanad or the terms of the grant in favour of the Jagirdar rather than in favour of the grantor, i.e. the State, to such an extent that even the State itself gradually began conferring rights by legislation upon Jagirdars which were incompatible with the position of a person having the right only to collect the sovereign's share of revenues.

Thus, under section 1514 of Revenue Circular No- I, published in the Fourth Part of the Second Volume of "Majmooaey Kawaneen Malguzari", in the year 1299 Fash (equivalent to 1288 Hijri), the Jagirdars were given the right to grow trees on their Jagirs and to cut and sell the same as also existing trees, along with their products and fruits. Even with regard to trees connected with irrigation, they were given the same rights as pattadars.

They were also given the right to cut forest timber and to have their own hammer for marking trees in forests within their Jagirs by sections 1506 and 1507 of the same circular. The right to levy excise duties, fees on distilleries and for tree-tapping for toddy was also given to Jagirdars by section 1511 in the same volume. Section 1515 gives the right to Jagirdars to construct tanks on their Jagirs and supply water therefrom for agricultural purposes at fixed fees prescribed thereunder. Section 1516 gives them the right to expend out of their own funds monies to improve the lands for cultivation, and for this the Jagirdars are to be rewarded by remissions or muafis if the additional income derived as a result of such improvements is brought into the Government treasury.

Learned counsel for the appellants have also referred to sections 1022 and 1023 published in Part 12 of Volume III of Majmooaey Kawaneen Malguzari (page 454) by which the State undertook, when it became necessary to acquire lands for the construction of the Hyderabad-Godavari Railway line, to compensate people. It was provided that, in the case of Jagir or inam lands, the Jagirdars or Inamdars would be compensated at the same rates as owners of other lands. If the lands had been under cultivation for five years or more, then they would receive compensation at usual rates. If the lands were lying uncultivated then they would be compensation as uncultivated lands. If the lands acquired contained tanks, bawlis etc then they would he compensate accordingly. In other words, the scheme laid down for compensation was more-or-less similar to the scheme of compensation under the Land Acquisition Acts.

It is also significant that in the year 1300 Fasli it was provided by section 1322 (vide page 66 of the fourth Part of the same volume of Majmonaey Kawaneen Malguzari) that where an inam has been resumed or confiscated then, if the displaced grantee so desires, the lands should be settled on those who were in possession immediately before the resumption at concessional rates.

Learned counsel for the appellants have also referred to the Qawiid-e-Kaza Ba Jagirdaran, printed at page 256 of Volume I of Majmooaey K-twaneen-e-Ozmania, to show that Jagirdars could also mortgage their Jagirs and the State recognised this right by making laws for h4uidating their debts. The form of the mortgage deed given at page 262 of the same volume also indicates that the mortgage bound not only the mortgagor but also his heirs, and although under those laws the State could take over possession of the Jagir -to liquidate the debt, it did not forfeit -the Jagir. The possession of the Jagir was returned to the mortgagor-Jagirdar after the liquidation of the mortgage debt.

Learned counsel for the appellants, has from these provisions and the decisions earlier referred to, sought to deduce that since the Jagirdars had the right to grant settlement of pattas and realize rest on paying a certain percentage thereon as malikana to Government, the right to create mortgages over the Jagirs, the right to cut trees, sell forest timber, dig ponds, supply water for purposes of irrigation and cultivation, collect excise fees from distillers, toddy tappers and those who work the quarries on their Jagirs. They were entitled to compensation in the case of acquisition of the lands for public purposes such as railways, etc, as also to receive compensation for the acquisition of lands in their self cultivation in the same manner as pattadars and were also entitled almost as a matter of course to a re-grant of the Jagir to an heir in the event of the death of tie Jagirdar. The interest thus acquired by a Jagirdar in the Jagirs in Hyderabad State appears to be clearly something more than a mere personal right. It was certainly an usufructuary interest in the land and a jus ad rem if not a jus in rem.

Lastly, learned counsel for the appellants contend that the restrictions on alienation and succession were only to this extent that the approval of the Ruler was superimposed; but this, they argue, was not incompatible with an estate or an interest, in the soil itself, because, by various Acts enforced in the territories of the Nizam in the year 1931 A. D, e.g., The, Money Lenders' Act. The Deot Settlement Act and the law Relating to Mutations of Agricultural Lands, similar restrictions .on transfer had been placed. This did not mean that these: Acts rendered the estates held by debtors or agriculturists merely personal interest’s having nothing whatsoever to do with the land. These restrictions were imposed merely for, the protection of Jagirdars themselves to see that suitable persons were placed in charge who did not discipate the grant -or defeat the very object of the grant by depriving the family of the grantee of the maintenance given to them. In any event, all Jagirs were not of the same kind as Jagira tankah or altamgah or tanshuda were perpetual grants, as lead been held by the Deccan Courts. Similarly, sat jagirs or Jagirs granted for "Madadey Ma'ash" gave rights to hers of a deceased Jagirdar to share in the rents, issues and profits of the Jagir.

Reference is also made in this connection to the decision of the Privy Council in the case of Pestonji Rvanji v. Shapurja Edu ji Chinoy (351 A 79) where the Privy Council assumed that a grant mace in 1838 by an orhcer of the Hyderabad State purported "to deal with and enforce a grant of the land by the State".

This opinion was expressed after considering the documents produced in the case and appreciating their effect.

Reliance is also placed on a decision of the Sind Chief Court in the case of Chimandas Kundanmal v. Kundanmal Alumal (I L R 1942 Kar. 559) where a learned 6tngle Judge of the Chief Court alter referring to the dicta of the Privy Council in Secretary of State for India v. Laxmibai to the effect that "the quality of the grant was to be determined on the facts of each case, and that there was no presumption one way or the other", held, on a consideration of the original grant and the history of the Jagir land in dispute, that it was a grant of land revenue only.

Similarly, in the case of Mir Abdul Husain Khan v. The Province of West Pakistan (P L D 1958 Kar. 175), a Division Bench of the West Pakistan High Court followed the Privy Council dicta in the `ass of Secretary of State for India v. Laxmibai and came to the conclusion that "if under the terms of the grant he is found to possess substantial interest in the land, besides collecting the land revenue, there is no doubt in our mind that such grant should be treated as also the grant of the soil". The Court also pointed out that there is a clear distinction between the assignment of land revenue simpliciter and the grant of Jagirs free from land revenue. In the latter event, where the grantee, also has the right to cultivate and enjoy the produce of the land, the grant is a conferment of a "proprietary interest" in the land.

As against this, it has been argued on behalf of the respondent that under the "Azamural Atiyat", a publication, made with the permission of the Nizam, it is clearly provided that on the death of each grantee a "takhta-e-werasat" should: be prepared and sent to the Government for approval; but from page 549 of this publication it appears that where the grant is for life only, then no "takhta-e-werasat" is to be prepared (vide tashreeh No. 1 under section 356). This means that the "takhta-e-werasat" was to be prepared only where the grant was not limited to the life of the grantee. Again in section 373 at page 574, instructions are given to the Zilla Talukdar that if he is satisfied that a certain person is this proper heir, then the grant may continue even before the final decision with regard to the inheritance. Section 389 at page 593, also provides that there may be a transfer or mutation of jagirs from one person to another, if approved by the State, whether the transfer is by sale or gift.

Section 393 at page 599, however, provides that it will be entirely in the discretion of the State to accept or not to accept any mutation or succession, and until such a mutation or succession is approved, it shall be of no effect.

It is nevertheless significant that these provisions in the "Azmural Atiyat" do not speak of a fresh grant but merely speak of the mutation of the name of the successor or transferee, as the case may be. There seems to be a great deal of force, therefore, in the contention which seas upheld by the Judicial Committee of the Deccan State, in the cases referred to earlier in this judgment, that the approval of an heir does not necessarily amount to the grant of a fresh Jagir, but it is merely an approval of the continuance of the Jagir in the name of all the heirs but possession is given to one of them who is considered the best fitted to manage. It is not a fresh grant to an individual heir to the exclusion of all others.

