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March 29.

AMAR SINGH

v.

CUSTODIAN, EVACUEE PROPERTY, PUNJAB

(BHAGWATI, JAGANNADHADAS, JAFER IMAM, GOVINDA MENON and J. L. KAPUR JJ.)

Evacuee property—Allotment—Displaced land-holders—Quasi-permanent allotment—Cancellation—Violation of Fundamental Rights—Constitution of India, Arts. 19(1)(f), 31(1), 31(2)—*Administration of Evacuee Property Act*, 1950 (*XXXI of* 1950).

The petitioners, who were displaced persons from Pakistan owning land therein, were also co-sharers in a joint *khata* owned by some evacuees in a suburban village in East Punjab. On their displacement they were in the first instance temporarily allotted agricultural land in that village. Subsequently, as a result of the readjustment of allotments of the suburban land amongst the various groups who had quasi-permanent allotments therein, which had to be carried out according to certain rules and instructions, the allotments of the petitioners were cancelled. The case of the petitioners was that the allotment to them was on a quasi-permanent basis and that, therefore, they had acquired certain rights in the land which constituted property, and they contended that the order cancelling the allotment was in violation of their fundamental rights to property under Arts. 19(1)(f), 31(1) and 31(2) of the Constitution of India. Though the petitioners were allottees of agricultural land on the basis of a quasi-permanent allotment it was admitted that they were not able to get a *sanad* under the rules for the lands originally allotted to them, when only they could obtain permanent property in the land. It was not disputed that the cancellation of the allotment was under the purported exercise of powers under the provisions of the Administration of Evacuee Property Act, 1950, and the rules framed thereunder taken with some executive instructions.

Held, that the interest of a quasi-permanent allottee does not constitute 'property' within the meaning of Arts. 19(1)(f), 31(1) or 31(2) of the Constitution of India, and accordingly the orders cancelling the allotments could not amount to violation of fundamental rights under those Articles.

The basic features of the interest of a quasi-permanent allottee are that the ultimate ownership of the land is still recognised to be that of the evacuee and the allotment itself is liable to resumption or cancellation with reference to the exigencies of the administration of evacuee law. The interest so recognised is, in its essential concept, provisional though with a view to stabilisation and ultimate permanence. An interest in land owned by another in such a situation cannot be fitted into any concept of property in itself.

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Julius v. *Lord Bishop of Oxford*, (1880) 5 A.C. 214, distinguished.

Property in order that it may fall within the scope of Art. 19(1)(f) must be capable of being the subject matter of "acquisition and disposal". But the interest of a quasi-permanent allottee arises by statutory grant to a person of a specified class and is not capable of being acquired by an ordinary citizen in any of the normal modes. Nor is it capable of being disposed of by the allottee himself by way of sale, mortgage, gift or will. Consequently, Art. 19(1)(f) cannot apply to the case.

In order that Art. 31(1) may apply it is not enough that there is deprivation, but such deprivation must be without the authority of law. In the present case the quasi-permanent allotments of the petitioners were cancelled in enforcement of a right of resumption or cancellation which is an incident of such property, and hence the Article has not been infringed.

The interest of a quasi-permanent allottee cannot be brought within the scope of Art. 31(2) as it stood prior to the amendment. The words "taking possession" or "acquisition" there are inappropriate in respect of the rights which constitute quasi-permanent tenure.

In view of the word "deemed" occurring in Art. 31(2A) it appears likely that the amendment to Art. 31(2) was intended to be retrospective, but even then the amended Article taken with Art. 31(2A) is equally inapplicable as it contemplates acquisition or requisitioning (and taking possession) as a result of transfer of the ownership or of the right to possession.

Suraj Parkash Kapur v. *The State of Punjab*, (1957) LIX P.L.R. 103, in so far as it purported to decide that the interest in the land allotted to a quasi-permanent allottee constitutes "property" which attracts the protection of fundamental rights under the Constitution, is disapproved.

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

ORIGINAL JURISDICTION : Petition No. 351 of 1954.

Petition under Article 32 of the Constitution for the enforcement of fundamental rights.

