

Muhammad Amin who ... have disposed the receiver
after obtaining injunction from the Court.

18. There is no evidence of dispossessing the receiver against Ghulam Qadir. He is, therefore, discharged.

19. In my view all these three persons deserve the maximum sentence, but in view of the fact that Hamid Aziz Sheikh and Malik Muhammad Amin agreed to deliver possession of the Canteen and the Cycle-stand to the receiver and have delivered possession of the same on 27th of February 1976, I take a lenient view of this case. I sentence Malik Mahmood Akhtar to a fine of Rs. 1,500 or in default to undergo simple imprisonment for a period of one and a half months. I sentence Hamid Aziz Sheikh to a fine of Rs. 1,000 or in default to undergo simple imprisonment for one month. I sentence Malik Muhammad Amin to a fine of Rs. 500 or in default to undergo simple imprisonment for fifteen days. The fine shall be paid by the 7th of March 1976.

S. A. H.

Offenders sentenced to fines.

P L D 1976 Lahore 880

Before Karam Elahee Chauhan, J

ALI MOHAMMAD AND 3 OTHERS—Petitioners

versus

SETTLEMENT COMMISSIONER (LAND), MULTAN
AND 3 OTHERS—Respondents

Writ Petition No. 132-R of 1971, decided on 1st March 1976.

(a) West Punjab Refugees (Registration of Land Claims) Act (V of 1949)—

— S. 4 and Registration of Claims (Displaced Persons) Act (III of 1956), Sched. V read with Chief Settlement and Rehabilitation Commissioner's Press Note dated 14-4-1959—Verification of claims of refugees from Alwar State in India—Could be verified on analogy of verification of claims under Sched. V to Act III of 1956. [p. 882]A

Saddar Din and others v. Officer on Special Duty, Central Record Room
Writ Petition No. 2769-R of 1963 distinguished.

(b) Constitution of Pakistan (1962)—

— Art. 98—Writ jurisdiction—Finding of fact—Cannot be interfered with in course of writ jurisdiction particularly when supported by attending circumstances and relevant record—[Writ]. [p. 885]B

Muhammad Hussain Munir and others v. Sikandar and others P L D 1974 S C 139 rel.

(c) West Pakistan Rehabilitation Settlement Scheme—

— Para. 20—Claims and objections regarding allotment of land pending scrutiny—Incumbent upon authorities concerned to reserve 75 per cent. area—Such course not being followed, petitioners, held, could not claim any vested right on basis of orders and proceedings suffering from infirmities and void. [p. 885]C

Chhaju etc. v. Rehabilitation Commissioner, Multan Division, Multan etc.
Writ Petition No. 626-R of 1960 ref.

- (d) Registration of Claims (Displaced Persons) Act (III of 1956)—
Sched. V—Respondents temporary allottees in village and petitioner's claims reaching village by way of transfer subsequently—Respondents, held, had preferential right to claim land. [p. 885]D
- (e) Registration of Claims (Displaced Persons) Act (III of 1956)—
Sched. V—Allotment to petitioners throughout remaining *sub judice* and subject to incidents of appeals and revisions, and verification or disposal of respondents' claims—Petitioners, held, could not, in circumstances, claim any vested right in their allotment and same could be set aside in revision. [p. 885]E
- (f) Registration of Claims (Displaced Persons) Act (III of 1956)—
Sched. V—Settlement Commissioner's order stating that revision petitions of respondents were being "presently filed" and could be revived after verification of their claim and thus keeping matter in abeyance—Petitioners not challenging such orders in any Court and having accepted such order, cannot be allowed to challenge same on Settlement Commissioner proceeding further in terms of such order. [p. 886]F

Ch. Qadir Baksh for Petitioner.

A. R. Shaukat for Respondent No. 1.

Ch. Qamar-ud-Din Khan Meo for Respondents Nos. 2 to 4.

Dates of hearing : 11th February and 1st March 1976.