Learned counsel for the respondent, however, contends that in essence a grant is a grant of only a favour or a privilege by the Ruler of certain sovereign rights such as the collection of "chouth" or revenue. It is not a grant of the soil and the essential principle of every such grant is that on the death of each grantee the Jagir reverts to the grantor. Furthermore, as the Privy Council has pointed out in its earlier decisions, a grant of State lands cannot subsist beyond the life of the grantor himself. Thus, when one Ruler dies, all grants automatically are resumed and the next Ruler decides as to whether the grants should be re-granted or not.

In support of this contention, strong reliance is placed on two post-Partition decisions from the Indian jurisdiction. The first is in the case of Sarwarlal v. State of Hyderabad (A I R 1954 Hyd. 227) where Division Bench of that High Court, retying on some earlier decisions of the Judicial Committee of the Deccan State, held that the Ruler was the absolute owner of all the lands situated in a Jagir and the grant was only a grant of usufructuary tights in them for life. Their heirs did not succeed automatically and the grantor was not bound on the death of the grantee to, confer the' estate on his heirs. The Jagirdars of Hyderabad State, therefore, according to this decision, "had during their lives rights of managing their estates, enjoying the incomes from the revenue, cess and excise duties arising therefrom and other important privileges which conferred considerable monetary benefits on them". It is, significant, however, that the Court did not go to the extent of saying that these rights were not rights in property; in fact, it conceded that such rights would have been covered by the word "property" within the meaning of Article 31(2)° of the Indian Constitution, if the Regulations by which the Jagirs had been abolished had been passed after the coming into force of the Indian Constitution. The only question for decision do this case was whether the Regulation impugned violated' any fundamental right subsequently guaranteed by the Indian Constitution.

The next decision is in the case of Sikander Jehan Begum v. Andhra Pradesh State Government (AIR1962SC996). Here the provisions of the Hyderabad Atiyat Enquiries Act, which barred the jurisdiction of the civil Courts with regard to enquiries under the Act, came under challenge. The Indian Supreme Court came to the conclusion that, since Jagirs were not heritable, no person claiming to be a successor of a deceased Jagirdar had any right to come to a civil Court for establishing that claim. The question as to whether Jagirs were merely grants of rights to collect the State's share of the revenue or the g-ant of rights in the soil did not arise at all for consideration in this case. All that the Court said was as follows

> "the Jagir tenure consisted of no more than usufructuary rights in land to which the revenue law of the State did not apply; that the Jagirs were inalienable and terminable on the death of the grantee, each Jagirdar, though as heir of the deceased holder, was deemed a fresh grantee of the estate, the right to confer such an estate being uncontrolled, absolute and beyond the jurisdiction of the civil Courts."

It will be noticed that even in this passage the Supreme Court of India did concede that a Jagir was a "tenure" and that it did consist of "usufructuary rights in land". None of these decisions, therefore, go to the extent of saying that Jagirs do not, and could not, create any interest in the soil itself.

The question with which we are here concerned is as to whether the interest of a Jagir holder in a Jagir in Hyderabad State is such that it would entitle him to file a claim within the meaning of subsection (3) of section 2 of the Registration of Claims (Displaced Persons) Act, 196 where a claim has been defined as not only "the assertion of a right to the ownership of" property but also as the assertion of a right to any interest" in property which has been treated as evacuee property in India or of which a displace person has been deprived under any law for the time being in force in India. Furthermore, whether under sub-clause (iv) of clause (c) of subsection (2) of section 2 of the said Act, a Jagirdar In Hyderabad had the right to receive rents or even a right of occupancy in "property". It as held by the Deccan Judicial, Committee in Lalgir v. Rajah Sham Raj a Jagirdar could grant a Patta, then he had a right to receive rents in respect of Jagir lands and that would certainly come within the definition of "property" under this Acct. Again if even after confiscation a Jagir had to be settled on pattah with ousted Jagirdar on concessional rates then did it not give him a right of occupancy?

In the circumstances, I am unable to accept the general proposition propounded by the High Court in its judgment, under appeal that all Jagirs in Hyderabad State were merely grants of rights to collect revenue and nothing more.

From what has been stated above, it will certainly a year that they did create, if not rights of full ownership, at least very valuable rights in the soil itself.

For the reasons given above, I am unable to agree with the High Court that the decisions of the Claims Authorities verifying the claims of the appellants were wholly without jurisdiction or nullities in the eye of law either because they purported to verify claims in respect of something which was not "property" or because these claims could not be verified under Schedule V as directed by the Claims Commissioner by his instructions of April and May 1959, although the claims were originally filed under Schedule V-A. In any event verifications, which took place before the cancellation of the Notification of the 7th of April 1958, enlarging the definition of "property" under section 3 of the Registration of Claims (Displaced Persons) Act, 1956, cannot be hell to be without jurisdiction.

Learned counsel for the respondent has also relied on the observation of the High Court in paragraph 22 of its judgment that some of the appellants had also been guilty of making "gross miss-statements and fraudulent representations" in support of their respective claims, and has contended that if the verification were obtained by practicing fraud, then too the Officer on Special Duty was entitled to treat the verifications as a nullity.

Learned counsel for the respondent has also sought to rely on certain noting in some departmental file to show that the Officer on Special Duty had found a prima facie case of misrepresentation and fraud before issuing the no-.ices, challenges by the appellants. This material, which war not produced before the High Court and has not been included In the Paper Book of this Court, cannot be utilised, nor can the Officer on Special Duty be allowed to set up a new case at this stage. The notices issued, by the Officer on Special Duty himself, did not refer to any such miss-representation and fraud, nor did they disclose the background in which the notices were issued, nor the sources of the authority on which the Officer on Special Duty had purported to act. Even in the written statement filed in the High Court, the Officer on Special Duty merely contended himself by saying that the writ petitions were premature. He cannot, therefore now be allowed to say that he was acting under some executive instructions of Government to examine these cases after a report from the Enforcement Department of the police or set up any special authority de hors the relevant statutes and Martial Law Regulations.

In the view I have taken, even if the verifications were, obtained by misrepresentation and fraud, the procedure for the cancellation of the verifications was available under the: Registration of Claims (Displaced Persons) Act, 1956, and not through the agency of the Officer on Special Duty' of the Central Record Office. Under subsection (3) of section 7 of the Registration of Claims (Displaced Persons) Act, the Claims Commissioner could. at any time before the 31st day of March 1965, suo motu review any order passed by any subordinate Claims Officer under his jurisdiction for the purpose of satisfying himself as to the correctness, legality or propriety of any such order and to pass any order in relation thereto as he thought fit.

If allotments had already been obtained in pursuance of any such alleged fraud or miss-representative, then too the jurisdiction, of the Chief Settlement Commissioner under section 10 of the Displaced Persons (Land Settlement) Act, 1958 should have been invoked for cancelling the allotments.

Lastly learned counsel for the respondent has referred to Paragraph 16 of Chapter V of the Scheme framed by the Chief Settlement Commissioner under Martial Law & regulation No. 84 of 1960. This paragraph reads as follows: -

> "16. Where all or any particular rights in land of a claimant were affected by any law in force abolishing such rights in India before the claimant's migration to Pakistan, the claimant concerned shall not be entitled to compensation in the form of allotment of land to the extent of the rights so abolished even though the amount of the compensation payable to him may not have been assessed and/or wholly or partially paid."

It is contended that since Jagirs were abolished in India on the 15th of August 1949, by the Hyderabad (Abolition of Jagirs) Regulation No. 69 of 1359 Fasli and some of the appellants had admittedly migrated to Pakistan after this date, they were not entitled to compensation in respect of the rights so abolished, even though the amount of compensation payable had been assessed or wholly or partially paid.

This contention was again not raised in the High Court; but since it affects the jurisdiction of the Claims Authorities, I am of the opinion that it can be raised even at this stage, particularly since, even under the Registration of Claims (Displaced Persons) Act, 19156, a "claim" only meant "the assertion of a right in property" which has been treated as evacuee property in India or of which the displaced person has been otherwise deprived under any law for the time being in force in India, this necessarily implied that the property must haven been treated as evacuee property or that the person concerned must have been deprived of it after he became a displaced person, and not before he became a displaced person.