N. S. Bindra, Udhai Bhan Choudhury and *Gopal Singh*, for the petitioners.

S. L. Pandhi and *K. L. Mehta*, for the Intervener.

1957, March 29. The Judgment of the Court was delivered by

JAGANNADHADAS J.—This is an application under Art. 32 of the Constitution by the petitioners, Amar Singh and four others, in the following circumstances. All these five are displaced persons who owned land in the non-suburban village of Chak. No. 159-RB, Tahsil Jaranwala, District Lyallpur in Pakistan. They were also co-sharers in a joint *khata* owned by some evacuees in village Sultanwind, a suburb of Amritsar in East Punjab. On their displacement, they were in the first instance temporarily allotted agricultural land in Sultanwind. Having regard to their original position in the village, they were allotted in the year 1949 a total area of 38 standard acres and 13 units of agricultural land therein. This allotment had to be disturbed under the following circumstances. The Director-General of Relief and Rehabilitation (Additional Custodian) directed by an order dated January 7, 1950, that out of the 1,263 standard acres and $1\frac{3}{4}$ units of suburban land of Amritsar, 142 standard acres and 5 units were to be allotted to allottees of Provincial Gardens. This necessitated readjustment of allotments of the suburban land of Sultanwind amongst the various groups who had quasi-permanent allotment therein. As a result of this readjustment which had to be carried out according to certain rules and instructions the allotment of these five petitioners (as also of some others) was proposed for cancellation by the order of the Deputy Custodian, Amritsar, dated July 31, 1951. This proposal was approved by the Custodian (Financial Commissioner, Relief and Rehabilitation) on February 6, 1952, and the allotment was cancelled. The proposal and the order of cancellation are said to have been passed without notice to the petitioners. Being aggrieved thereby they moved the Custodian-General of Evacuee Property for revision thereof under s. 27 of the Administration of Evacuee

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Property Act, 1950 (XXXI of 1950). This was dealt with by the Deputy Custodian-General who dismissed the same by a fairly elaborate order dated May 1, 1954, after hearing the parties. The petitioners have come up to this Court by this application under Art. 32 of the Constitution.

The case of the petitioners is that the allotment to them was on quasi-permanent basis and that, therefore, they have acquired certain rights in the lands which constitute 'property'. They urge that the order of the Custodian cancelling the allotment and that of the Deputy Custodian-General affirming the same are in violation of their fundamental rights to property under Arts. 19(1)(f), 31(1) and 31(2) of the Constitution. They accordingly contend that they are entitled to have these orders quashed and their rights to property declared and protected. That the petitioners are allottees of agricultural land on the basis of what has come to be known as quasi-permanent allotment is not disputed. It is also not disputed that cancellation thereof was under the purported exercise of powers vested in the Custodian under certain provisions of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) and the rules framed thereunder taken with some executive instructions. It may be mentioned that the term "quasi-permanent allotment" appears to be a term which has come into vogue in later statutory rules and has at no time been specifically defined, though it appears to be now fairly well-understood. The two substantial questions that arise, therefore, for consideration are (1) whether the rights of a quasi-permanent allottee constitute property within the meaning of the articles above referred to, and (2) whether the orders of the Custodian and Deputy Custodian-General cancelling the quasi-permanent allotment amount to violation of fundamental rights contemplated by the above articles. Both these questions require a review of the Evacuee Property Law in so far as it relates to the allotment of agricultural lands of the evacuees to displaced land-holders and an appreciation of the background of the circumstances that necessitated it.

The Declaration of Independence and the partition of India into Pakistan and India on August 15, 1947, was accompanied by mass migrations of Non-Muslims from West Punjab to East Punjab and of Muslims from East Punjab to West Punjab. These mass migrations were on a stupendous scale. About five million persons are said to have moved from each side to the other. This was done in a state of panic generated by communal riots. Migrants from West Punjab reached East Punjab almost destitute. This unprecedented situation brought in its train gigantic problems of administration relating to rehabilitation and resettlement of these persons. One of such problems was that relating to agricultural immovable property left on either side by the migrants. For purposes of convenience persons who crossed over from East Punjab to West Punjab are referred to as evacuees and persons who came over from West Punjab to East Punjab are referred to as displaced persons. The displaced persons are said to have left in Pakistan lands of the extent of about 67 lakh acres. The evacuees seem to have left in East Punjab and Pepsu, lands of the extent of about 47 lakh acres. This meant a deficit of over 20 lakh acres for resettlement.

It would appear that in the earlier stages there were attempts to settle the question by way of mutual exchanges either in individually or at the govermental level and by means of inter-dominion conferences between India and Pakistan. But for one reason or other, these attempts appear to have failed. The various steps and administrative measures taken to settle the displaced agricultural population who came over from West Punjab, on the hurriedly abandoned lands of the evacuees from East Punjab, are to be found described in the Land Resettlement Manual by Shri Tarlok Singh who was the Director-General of Relief and Rehabilitation (hereinfter referred to as the Resettlement Manual). In *Dunichand Hakim* v. *Deputy Commissioner (Deputy Custodian, Evacuee Property)*, *Karnal* (1), this book has been referred to by this Court as having the stamp of authority. It can be usefully referred to not

(1) [1954] S. C. R. 578.

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necessarily as an authority for every statement of fact or law contained therein but as a guide to appreciate the background of the problems which the administration had to face in that unprecedented situation, how the administration attempted to solve the same, what were the rules and practice which the administration normally followed and considered binding on itself, and what ideas inspired the course of legislation in this behalf. It appears therefrom that within about a month after the partition of India, the Government had to take an emergency decision to allot evacuee lands to groups of displaced persons on temporary basis. But this was found not to satisfy the displaced landholders. There was insistent pressure from them for such allotment as would enable them to settle on the lands of the evacuees on a permanent basis. This led to the abandonment of the policy of temporary allotments and the introduction of a system of allotment which came to be known as quasi-permanent allotment. This policy was announced by the Government of East Punjab in its Press Communique dated February 7, 1948, which is reproduced at pages 28 and 29 of the Resettlement Manual. The following extract therefrom is instructive :

"The East Punjab Government propose to replace the present system of temporary allotments of evacuee lands by a new system of allotments which will take account of the holdings of evacuees in West Punjab. The new allotments will not confer rights of ownership or permanent occupancy, but the possession of allottees will be maintained. Claims of allottees will be dealt with in accordance with decisions reached eventually regarding the treatment of evacuee property.