JUDGMENT

The dispute in this case is about an area of 251 *kanals* 13 *marlas* situated in Mauza Roshan Rai Wala, Tehsil and District Multan, the details whereof are contained in Annex. 'I', attached with the writ petition, which is a copy of R. L. II of Budh Singh son of Kala, with reference to his Claim Form No. 6662/4298. Budh Singh was a displaced person from village Jagrawar, Tehsil and State Alwar (India). He submitted a claim form under section 4 of the Punjab Refugees (Registration of Land Claims) Act V of 1949. He was issued a provisional certificate under Para. 19 of Rehabilitation Settlement Scheme somewhere in year 1950. The exact date of that provisional certificate is not available to the learned counsel for the parties.

2 Provisional allotment, however, was then formally made in the name of Budh Singh on 27-8-1952 preliminarily attested on 5-7-1953 and confirmed on 31-10-1953 (see para. 1 of the parawise comments of respondent No. 1). The Central Record Office later, on a date not known to the parties' counsel, cancelled the provisional certificate because a report was received from India that Budh Singh had no rights in any land in Alwar State. In consequence the A. R. C. on 2-3-1959 cancelled the allotment from the name of Budh Singh or his heirs (as Budh Singh had died in the meantime).

3. At this stage it is to point out, as is evident from Annex. 'II' and 'III' filed by the petitioners that the claims of Ilam Din and Roshan, predecessors-in-interest of the petitioners were transferred from village Farid Pur to the present village, namely, Roshan Rai Wala by order of the A. R. C. dated 17-2-1959, whereupon the Colony Naib Tehsildar passed the following order on 26-2-1959 by creating Khata Nos. 100 and 99 of Ilam Din and Roshan respectively:—

”حقداران میں سے خوشی محمد حاضر ہے۔ بہ تعمیل حکم تحصیلدار ملتان مورخہ ۱۴-۲-۵۹

تجویز رقبہ حسب پسند دعویدار ہوئی - ابتدائی تصدیق کرانے سے قبل رقبہ
 مجوز کے اخراج کا حکم کہاتہ متعلقہ پر ہوگا - ۲۶-۲-۱۹۵۹ -
 "C. N. T.

In Khata No. 99 a similar order was passed with the exception that instead of Khushi Muhammad the name written there was Ali Muhammad who is successor-in-interest of Roshan. On 2-3-1959 *kham khatoni* was issued and the allotment was confirmed on 31-3-1959. A perusal of this order will show that the land had already been proposed in the names of Ilam Din and Roshan while the matter with regard to the formal cancellation of allotment from the name of Budh Singh was still in process, though ultimately the cancellation from the names of heirs of Budh Singh and distribution of *kham khatoni* in the names of the petitioners took place on the one and the same date, namely, 2-3-1959.

4. Respondents 2 to 4 who are successors-in-interest of Budh Singh filed two appeals which were dismissed by the learned D. R. C. on 23-10-1959. The said respondents then instituted revisions which were "filed presently" by the Settlement and Rehabilitation Commissioner by means of his order dated 28-3-1960 (copy Annex. VI with the writ petition) leaving the liberty to the respondents to get them revived after their claim was verified by the Central Record Office. The petitioners filed no further revisions and nor they took any other steps against that order.

5. The claim of Budh Singh was verified by the Central Record Office on 23-6-1967 whereafter his widow *Mst. Khilauni* submitted a petition requesting the learned Settlement and Rehabilitation Commissioner to take up their case and decide the question of their entitlement. The Settlement and Rehabilitation Commissioner on 30-9-1967 made a reference to and sought advice from the Chief Settlement and Rehabilitation Commissioner pointing out certain alleged defects in the verification order hereinbefore mentioned. It appears that later on when he was made aware of a policy letter dated 24-7-1963, copy Annex. 'RI' (attached with the parawise comments of the department), he did not wait for the reply from the Chief Settlement and Rehabilitation Commissioner and proceeded to decide the case himself. Taking up the case on 13-2-1971 he accepted the revision filed by the heirs of Budh Singh and held the verification to be in order and restored the allotment which had already been made in their favour. The petitioners have come up in writ petitions against the aforesaid proceedings and orders to this Court. Actually they have filed two writ petitions. Writ Petition No. 132-R/1971 challenges the allotment of land to the respondents whereas Writ Petition No. 226-R/1971 challenges the verification of claim of Budh Singh. This judgment will dispose of both these writ petitions.