Learned counsel for the appellants have contended that, since Martial Law Regulation No. 84 was reconstituted by Martial Law Regulations Nos 89 and 91 and the latter regulations did not apply to claims in respect of lands situated in the territories of the State of Hyderabad (vide Paragraph 13 of Martial Law Regulation No. 89), therefore, Martial Law Regulation No. 84 also did not apply. This is not wholly correct, because, before the notices were issued by the Officer on Special Duty, paragraph 13 of Martial Law Regulation No. 89 had been renumbered and amended by Martial Law Regulation No. 91 and after such amendment it read as follows:

> "13. (3) Paragraph 5 of this Regulation shall not apply to Con claims in respect of land situated in the territory of the States of Jammu & Kashmir, Hyderabad, junagarh Munavader, Ral Mangrol, Sardargadh, Bantva and Sultanabad in occupation of India Therefore, it was only paragraph 5 of the Martial Law Regulation No. 89, which dealt with the scaling down of the, entitlement, that did not apply to Hyderabad. The other provisions applied and Martial Law Regulation No. 84 certainly did apply.

The contention that Paragraph 16 of the Scheme prepared under Martial Law Regulation No. 84 was ultra vires the Regulation or outside the scope of Paragraph 5 of Martial Law Regulation No. 84 itself, does not also appear to be tenable, because, Paragraph 5 gave only a general power to the Chief Settlement Commissioner to prepare a scheme for the verification and re-verification of claims on the basis of the record. Therefore, Paragraph 16 of the Scheme could not be said to be outside the scope of such a scheme.

In my opinion, therefore, if there is any such case in which a displaced person is found to have migrated to Pakistan from Hyderabad State after the abolition of Jagirs in that State by a valid law of that State, then It cannot be said that when such person came over to Pakistan he came over leaving behind any Jagir. The Jagir having been abolished before the date of his departure for Pakistan, his right, title and interest in the Jagir, a whatever it might have been ceased to exist, and when he came over, he had no further interest in it except perhaps a right to receive some kind of compensation In the shape of money or bonds: but this was not an interest in property. To hold otherwise would amount to this that even If a person's properties had been validly acquired in India under the Land Acquisition Acts prevailing there, he could still come to Pakistan after such acquisition in India and claim compensation in respect of properties, which did not exist on the date of his migration. This could never have been the intention of the laws made in Pakistan to compensate evacuees coming over from India for the properties left behind by them.

It has to be remembered that the Rehabilitation and Settlement Laws were designed to compensate displaced persons for the Properties, which they bad left behind in India. The date on which they became displaced persons, therefore, became a very relevant date, and the properties for which they were to be compensated were properties left behind on that date or of which they had been deprived on dates subsequent thereto but not on dates antecedent thereto.

Unfortunately, all these facts have not been investigated at any stage because, most of the appellants came to the High Court almost immediately after the show-cause notices were Issued by the Officer on Special Duty. There was no enquiry or investigation, therefore, either by the Officer on Special Duty or the High Court in its writ jurisdiction. This view of mine receives further confirmation from the examination of the facts of the cases of each individual appellants which t now propose to undertake: -

Civil Appeal No. 109 of 1966

(Nawab Syed Raunaq Ali v. Chief Settlement Commissioner and others).

The claimant in this case Syed Raunaq Ali has since died. He migrated to Pakistan in December 1948, and first filed a claim under Schedule V on the 21st of March 1956, inter alia, for a Jagir of Ojni village. The nature of the Interest disclosed in his Claim Form for this Jagir was " zat jagir" (hereditary rights). The revenue received in respect of thereof was Rs. 72,000 approximately out of which Rs. 2,400 per annum bad to be paid to Sahibzadi Begum and her decendants but 2% of the revenues were retainable by the Jagirdar in possession as "Haq-e-Malikana".

This claim was later converted into a claim under Schedule V-A on 3-11-1958 but in this additional items were brought in. An income of another Rs. 60,000 a year from tanks, forests, excise, grazing land, cattle farm, markets, mines, leaves, line stones, etc., was disclosed. The only document filed in support of this claim was a "Takhta-e-Werasat" which was issued in 1357 Fasli year. This "Thakhta-e-Werasat" showed that by a Firman of 1342 Fasli, the jagir was continued and the possession of it was given to Nawab Hashim Khan, the father of the claimant Raunaq Ali. The same Firman confirmed that after the death of Nawab Hashim Khan, possession of the Jagir would be given to the person found to be most suitable (ba lehaz-e-ahliayat). After the death of Hashim Khan, therefore a number of claimants, who claimed descent from a collateral, Syed Lashkar Khan, came forward to claim the Jagir. Ultimately, the two sons of Hashim Khan, namely v, Raunaq Alt and Muhammad Ali Khan, and his two daughters, Nawab Begum and Tamiz-un-Nisa Begum, were held to be his "sharai" heirs, but the

widow was given a share only for her life. It i9 significant, however, that this very order states that the question of possession no longer arises by reason of the "Dastur-ul-Amal" relating to the abolition of Jagirs.

The claimant Raunaq All also appeared before the Deputy Claims Commissioner, Karachi, and made an oral statement in which he admitted that he did not have the old papers relating to the Jagir. In his statement be also claimed that some of the Jagir lands were under the self-cultivation of the Jagirdars, but he could not give the particulars thereof

This claim was verified on the 15th of August 1959, as a claim under Schedule V for 1835 acres. Then on the 29ih of August 1959, Form QPR-I was filed for "Entitlement Certificates" showing the nature of the rights as "seer khud kash " and on this basis he obtained the Entitlement Certificate in Form QPR-V for 36,000 P. I. Units on the same day, and obtained allotments of 404 acres of land in Hyderabad District and 661 acres in Dadu District. Subsequently, under Martial Law Regulation No. 84, the claimant also filed his written statement in Form MR-I showing no variation in the claim. The Officer on Special Duty issued a notice on the 9th of April 1963, to show cause as to why the Entitlement Certificate granted w him should not be cancelled, and he challenged this by a Writ Petition in the High Court on the 10th of June 1964.

Civil Appeal No. 4 of 1967

(Mar Ehsan Ali Khan v. Chief Settlement Commissioner and others)

and

Civil Appeal No. 6 of 1967

(Tamizun-Nisa Begum v. Chief Settlement Commissioner and others)

Mir Ehsan Ali, the appellant in Civil Appeal No. 4 of 1967, migrated to Pakistan in 1959 after the abolition of Jagirs in, Hyderabad (Deccan). The Jagir concerned is the same as the Jagir in the cases of Syed Raunaq Ali (Civil Appeal No. 109 of 1966) and Tamiz-un-Nisa Begum (Civil Appeal No. 6 of 1967).

Mir Ehsan Ali first filed a claim under Schedule V on the 24th of March 1956, and then filed another claim under Schedule V-A on the 25th of September 1953. His claims were, however, rejected in toto on the 3rd of July 1959, by the Deputy Claims Commissioner on the ground that there were material differences in the number of villages comprised in the Jagir in the three claims, namely the one filed by him, the claim of his sister Tamiz-un-Nisa Begum and the claim filed by Syed Raunaq Eli. On appeal, however, the Additional Claims Commissioner verified the claim on the 12th of October 1959 without noticing that on the 2nd of October 1959 a Notification N. SRO-466 had already been issued cancelling the notification of the 7th of April 1958 whereby the definition of "property" under subsection 12) of section 2 of the Registration of Claims (Displaced Persons) Act, 1956, had been extended. Thereafter, he put in his QPR-f form for the Entitlement Certificate on the 2nd of November 1959 attain describing the nature of his rights as "seer khud kash". QPR-V Form was issued on the 4th of November 1959, for 36 000 P. 1. Units and in pursuance thereof allotments were granted for 309 acres in Mirpurkhas District and 663 acres in Sahghar District. In this case also, the only document filed in support of the claim was the "Takhta-e-Werasat".

Subsequently he filed his MR-1 Form under Martial Law Regulation No. 84 and the Officer on Special Duty issued the show-cause notice on the 15th of May 963. Ultimately by a detailed but ex parte order by cancelled the entitlement certificates on the 3rd of October 1963. This is the order that was challenged In the High Court by Writ Petition on the 10th of June 1964. The operative portion of this order reads as follows: -

"In reply to these the claimants did not attend the office but sent a statement stating that O. S D (CRO) had no jurisdiction to interfere with QPRS because the OPR-V which had been issued in their name, stand. It is true that QPR-V issued in accordance with law stand. But I do not accept the position that such QPRS, which were wrongly issued by my subordinate staff will be allowed to stand. The short question is whether the claim of Jagir is right to he compensated and short answer is in the negative. As a head of the office I have power to supervise and correct the action taken by my subordinates. I find both the QPRVs. were issued invalidly and also find that the misrepresentation of the claimants also played a part in the issue of these QPRVs. The claimants had misrepresented the true facts in the written statement in forms M. R. 1. It is my duty to take action against the Entitlement Certificate fraudulently obtained and to issue the correct (NIL) Entitlement Certificates. I therefore order chat QPRV No. 2305/244-8 and 23616/145-B issued to the District Sanghar in favour of Mir Ehsan Ali Khan and Mst. Tamizun-Nisa Begum should be withdrawn, as being invalid and of no legal effect."

It will be seen from the above that the Officer on Special Duty did not merely proceed on the basis that the Entitlement Certificates bad been wrongly issued by his subordinate staff but that he also purported to ignore the verification of the claim on the ground that the Jagir is not a right which can be compensated and that the claimants had misrepresented the true facts in their M. R-I Form.

The case of Tamiz-un-Nisa Begum (Civil Appeal No. 6 of 1967) relates to the same Jagir. She claimed to have migrated to Pakistan in September 1948 according to her claim forms but on the 18th of May 1949 according to her Form M. R I. She originally filed a claim under Schedule V on the 27th of December 1955. Then she filed a claim under Schedule V-A on the 3rd of September 1958. Thereafter she applied for withdrawing her claim under Schedule V. Her claim was considered withdrawn and rejected on the 26th of November 1958, but her claim under Schedule V- A, was subsequently verified as a claim under Schedule V on the 29th of September 1959 for 970.05 acres of baranilands. On appeal, the Additional Claims Commissioner on the 3rd of May 1960, modified this to 370.05 acres of barani lands and 600 acres of land irrigated by wells, tanks, etc. On the basis of this she put in her QPR-I Form for an Entitlement Certificate and a QPR-V was issued in her favour on the 18th of June 1960. Subsequently, she filed her MR-I statement under Martial Law Regulation No. 84 on the 18th of February 1961 and the Officer on Special Duty after issuing notice to her cancelled her certificate on the 151 of October 1963 by the order already referred to In the case of Mir Ehsan All Khan. She too then filed a writ petition In the High Court challenging this order on the 29th of October 1963.

It may be stated here that both Mir Ehsan All Khan and Tamiz-un-Nisa Begum claim to be the descendants of Lashkar Khan, a brother of Hashim Khan, the father of appellant, Syed Raunaq Ali in Civil Appeal No.109 of 1966. Mir Ehsan Ali Khan and Tamiz-un-Nisa Begun claim to be owners of a half share in the Jagir while Syed Raunaq Ail claims that Hashim All Khan alone had been given the possession of the entire Jagir. These claims were considered independently on the basis of their respective "Takhta-e-Werasats" which merely decided the right of succession but gave no decision with regard to the right to the possession of the Jagir. Apart from this, no one appears to have applied his mind to the question whether Mir Ehsan Ali and Tamiz-unNisa Begurn migrated before or after the abolition of the jagirs in Hyderabad (Deccan).

Civil Appeal No. 9 of 1967

(Syed Fidvi Ali and others v, The Chief Settlement Commissioner, Lahore and others)

There are four appellants in this case who, in their concise statement, declare that they migrated to Pakistan in 1950; but the Deputy Claims Commissioner, in his order of verification, states that appellant No. 2 Syed Abid Hussain migrated to Pakistan in September 1948, on the basis of his identity card (Exh. 12). The appellant No. 1, Syed Fidvi Ali, it appears, had originally filed a, claim under Schedule V in respect of 250 bighas of Jagir lands said 8o have been left by him in village Hussainabad in Deccan; but on the 14th of October 1958, he filed another claim under Schedule V-A, after the expiry of the prescribed date, namely, the 31st of July 1958, and in this he included Jagirs in respect of two other villages of Bal Gopalpur and Nandgaon. In these claim forms, -the nature of his interest was disclosed as "hissadar jagir mouroosi" and land revenue was said to have been exempted as it was a muafi.

He further claimed to be a Jagirdar in possession and valued his interest at Rs. 2,000 a year in respect of Hussainabad in the first claim under Schedule V but in the second claim under Schedule V-A, the amount of the interest went up to about Rs. 4,000 In respect of Hussainabad and in respect of Bal Gopalpur the income declared was about Rs. 5,000 a year.

In respect of village Nandgaon, it was stated that the Jagir was in possession of Syed Ghulam Abbas but the incomes disclosed fin the claims under the two Schedules varied considerably. It was Rs. 400 a year in the first claim but about Rs. 8,000 in the second claim.

Curiously enough Syed Fidvi All was again permitted to file a fresh claim on the 14th of October 1959, under Schedule V. In this he claimed a 1/4th share in 4300 bighas of lands in Hussainabad and 3563 acres of land in village Bal Gopalpur, and on the very next day, i.e., the 15th October 1959, the Deputy Claims Commissioner verified his claim for 1246 acres. The claim of his brother Syed Ghulam Abbas was also verified for an equivalent area and the claims of his sisters, Zakia Begurn and Sugbra Begum, were verified for 1196 acres. The claim of Syed Abid Ali a collateral, was verified for only 221 acres. In all, these five persons' claims were verified for 3909 acres.

In support of their claims, they had examined themselves, filed the " Takhta e-Wirasat" in their favour and also placed a copy of a letter dared 14th of Khurdad 1318 Fasli (1927 A.D.) from the Nazim-e-Attiyat to the Subedar of Mehdak. This letter disclosed that the administration of the estate of village Bal Gopalpur had to be made over to Mir Manzar Hassan, and if he be dead, to his eldest son Jafar Nawaz. Another document accompanying this letter which appeared to have been prepared in connection with the survey of grants in 1941 A.D. showed that

under the orders of the Nizam's Government the village of Bal Gopalper had in 1929 been released in favour of Mir Jafar Nawaz. The latter died in 1934 A.D., and on his death another "Takhta-e-Werasat" was prepared but in this there is no mention of either village Bali Gopalpur or village Nandgaon.

This read in conjunction with the original claim filed by Syed Fidvi Ali under Schedule V only in respect of the village Hussainabad only led the High Court to infer that the subsequent -inclusion of Bal Gopalpur and Nandgaon, were wholly fictitious.

Be that Is it may, on the basis of the above verification order, Entitlement certificates in Form QPR-V were issued in favour of Syed Fidvi Ali and his other co-appellants on the 21st of January 1960 and all of them, except Zakia Begum, got allotments of about 4384 acres of land in the District of Bahawalnagar.

It may also be mentioned here that in the order sanctioning the continuance of the grant in favour of Syed Fidvi Ali, it is clearly recited that the Jagir comprised of a "Mohasil" amounting to, Rs. 1,186 per annum, and out of this, only the share of Jafar Nawaz devolved on his sons, Fidvi Ali and Ghulam Abbas, being "shikmidars" and the Tamales were altogether excluded.

After Martial Law Regulation No. 84 came into force, Syed Fidvi Ali submitted his written statement in M. R-I Form on 18-2-1961 without any change to his former claims. No Entitlement certificates were, however, issued to persons from Hyderabad in respect of Jagir claims after the coming into force of Martial Law Regulation No. 91 of 1961. Instead, the Officer on Special Duty issued notices to the appellants on the 1211, 16th and 29th April 1963, respectively to show cause as to why their Entitlement Certificates under QP&-V should not be cancelled. They came tea, the High Court or, the 10th of July 1963, to challenge these notices.

If it be correct that, apart from Syed Abid Hussain, the other appellants all came to Pakistan in 1950 after Jagir estates had: been abolished in Hyderabad by the Hyderabad (Abolition of Jagirs) Regulation promulgated on the 15th August 1949, then, it does not appear that the Deputy Claims Commissioner was even aware of this fact, How the appellant Syed Fidvi Ali came to be entitled to file afresh claim under Schedule V on the 14th of October 1959, is also not clear. The claims in respect of the villages of bal Gopalpur and Nandgaon which had not been made in the original claim filed under Schedule V, appear also to have been accepted without enquiry.