6. The first point argued by the learned counsel for the petitioners was that the verification of claim of Budh Singh was without lawful authority on the part of the claims organisation. His submission was that the claim form which had been filed under the Punjab Refugees (Registration of Land Claims) Act V of 1949 could be verified only on the basis of Jamabandi, if any, received from India and not on the analogy of verification of claims under Schedule V to the Registration of Claims (Displaced Persons) Act III of 1956. The contention has no merit. On 14-4-1959 there was issued a press note authorising verification of claims of refugees from Alwar State (India) in the manner in which it has been verified in the instant case. A copy of that Press Note has been placed on record. It reads as follows:—

"PRESS NOTE

A number of displaced persons have claimed to have abandoned land in estates of which records have not been received. Intimation has been

received in respect of some Jagir and Mauafi estates of the Alwar State to the effect that no displaced person has abandoned any rights therein. With a view to afford another opportunity to claimants of this type the Chief Settlement and Rehabilitation Commr., Pakistan has directed that their claims may be disposed of in the manner prescribed for the claims under Sch. V to the Registration of Claims (Displaced Persons) Act, 1956. It is, therefore, notified for the information of all concerned that notices will be issued to them shortly by the Officer on Special Duty, C. R. O. or any other Officer appointed for the purpose, calling upon them to appear and furnish such documentary or other evidence as may be available with them.

The claim of any such person who fails to attend in response to such a notice or to furnish any satisfactory evidence in support of his claim will be rejected.

14th April 1959

(Sd.) S. H. Raza,

Lahore.

C. S. & R. C. West Pak."

In the face of the aforesaid sanction of law on the subject the plea raised cannot be accepted. When confronted with this situation learned counsel submitted that in Para. 29 of Part II of the West Pakistan Rehabilitation Settlement Scheme it was laid down that "rights under the Rehabilitation Settlement Scheme should be given to a claimant in accordance with the entries in the special *jamabandi* received from the prescribed areas of India. Classification of evacuee land should be taken into account according to the entries in the special *jamabandi* prepared for exchange with India and subsequent variations in the classification of soil should be ignored. If any hardship is caused by the application of this rule in individual cases a reference should be made to the Rehabilitation Commissioner, West Pakistan. (Reference former Punjab Government memorandum No. 8553-R(L), dated 2nd September, 1950". He argued that since in this case no *jamabandi* was received from village Jagrawar in Alwar State and the original report received from India was that in that State Muslims had no land or right or interest in any land, therefore, allotment to the respondents could not have been made. For this proposition he relied upon a judgment of my learned brother Mushtaq Hussain, J. in *Saddar Din and others v. Officer on Special Duty, Central Record Room* (Writ Petition No. 2769-R-1963, decided on 22-10-1968. The facts and circumstances of that case were different and, therefore, the same has no application to the present case. In that case *jamabandi* from India was in fact received and the question was whether allotment should be in accordance with entries of that *jamabandi* or on some different scale or standard. It was held that the allotment should be in accordance with the entries in the special *jamabandi* received from India and not on any other basis. The present case, however, is distinguishable, because, here the *jamabandi* of the relevant village from India was not received. This is so stated in Paras. 9 and 12(i) of the parawise comments of the learned Settlement Commissioner who decided the case in revision. The relevant passages in those paragraphs read as follows :—

"Passage from Paragraph 9

.....Policy letter according to which the claims of such of the displaced persons hailing from the agreed areas (Bhartpur, Alwar and Bikanir etc.) whose record had not been received from India were verified on analogy of Schedule V in accordance with the policy framed by Chief Settlement Commissioner....."

"Passage from Paragraph 12(i)"

The claim form of the predecessor-in-interest of the respondents Nos. 2 to 4 was registered under Punjab Refugees Registration Act, 1949 and as Jamabandi of that village was not received from India, certificate under paragraph 19 of Chapter I, Part II of the Rehabilitation Settlement Scheme was issued from the Central Record Office and the land in dispute was confirmed against the same."