The High Court has, of course, presumed on the basis of these discrepancies that the claims of these appellants were fictitious without giving the appellants any opportunity of establishing the correctness of their claims, particularly since they came to the High Court immediately the notices were issued by the Officer on Special Duty:

Civil Appeal No. 16 of 1967

(Mirza Kazim Ali Baig v. The Chief Settlement Commissioner and others)

The appellant in this case was serving in the Armed Forces and he opted for Pakistan on the 17th of June 1947. On the 26th of July 1955, he filed a claim under Schedule V for Jagir lands measuring 20,000 acres. The agricultural property claimed under Schedule V was a Jagir at village Keesra and the nature of the Jagir was said to be a "zat jagir" of the nature of an inam. Its area was given as 20,00.) acres. Out of this 1/6th was said to be under self-cultivation and possession of the Jagir and the rental income of other portions let out to tenants was shown as Rs. 6,000 per annum. There were also other incomes claimed in respect of this Jagir from excise, irrigation, forest, tanks, grazing lands, etc. The appellant claimed to be the sole heir of the deceased Jagirdar.

Later, on the 14th of October 1958, he filed another claim under Schedule V-A, but this time the area of the Jagir went up to 50,000 acres. On the 8th of August 1959, the Deputy Claims Commissioner disallowed his claim under Schedule V, but on the 18th of January 1960, the Addl. Claims Commissioner allowed his review application and verified his claim under Schedule V.A for 8333 acres of zamindari land in respect of his 1/6th share in the Jagir, Subsequently, on the 26th of January 1960, the Additional Claims Commissioner changed this order of verification from Schedule V-A to Schedule V and an Entitlement Certificate was issued to him on the 30th of January 1960, for the maximum limit of 36,000 P.I. Units. Allotments of lands were also given to him lit Hyderabad District covering 23178 P.I. Units. He filed M.R.-I statement under Martial Law Regulation No. 84 on the 13th of February 1961, but no Entitlement Certificate was issued to him after the coming into force of Martial Law Regulation No. 89 as amended by Martial Law Regulation No. 91. Instead, the Officer on Special Duty, on the l0th of July 1963, issued a notice calling upon him to show cause as to why his Entitlement Certificate should not be cancelled. The appellant challenged this notice by a Writ Petition in the High Court filed on the 22nd of October 1963.

The nature of the Jagir in respect of which the appellant claims came up for consideration, it appears, in the case of Abbas Mirza v, Hefazat Ali Mirza before the Judicial Committee of the Nizam. The Judicial Committee held

that since the sanad disclosed that the Jagir of Keesra village was given as a "jagir-e-zat" by way of "Tankha Gashta", the grant was of a perpetual nature according to the terminology usually employed by the Inam Department of the State. Therefore, the heirs of the original grantees were entitled to share in the profits. This was assessed at two annas, since the predecessor-in-interest of the plaintiff in that case, namely, Ismail Mirza, had, according to the entry on the back of the sanad itself, a share to that extent.

In this case too the High Court has held that since it was a "zat jagir", it was not transferable by sale, gift or bequest and that the entry in QPR-I and MR-I Forms that the nature of the right was "seer khud kasht" was erroneous and the Entitlement certificate was incorrectly issued. There is no finding as to whether this jagir was heritable or not, nor has the High Court considered the decision of the Judicial Committee of the Deccan High Court, presumably because it was not placed before it.

Civil Appeal No. 24 of 1967

(Mst. Wilayatun-Nisa Begum and another v. The Chief Settlement Commissioner and others)

The appellants in this case claim that they came over to Pakistan on the 17th of January 1949, from the State of Hyderabad, Deccan, leaving behind extensive properties including a hereditary Jagir comprising of three villages, namely, Phoolbel, Awantwaram and Sanwargaon. They inherited these from their father, the late Nawab Muhammad Saadat Yar Khan, who died leaving behind a widow, nine sons and seven daughters, including the appellants. The shares of the female appellant, therefore, worked out to he 81 acres 6 guntas and of the male appellants to 162 acres 12 guntas each.

On the 25th of August 1958, they jointly filed their claim under Schedule V-4 claiming 1/25th and 2/25th share respectively in the Jagirs, the total Income of which was shown as about Rs. 14,000 per annum. Their claim was verified by the Claims Officer on the 30th of September 1959, under Schedule V for 243 acres 8 guntas of agricultural lands relying on the "Werasatnama" filed by the parties and their oral statements.

Their "Takhta-e-Werasat" shows that the grant was of a "Mohasil" in perpetuity Dawaman) in favour of Muhammad Saadat Yar Khan and his heirs. One of the conditions of the grant was that they would give their sister Ghousia Begum and her children Its. 600 per annum in perpetuity. The final decision of the Nazim-e-Attiyat describes the grant as "Maqbuza Maash". This decision however was given on the 8th of January 1950, after the abolition of Jagirs in Hyderabad and, therefore, the question of possession was not decided.

On the basis of the above verification, PR-V Forms (Entitlement Certificates) were issued on the 20th of October 1959, and the 31st of October 1959, respectively for 5698 and 1140 P.1. Units and allotments of lands were given in the Districts of Sanghar and Hyderabad in November 1959. After the coming into force of the Martial Law Regulation No. 84, they filed their M. R-1 Forms on the 1st of February 1961 and the 6th of February 1961, respectively but no Entitlement Certificates were issued to them. The Officer on Special Duty instead issued show-cause notices on the 1st of July 1963, and the 10th of July 1963, calling upon the appellants to show cause as to why their certificates should not be cancelled. They filed written objections but did not appear and the Officer on Special Duty on the 3rd of October 1963, by an ex parse order cancelled their Entitlement Certificates.

They challenged this order by a writ petition in the High Court on the 29th of October 1963. The High Court took the view that their claim under Schedule V.A had been filed after the proscribed date, namely, the 31st of July 1958 and that the declarations in their claims were incorrect, as the "Takhta-e-Werasats" filed in support of their claims was of a doubtful nature, not being sealed or stamped by any authority. In any event, the "Takhta-e-Werasat" seemed to indicate that the grant was only of revenue and that no proprietary right vested in the grantees or their successors, This is precisely what the Officer on Special Duty had held on a perusal of the "Takhta-e-Werasat" but without hearing the appellants.

Civil Appeal No. 42 of 1967

(Mir Murtaza Hussain Khan and others v. The Chief Settlement and Rehabilitation Commissioner and others)

There are six appellants in this case, of whom only appellant No. 5, i.e. Mst. Zohra Begum, came to Pakistan in 0ctober 1947. The others came over during the years 1948 and 1949. The precise date of his arrival in Pakistan has not been given by appellant No. 3 Mir Ali Naqi Khan.

They filed a joint claim on the 22nd of March 1956, under Schedule V claiming 370 acres of Jagir lands in village Dongargaon, Pallawad, Barari and Talni aggregating to about 20,000 acres, out of which about 12,030 acres were said to be in self-cultivation and the rest 8,000 acres were grazing land. The nature of the jagir was shown as "Jagirat-e-Mauroosi" and the income were shown as Rs. 17,030 per annum. The claimants claimed 1/6th share, each amounting to about 870 acres.

Subsequently, on the 10th October 11958, they filed another claim under Schedule V-A. This time the nature of the Jagir was described its a "zat Jagir". There was no other radical change. The area claimed was, the same, so was the income. This was verified by the Deputy Claims Commissioner on the 30th of September 1959 under Schedule V for 7840 acres on the basis of the "Takhta-e-Werasat" and the settlement "Khatunis" filed by the appellant. On the basis of these verification orders, Entitlement Certificates in QPR-V Forms were issued in October and November 1959, to all but appellant No. 6 who received her Entitlement Certificate only on the 4th of October 1961. Allotments of land were also thereafter made in favour of the appellants in the Districts of Hyderabad, Larkana and Dadu. On the coming into force of Martial Law Regulation No. 84, they filed their statements in Form MR-I on the basis of the verification order. Between the 8th of April 1963 and the 19th of October 1963, the Officer on Special Duty issued individual notices to the appellants to show cause a to why their Entitlement Certificates should not be cancelled. They challenged his competence to issue these notices by a writ petition filed on the 26th of October 1963. The writ petition was dismissed on the 10th of June 1964, and the Officer on Special Duty then cancelled their Entitlement Certificates by an ex parse order on the 8th of July 1964, before the appellants could approach this Court.

The High Court has held that the "Takhta-e-Werasat", on the basis of which the claims were verified, disclosed that the Jagir was a "Tankah jagir" of only the "Mohasil" i. e., the land revenue. Therefore, this also was not any grant of any interest in the land. Evidently the High Court did not accept the declaration of the appellants that a large area was in their self-cultivation, nor did it discuss the nature of the Jagir or the precise nature of the other rights acquired by the Jagirdars under the various Firmans and circulars issued by the Nizam from time to time.

Civil Appeal No. 51 of 1967

(Qazi Anwar Ahmad and others v. The Chief Settlement Commissioner and others)

The four appellants in this case claim to have migrated to Pakistan from the State of Hyderabad (Deccan) in 1930 after the Police action by India, according to their own version in their concise statement, leaving behind in India considerable properties including Jagirs. The appellants Nos. 1 and 2, who are brothers, filed separate claims under Schedule V on the 16th of December 1955. The appellant No. 1 declared Jagir interest in some nine villages as follows: -

(1) 2/3rd share in Mouza Kam Khera consisting of 2466 acres yielding a total lagan of Rs. 3,015;

(2) 1/4th share in Monza Antrdni peer consisting of 83 acres 19 guntas;

(3) 1/4th share in Mouza Bola Khera consisting of 107 acres 16 guntas;

(4) 1/4th share in Monza Garam Patti consisting of 34 acres 33 guntas;

(5) 1/4th share in Mouza Kamni consisting of 15 acres 18 guntas;

(6) 1/4th share in Mouza Mazrua Das Wari consisting of 4 acres 15 guntas;

(7) 1/4th share In Mouza Malapuri consisting of 49 acres 28 guntas;

(8) 1/4th share in Monza Pandoyari consisting of 47 acres 33 guntas;

(9) 1/4th share in Mouza Ghakil Gehwan consisting of 52 acres 33 guntas;

In addition to the above, he claimed a proprietary interest in 29 acres of land in occupation of tenants in the village of Malikpur bringing in a rental income of Rs. 1,300 per annum subject to payment of malguzari of Rs. 100 only.

The total share of this appellant in the lagan of all the other villages except Mouzas Kam Khera and Malikpur was said to be Rs. 1,200. The nature of the interest disclosed in respect of Monza Kam Khera was "Madad Muaash" Mashrut-ul-Khidmal. In respect of other villages, except Malikpur it was said to be perpetual "Madad Muaash" by way of Inami Attiya.

The appellant No. 2, however, in big claim filed on the same day under Schedule V, stated that he was entitled only to Rs. 100 per annum as a guzaradar from the Jagir of Kam Khera. In addition to this, he also claimed to be in occupation of 204 acres of land in this village through tenants who were paying an annual lagan of Rs. 1,000. In respect of the other eight villages, he claimed like his brother a 1/4th share in the annual lagan amounting to Rs. 1,210. In the village of Malikpur, he claimed proprietary interest in 12 acres of land said to be in occupation of tenants paying rent of Rs. 500 per annum subject to a malguzari .of Rs. 140 per annum.

The other two appellants, namely, Mst. Ruqiya Begum, a sister of the first two appellants, and Qazi Ahmad Mohy-ud-Din, a cousin, did not file any claim at all, but they were subsequently joined by the Deputy Claims Commissioner as parties by orders passed on the 30th of April 1959, and the 31st of August 1959 respectively.

After the amendment of the definition of "property" given in the Registration of Claims (Displaced Persons) Act, 1956, the appellant No. 1 alone filed a claim under Schedule V-A claiming only a 2/3rd share is Mouza Kam Khera; but no such Jagir claim was filed in respect of the other nine villages included in his earlier claim under Schedule V. Although his brother Qazi Israr Ahmad did not file any separate claim under Schedule V-A, he was in the claim filed by Qazi Anwar Ahmad shown as a co-sharer to the extent of 1/6th of 1/3rd share.

The Deputy Claims Commissioner, as already stated, joined all the co-sharer and verified the claims of all of them on the 31st of August 1959, under Schedule V on the basis of a proprietary Jagir for 731 acres of land in favour of appellant No. 1,242 acres in favour of appellant No. 2,123 acres in favour of appellant No. 3 and 548 acres in favour of appellant No. 4.

On the basis of this verification, they filed QPR-1 Forms and obtained Entitlement Certificates in Form QPR-V in September and October 1959. Allotments of lands were also made to them in the Districts of Dadu. Tharparkar and Hyderabad, on the basis that the verified claims were for seer khud kasht lands.

When Martial Law Regulation No. 84 came into force, they, filed their MR-1 Forms in February 1961, in conformity with the verification order, again disclosing that the lands left behind were, seer khud kasht. The October on Special Duty did not, whenever, issue any revised Entitlement Certificate but gave separate notices to them in July and August 1963, to show cause as to why their Entitlement Certificates in Form QPR-V should not be cancelled. They challenged his right to do so by a Writ Petition in the High Court filed on the 1st of October 1963.

The High Court has held that the Naqal Muntakhab and the Takhta-e-Werasat relied upon by the appellants only shows that -succession was accepted in favour of Qazi Anwar Ahmad and Qazi Israr Ahmad as Shikmi and they were directed to maintain their mother Rahim-un-Nisa and their sisters out of the grant, The nature of the right being described as "Madad Muaash" in these documents did not, according to the High Court, confer any proprietary right in the soil but merely amounted to an assignment of the land revenue. They were not as such entitled to any land compensation in Pakistan. The question, as to whether they had left behind any Jagir on the date of their migration to Pakistan, did not come up for consideration nor was the effect of the Hyderabad (Abolition of Jagirs) Regulation1949, noticed.

Civil Appeal No. 54 of 1967

(Mirza Abbas All Baig and others v. The Chief Settlement Commissioner and others).

These appellants too, according to their own declaration in the concise statement, migrated to Pakistan in 1950 after the Police action by India in the State of Hyderabad. They did not file any claim under Schedule V; but on the 18th of August 1958, they submitted a joint claim under Schedule V-A claiming maufi jagirs rights in some eleven muzzaras extending over an area of 65,000 acres and yielding an income of about Rs. 80,000 plus an assignment of land revenue to the extent of Rs. 375 per annum. In addition to the above, they also claimed other benefits amounting to Rs. 1,666 per mensem as maintenance allowance under the Paigah estate of Mirza Hussain Ali Baig, Mirza Hawan Ali Baig. and Mirza Abbas Ali Baig plus a further sum of Rs. 150 pen month payable as maintenance allowance to Mirza Hussain All Baig and Mirza Abbas Ali Baig out of the Sarf e-Khas.

There after, on the 3rd of September 1958, appellants Abbas Ali Baig, Hassan Ali Baig and Mst. Mohammadi Begum filed separate claims under Schedule V-A in which only the are& differed. It was now shown as only 18,000 acres. Mst. Mohammadi Begum, however, claimed that the total area of the Paigah and Sarf-e-Khas Jagirs was 10,000 acres.

The claims of Mirza Abbas Ali Baig and Mirza Hasan Ali Baig were verified to the extent of 5714 acres each but their claims in respect of maintenance allowances were not verified, being claims of a personal nature. The claim of appellant No. 4. Mst. Mohammadi Begum was verified for 2,857 acres. Subsequently, on the 12th of October 1959, the Deputy Claim Commissioner verified the claim of Mirza Hussain All Baig also for 5714 acres.

On the basis of these verifications, they received they Entitlement Certificates in Form QPR-V for 36,000 P. I. Units each and obtained allotments of large tracts of land in the Districts of Sanghar, Tharparkar and Sukkur.