To the same strain are the facts highlighted in Para. 12(iii) of the parawise comments. "In the face of this factual position the point raised by the learned counsel cannot be accepted. It was pointed out by Mr. Razi Haider, Naib Tehsildar of the Central Record Office, who was present in this Court along with the relevant record, that this was not a solitary case where this procedure or policy was adopted but, as recited by the claims officer in his impugned order, large number of claims were so verified and settled. Even otherwise West Pakistan Rehabilitation Settlement Scheme consists of two parts. Part I comprising of Paras. 1 to 23 is the main Scheme and Paras. 1 to 77 of Part II are instructions to implement the same issued by the Chief Settlement and Rehabilitation Commissioner in pursuance of Para. 23 of Part I of the Scheme. Para. 29 occurs in Part II i.e. Instructions Part and from that point of view the policy letter dated 14-4-1959 could well be acted upon—there being no bar on the part of the authorities concerned to issue the same. Verification of claims of the present kind under policy letter dated 14-4-1959 was thus quite in order. The contention raised by the petitioners to the contrary is, therefore, hereby repelled.

7. The next point argued by the learned counsel for the petitioners was that the press note dated 14-4-1959 was not retrospective in nature and if prior thereto the land in dispute was confirmed in the names of the petitioners then subsequent verification of the claim of Budh Singh under the policy letter aforesaid could not affect the allotment obtained and vested rights acquired by the petitioners in the meantime. This plea also has no substance as the learned Settlement Commissioner in his parawise comments and the impugned order has given cogent reasons in support of his view. It is to be noticed firstly, that the finding of the learned Settlement Commissioner was that the respondents were not present at the time of the passing of the relevant orders whereby or whereunder allotment from Budh Singh's khata was cancelled or when the land was allotted to the petitioners and that all these proceedings were taken at the back of the respondents, without hearing or without issuing any notice to them. The following passages from paras. 2, 3, 12(i) and 12(vi) of the parawise comments are relevant :—

"Passage from Paragraph 2"

The R. L. II shows that the respondent was not present at the time of passing of this order."

"Passage from Paragraph 3"

Para. 3 of the petition is not correct as Mst. Khilauni was not heard at the time of cancellation of the Khata in dispute. No service appeared to have been effected on Mst. Khilauni as no such paper regarding the service of Mst. Khiloni is with the R. L. II or in the papers of the patwari concerned."

"Passage from Paragraph 12(i)"

The order of the cancellation of the land in dispute from the name of the respondents Nos. 2 to 4 was made in their absence. It is also

ALI MOHD. V. SETTLT. COMM. (Karam Elahee Chauhan, J) LAHORE 855
mentioned herewith, that Budh Singh son of Kala was temporary allottee of village Roshan Rai as is evident from the R. L. II of village Roshan Rai where temporary allotment was made on 24-4-49 and the confirmation in favour of the petitioners appeared to have been made in the absence of the respondents."

"Passage from Paragraph 12(vi)

Sub-para. (vi) is also incorrect as the respondents were not served with any notice, information and no such document is available with the patwari concerned in his record and the predecessor-in-interest of the respondents filed appeals within time in the Court of Deputy Settlement and Rehabilitation Commissioner as is evident from the order of Deputy Settlement and Rehabilitation Commissioner in which he did not mention that the appeals were time-barred."