With the coming into force of the Martial Law Regulation, No. 84, they filed their MR-I statements; but they were not: issued any revised Entitlement certificates, because, the Often on Special Duty of Central Record Office, on

various dates in, January, March, April and July 1963, Issued notices calling upon them to show cause as to why their QPR-V certificates should not be cancelled. They challenged his right to do so by filing a Writ Petition in the High Court on the 10th of June 1964

In this case, it appears that apart from the Takhta-e-Werasat the sanad was also available and it did corroborate the state merits of the claimants to the extent that the area of the jaghir was 65,000 acres and the total mohasil was about Rs. 80,000. Maintenance allowances out of the Paigah and Sarf-e-Khas Jagirs were also grantable to some of the appellant of whom one, namely, Hasan Ali Baig was insane. The shikmi grantees also, it appears, were to get proportionate shares out of the income. Nevertheless, the High Court took the view that the claimants had no proprietary interest in the lands and were, therefore, not entitled to file any claims in Pakistan. Unfortunately, the sanad is not before us now, nor have the terms of the sanad been mentioned in the judgment of the High Court, presume by because, the High Court started with the presumption that all Jagirs were assignments of land revenue only and did not take into account the various legislative changes that had been introduced in the law of jagirs and attiyat in the State of Hyderabad.

Civil Appeal No. 68 of 1967

(Muhammad Wajid All Khan and another v. The Chief Settlement Commissioner and others)

The appellant Wajid Ali Khan declared in his MR-I statement that he came to Pakistan In May 1949, but the appellant Sarfraz Ali Khan, on his own admission, came over to Pakistan (n September 1949, i.e., after the coming into force of the Hyderabad (Abolition of Jagirs) Regulation on the 15th of August 1949. They first filed a joint claim under Schedule V on the 29th of March 1956, claiming maliki rights in lands measuring 9300 acres situated in six villages of Haryal, Konwad Buzurg, Maleygaon, Kolaygaon, Dhond Gunda Buzurg and Elora yielding an aggregate income of Ks. 13,661-8-10, out of which, according to the claimants, who are brothers, weir mother was entitled to a maintenance of Rs. 25 per mensem.

Subsequently, on the 15th of January 1959, they filed; separate claims under Schedule V-A and on the 14th of September 1959, the Deputy Claims Commissioner verified their claims only in terms of money, because, he was not able to discover the exact acreage of the jagirs from the documents submitted by the appellants. On appeal, however, the Additional Claims Commissioner, on the 16th of January 1960, verified their claims under schedule on the basis of proprietary rights as follows :-

Wajid Ali Khan	14/48th share in 3030 acres
Sarfraz Ali Khan	14/48th share in 3030 acres
Mst. Mahboob Begum	1/16th share in 649.12 acres

On the basis of this verification, they filed QPR-1 Forms on the 25th of January 1960, claiming lands equivalent to 3030 acres as seer khud kasht lands and they were issued QPR-V certificates on the 28th of January 1900, up to the maximum limit of 36,000 P. I. Units each. They also obtained allotments of lands in the District of Hyderabad to the extent of their full entitlement.

They filed their MR-1 statements separately on the 15th of February 1961, in conformity with the verification order, but they were not issued any revised certificates. The Officer on Special Duty instead, on the 10th of July 1963 and the 29th of July 1963, respectively issued separate notices to show cause as to why their QPR-V certificates should not be cancelled. They protested in writing and then invoked the Writ jurisdiction of the High Court on the 1st of November 1963. The High Court took the view that since the Takhta-e-Werasat filed before the Claims Authorities mentioned no area of the jagir but only described it as a zat jagir for Madad Muaash giving only the amount of the mohasil as Rs. 21,544 and the Haq-I-Malikana of the estate as 2% per annum, the jagir was a grant of only the land revenue or mohasil and not the grant of any interest in the soil. The High Court also relied on certain documents emanating from the Court of Wards of the Muawazna Jama Estate showing that in 1356-57 Fasli (1948 A. D.) the total income of the property was Rs. 14,724 and the collection expenses for a previous year, namely, 1946 A. D., amounted to as much as Rs. 10,222, the grant could only have been of the land revenue, because, if proprietary rights had been conferred, then such a meagre income would not have been realised. The meagreness of the income and the largeness of the expenditure is hardly a relevant consideration for determining the nature of the estate. The low realisation and the large expenditure incurred for such realisation may well have been due to the fact that the estate was under the management of the Court of Wards as a temporary measure and/or the mismanagement of the Jagirdar.

Civil Appeal No. 69 of 1967

(Muhammad Askari Khan v. The Chief Settlement Commissioner and others)

The appellant migrated to Pakistan, according to his own declaration in his MR-1 statement, on the 18th of August 1951, long after the coming into force of the Hyderabad (Abolition of Jagir) Regulation, 1949. Yet he put in a claim under Schedule V of the Registration of Claims (Displaced Persons) Act, 1956, on the 27th of March 1956, claiming to have left behind a muafi Jagir spread over seven villages and covering about 13,620 bighas. Its total mohasil was declared to be Rs. 36,895-7-8. In his own exclusive share, tie claimed 2917 bighas and he stated that his other co-sharers were still in Hyderabad State.

The Deputy Claims Commissioner at first rejected his claim, but on appeal, the Additional Claims Commissioner remanded the case back to him. On remand, the Deputy Claims Commissioner, on the 5th of April 1960, verified the claim for 1408.12 acres under Schedule V. The QPR-1 was filed on, the 16th of April 1960 and the Entitlement Certificate in Form QPR-V was issued on the 22nd of April 1961 for 29,708 P. I. Units on the basis that the lands wore seer khud kasht land.

He filed his MR-I statement on the 16th of February 1961, and either on the 20th or the 22nd of November 1962, a supplementary QPR-V was issued to him for 33,183 P. 1. Units. He received allotments of lands in the District of Nawabshah to the extent of 96.5 acres.

Nevertheless, in 1963 (undated), the Officer on Special Duty issued a notice to him to show cause as to why his Entitlement Certificate should not be cancelled. He protested in writing and filed a Writ Petition in the High Court on the 7th of November 1963.

The High Court has taken the view that the Muntikhab relied upon showed that the Jagir was given only to the lather of the appellant and the other heirs of the original grantee, Nawab All Yawar Jang, including the appellant, were given only maintenance allowances for life. The interest of the appellant In the Jagir was, therefore, only a monetary or personal interest and, as such, he had no right title or interest in the soil, for which he could file any claim in Pakistan. His Writ Petition was, accordingly, rejected as being misconceived.

Civil Appeal No. 70 of 1967

(Syed Moosa Rizvi v. Chief Settlement & Rehabilitation Commissioner and others)

This appellant, according to his own declaration in his MR-I statement, arrived in Pakistan in April 1950; but according -to his claim under Schedule V. his date of arrival in Pakistan was June 1950. He filed a claim under Schedule V on the 27th of March 1956, for 2500 square yards of land in Jam Gaon and another 2000 square yards in Ibrahimnagar. He claimed Maliki rights in both these lands and, therefore, did not file any further claim under Schedule V-A. The Claims Officer at first rejected his claim on the ground of want of proof of proprietary rights; but on appeal, the Deputy Claims Commissioner, on the 14th of June 1960, verified his claim for 658 acres and 2 guntas of land. He filed his QPR-t Form on the 27th of July 1960, and the QPR-V certificate was issued to him in due course. Then he put in his statement under MR-I on the 15th of February 1961.

A QPR-V was first issued to him on the 17th of February 1962 for 2086 P. I. Units but this was curiously enough followed by a supplementary QPR-V for 28,789 P. I. Units on the 7th of April 1962. No allotment of land was, however, made to him is Pakistan.

In this state of affairs, the Officer on Special Duty on the 21st of October 1963, Issued notice to him to show cause as to why his Entitlement Certificate should not be cancelled but he challenged the OSD's right to do so by a Writ Petition filed in the High Court in November 1963.

The High Court has taken the view that since the Takhta-e-Werasat filed in support of the claim merely mentioned the tenure as a Jagir with a mohasil of Rs. 2628-5-6 and a Haq-i-Malikana payable to the at State at 2% per annum without giving the area of the Jagir, "it cannot be construed as anything abut a mere assignment of land revenue"

Civil Appeal No. 71 of 1967

(Miraa Pawar Ali Beg and others v. The Chief Settlement Commissioner and others)

The three appellants in this case are cousins. The first appellant, according to his declaration in his claim under Schedule V-A came over to Pakistan to April 1949 but according to his MR-I statement lie came over to Pakistan from the State of Hyderabad in the Deccan in the month of September 1949, leaving behind Jagir lands in that State. He filed no claim under Schedule V; but on the 9th of October 1958, after the expiry of the last date for filing such a claim, he had a claim under Schedule V-A with regard to the Jagir lands said to have been left behind in the villages of Janwaram and Patch Ningal. The other two appellants did not file any separate claim but joined in this claim and a later date. The actual date, however, is not decipherable from the original record. The Jagir is

said to consist of 2000 acres of land and to yield an income of Rs. 4,175 in the shape of rents collected from farmers. The share of the appellant No. 1 Is said to be 1/10th amounting to Rs. 417-8-0 per annum.

The Claims Officer rejected the claim for want of prosecution. The Deputy Claims Commissioner, on appeal, also rejected the claim on the 29th of December 1959, on the ground that the property had not been declared evacuee in India. The Additional Claims Commissioner, however, on the 21st of March 1960, verified the claims of all the three appellants under Schedule V' as follows:

Mirza Dawar Ali Beg	... 245 acres 30 guntas
Mirza Kazim Ali Beg	... 141 acres 38 guntas
Mst. Ghafoor-un-Nisa	... 182 acres 22 guntas

The appellants Nos. I and 2 obtained their QPR-V Certificate for 10,469 and 6,046 P. 1. Units respectively in April 1960 and the appellant No. 3 was given a certificate in Form QPR-V for 7,777 P. 1. Units, but the date of this is not available, as the certificate has not been filed. They filed their MR-1 statements in February 1961, but no revised certificates were issued to them, as the Officer on Special Duty, in June and October 1963. issued notices to them for the cancellation of their QPR-V Certificates. They challenged his competence to do so and filed a Writ Petition in the High Court in November 1963. This was dismissed on the 10th of June 1964, and thereafter, the Officer on Special Duty by an ex parte order cancelled their QPR-V Certificates on the 8th of July 1964, before they could approach this Court.

Unfortunately, the appellants did not file either any Takhta-e-Werasat or any Muntakhab in support of their respective claims nor produced any revenue record or any order of any competent, Court in Hyderabad to support their assertions in the QPR Forms. In these circumstances, the High Court took the view that the Officer on Special Duty was fully justified in cancelling their Entitlement Certificates.

Civil Appeal No. 8 of I968

(Mst. Tamizun Nisa Begam daughter of Mir Ghulam Qavi Khan v. Officer on Special Duty, Central Record Office and another)

She claims that she migrated to Pakistan in 1949 from Hyderabad, (Deccan) but the exact date of migration is not given. It cannot, therefore, be said with any certainty whether she migrated before or after the promulgation of the Hyderabad (Abolition of Jagirs) Regulation, 1949. She filed a claim under Schedule V-A on the 9th of March 1959. Although she claims that she had also tiled a claim under Schedule V earlier, but no record of the same is available.

In her claim under Schedule V-A she claimed Jagir rights in village Ojni and a number of other villages as a co-sharer of her brother Mir Ehsan Ali Khan whose case has already been dealt with under Civil Appeal No. 4 of 1957.

The claim was rejected in toto by the Deputy Claims Commissioner, but subse4uently, on appeal, the Additional Claims Commissioner, on the 12th of October 1959, verified her claim up to 10,066 bighas. On the basis thereof, she obtained her QPR-V Certificate on 4-11-1959 or 34,000 P. 1. Units and obtained allotment of 893 acres and 31 bighas of land In Sanghar District.

She filed her MR-I Form in confirmity with the verification order, but the Officer on Special Duty, on the 3rd of October 1963, after issuing a notice to her, cancelled her Entitlement Certificate by an ex pane order.

She filed a Writ Petition in the High Court on the 30th of October 1963, which was dismissed in limine. She went up by way of Letters Patent Appeal, but that also met the same fate.

The facts of this case have already been dealt with earlier when dealing with Civil Appeal No. 4 of 1967. It is not, therefore, necessary to repeat the facts here.

The High Court has held that her claim did not amount to a right or interest in property, as it was merely a grant of land revenue, therefore, the Officer on Special Duty rightly cancelled her certificate.

For the reasons given above, I have corns to the conclusion that the Officer on Special Duty, Central Record Office, had no jurisdiction to cancel the Verification Orders issued by the Claims Authorities before the 2nd of October 1959, the date of publication in the Gazette of the Notification No. SRO-466, dated the 25th of September 1959; nor could he being an authority with limited jurisdiction, treat such Verification Orders as nullities. His claim, therefore, to cancel the Entitlement Certificates issued earlier on the basis of such Verification Orders was wholly unjustified.

Verifications, however, which were made after the embargo placed on the verification of all claims on the 19th of January 1959, need further examination, for, it appears that the Claims Commissioner had never authorised the Claims Authorities under him to verify claims in respect of Jagir and Muafis as explained in his circular letter of the 10th of September 1959. Similarly, verifications of claims filed by persons migrating from Hyderabad State, after the resumption of Jagirs under the Hyderabad (Abolition of Jagirs) Regulation, 1949, need further scrutiny. If under the above Regulation the Jagirs no longer subsisted on the respective dates of their migration, then no claim in respect of such Jagirs could have been filed in Pakistan.

My examination of the facts of each individual case also reveals that the Claims Authorities have, while verifying the claims, not considered many relevant questions and overlooked a number of irregularities and treated all Jagirs at par, without making any careful examination of the nature of each particular type of Jagir in respect of which a claim had been filed.

The High Court was also, in my view, not right In holding that all Jagirs should be presumed only to be grants of the right of the sovereign to collect his share of the land revenue and that such grants could never confer any interest in the soil. As I have endeavoured to Indicate earlier in this judgment, the authorities seem to reveal that there is no presumption attaching to the nature of a Jagir one way or the other and that the true character of the Jagir and the nature of the interest conveyed by the Jagir have to be determined from the terms of the sanad or pervanah of grant, if any available, and the surrounding circumstances. The Jagir grants could take any shape or form. They could be even grants in perpetuity of the soil itself. Hence, no general rule can be laid down that a Jagir is prima facie a grant only of a personal interest. Each case has to he considered on its own facts.

The High Court unfortunately did not undertake this task nor did it take into consideration the surrounding circumstances, nor did it examine the provisions of the various firmans issued by the Nizam of Hyderabad from time to time conferring rights on Jagirdars. In the circumstances, even though the High Court could refuse to interfere in its extraordinary Writ Jurisdiction with the orders of the Officer on Special Duty, which had been found to be without jurisdiction, on the ground that the Officer en Special Duty had in fact done wrongly what was, in fact, right, it could not do so in the present cases, because, it cannot be said, in the facts and circumstances of the appeals now before us, that the orders of the Claims Authorities were in all cases wholly without jurisdiction or nullities.

In the light of the above conclusions, I am of the opinion that the judgments and orders of the High Court must be set aside and the writs allowed for quashing the impugned notices and orders issued by the Officer on Special Duty. Having done this, however, I am of the further opinion that all these cases must be remanded back to the Claims Commissioner to himself re-examine each cage after giving the parties due notice to produce relevant evidence in support of their respective claims and to decide whether the claims in respect of Jagirs verified either under Schedule V or Schedule V-A were in respect of properties left behind by them in India before their respective dates of migration and whether on such dates the interests claimed were subsisting interests. The Claims Commissioner will also examine if any claim had been verified after the publication on the 2nd of October 1959, of the Notification No. SRO-466 and the effect thereof in the light of Martial Law Regulations Nos. 84, 89 and 91.

The Claims Commissioner will also examine whether claims filed, after the last date for filing claims under Schedule V-A had expired, could be validly accepted and verified under Schedule V, in the light of the circulars issued by him between April 1959 and the 10th of September 1959.

The net result, therefore, is that these appeals are allowed, the judgments and orders of the High Court are set aside and the Impugned notices and/or orders of the Officer on Special Duty are hereby quashed. The cases will now go back to the Claims Commissioner for re-examination in accordance with law and in the light of the observations made in this judgment.

In view of the difficult questions of law Involved, I would not make any order as to costs.

SAJJAD AHMAD, J--I agree.

SALAHUDDIH AHMED, J----agree.

Appeals accepted.