To the same strain is the finding recorded by the learned Settlement Commissioner in his impugned order dated 13-2-1971. It is not possible for me to take exception to this finding of fact in view of the law laid down by the Supreme Court in *Muhammad Hussain Munir and others v. Sikandar and others* (1) where it was held that a finding of fact cannot be interfered with in the course of writ jurisdiction and this is more so when in the instant case it is supported by the attending circumstances and the relevant record. In that view of the matter the orders cancelling allotment of land from the Khata of Budh Singh and allotting the same to the petitioners were void, *ab initio* and, as is obvious, they cannot claim any vested right on the basis of a void order. *Secondly*, according to paragraph 20 of the West Pakistan Rehabilitation Settlement Scheme it was incumbent upon the authorities concerned to reserve 75 per cent. area when the claim and objections of the respondents were pending scrutiny. The learned Settlement Commissioner has held so and for this he has also sought support from and referred to a judgment of S. A. Mahmood, J. dated 29-1-1962 passed in Writ Petition No. 626-R/1960 titled *Chhaju etc. v. Rehabilitation Commr., Multan Division, Multan etc.* He has quoted copious passages from that judgment. The view taken by the learned Settlement Commissioner which is backed by enunciation of law made by this Court is thus not open to exception. In the face of the aforesaid legal position the petitioners cannot claim any vested right on the basis of the orders and proceedings which suffer from various infirmities hereinbefore highlighted. Mr. Razi Haider, Naib Tehsildar, Central Record Office, who was present, testified the factum of pendency of the objections of Budh Singh with reference to the record which he brought in Court which supports the view on this positive point as recorded by the learned Settlement Commissioner in para. 3 of his impugned order. *Thirdly*, the finding recorded by the learned Settlement Commissioner is that the respondents were temporary allottees of this village whereas the claims of the petitioners reached there by way of transfer subsequently. From that point of view also the respondents had preferential right to claim this land. *Fourthly*, the allotment to petitioners has throughout remained *sub judice* and as the same was subject to the incidents of appeals and revisions and verification of claims of the respondents or disposal of their objections in connection therewith which they had duly filed, therefore, from that point of view the petitioners cannot claim any vested right in their allotment if the same was set aside in revisions. It may be pointed out—(to excuse repetition)—that the order dated 28-3-1960 (Annex. VI) passed by the learned

Settlement Commissioner did keep the matter in abeyance. The petitioners filed no further revision or any other proceedings against that order which consequently became final qua them. In that order it was expressly stated that the revision petitions of respondents were being "filed presently" and could be revived after verification of their claim. After having accepted that order and after having taken no steps to challenge the same in any Court of competent jurisdiction, in my opinion, the petitioners cannot be allowed to take exception to the same when the learned Settlement Commissioner proceeded further in the matter in terms of that order. This aspect of the case has specifically been pleaded by the learned Settlement Commissioner in Paragraph 12(ii) of his parawise comments and I see no justification to take exception to his aforesaid stand.

8. No other point was argued before me.

9. The upshot of the above discussion is that the writ petitions have no merit and are hereby dismissed with costs throughout.

S. A. H.

Petitions dismissed.

P L D 1976 Lahore 886

Before Nasim Hassan Shah and Munawar Elahee Rana, JJ

MESSRS Sh. ABDUR RAHIM ALLAH DITTA—

Petitioner

versus

FEDERATION OF PAKISTAN THROUGH SECRETARY, MINISTRY
OF FINANCE, GOVERNMENT OF PAKISTAN, ISLAMABAD
AND ANOTHER—Respondents

Writ Petition No. 2774 of 1975, decided on 5th March 1976.

(a) Constitution of Pakistan (1973)—

— Sched. IV, items. 27, 43 & 59—Customs—Legislation—Federal Legislature having power to legislate in respect of matters enumerated in items 27, 43 & 59, legislation can be enacted in connection with all matters pertaining to customs. [p. 891]A

Groller by Encyclopaedia International, 1970 Edn. ref.

(b) Constitution of Pakistan (1973)—

— Sched. IV, items 27, 43 & 59 read with Customs Act (IV of 1969), S. 18 and Notification No. S. R. O. 910(1)/75 dated 21-8-75—Custom duty, levy of—*Vires* of legislation—Real nature of charge ascertainable by considering all attendant circumstances and not by its nomenclature—"Pith" and "substance" of duty levied by Notification: a custom duty levied in addition to custom duty levied under subsection (1) of S. 18—Levy being simply in nature of duty of customs, subsection (2) of S. 18 authorising such levy, held, clearly *intra vires* Constitution of Pakistan (1973), being relatable to items, 27, 43 & 59. [p. 891]B

Governor-General-in-Council v. Province of Madras A I R 1945 P C 98
ref.