In the new scheme of allotments, land will be allotted only to those who, in West Punjab, were owners, occupancy tenants under the Punjab Tenancy Act, and tenants under the Colonization of Government Lands Act and to certain other classes of grantees and holders of land in West Punjab to be specified by Government. It is proposed to give to small holders allotments of equivalent areas, while in the case of larger holders there will be graded cuts. The definition

of the "Small Holders" and the details of the graded cuts will be determined when detailed information regarding the available areas in East Punjab and the East Punjab States, the areas held by the population to be settled in East Punjab and the East Punjab States, and other relevant information becomes available.

It is intended to complete the new system of allotments in the East Punjab and the East Punjab States, not later than the 31st May, 1948. Government are, however, anxious to introduce the new scheme as early as may be feasible and steps to this end will be taken at once.

Arrangements for collecting complete information regarding the land available for allotment in East Punjab and the East Punjab States and the land abandoned by individual evacuees will be taken in hand without delay and it is hoped also to make arrangements on a reciprocal basis to secure information from records of rights in West Punjab.

To ensure accurate information an Ordinance will shortly be promulgated prescribing punishment for false information regarding claims to land and action by way of forfeiture and otherwise in respect of allotments taken on false information. Claims to land will be invited on a form to be prescribed by Government.

Until the new system of allotments can be introduced, the present system of allotments will continue and allotments made to the present holders will be maintained subject to a complete scrutiny of existing allotments, cancellation of unauthorised and excessive allotments, dispossession from illicit occupation and such other adjustments as may be necessary including adjustments in the unit of allotment decided upon by Government."

To facilitate the process of resettling the displaced persons on evacuated land on this new basis of allotment various steps became necessary. They are roughly the following.

1. Registration and verification of land claims.
2. Assessment and valuation of such claims.

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3. Classification of the villages and of lands of evacuees available for allotment.

4. Allocation of the claims to various areas with reference to such classification.

5. Allotment of lands to individuals with reference to the valuation of their claims, guided by various considerations, priorities and preferences and so forth administratively determined.

The basic idea which inspired and regulated these measures was that the displaced landholder is to be allotted (subject to graded cuts) such lands out of the evacuee agricultural land which, in its extent, quality and other relevant features, bear some reasonable relation and correspondence to the lands left by him in West Punjab. All these steps involved very elaborate administrative measures as indicated above. We are concerned in this context to trace the legislation which brought about these steps and to examine whether and to what extent such legislation recognised property rights in the displaced land-holders. But before tracing the legislative measures which brought about the quasi-permanent allotments of evacuee lands in favour of displaced land-holders from West Punjab, it will be convenient to have a brief survey of the present law in its application to administration of evacuee property of all kinds in general with the history of such of the provisions therein as are relevant for our purpose and then to consider the relevant legislative measures taken specifically with reference to agricultural land.

The earliest legislative measure in this behalf is the East Punjab Evacuees' (Administration of Property) Ordinance, 1947, (E.P. Ordinance IV of 1947) dated September 14, 1947, which was a simple measure defining the terms 'evacuee', 'evacuee property', and 'Custodian of evacuee property' and other terms, and authorising the appointment of a Custodian. It gave the Custodian power to take possession of evacuee property and to take all measures necessary and expedient for preserving such property. It vested in him extensive powers of management thereof. This was an emergency measure which appears to have

been meant to get possession of the properties as a care-taker. This was superseded and followed by a series of legislative measures which underwent modifications from time to time. These legislative measures were in the first instance Provincial, *viz.*, East Punjab Evacuees' (Administration of Property) Act, 1947 (E.P. XIV of 1947) ; East Punjab Evacuees' (Administration of Property) (Second Amendment) Ordinance, 1948 (E.P. Ordinance XVI of 1948) ; East Punjab Evacuees' (Administration of Property) (Second Amendment) Act, 1948 (E.P. XLIX of 1948) ; and East Punjab Evacuee Property (Administration) Ordinance, 1949 (E.P. Ordinance IX of 1949). These Provincial measures were repealed and superseded by Central legislation, *viz.*, Administration of Evacuee Property Ordinance, 1949 (Ordinance XXVII of 1949) amended by the Administration of Evacuee Property (Amendment) Ordinance 1950 (Ordinance IV of 1950). These were repealed and superseded by the Administration of Evacuee Property Act, 1950 (XXXI of 1950).

The main provisions of Central Act XXXI of 1950, which, with some modifications, is at present in force, may now be noticed so far as they are relevant. Under ss. 5 and 6 of the Act an administrative machinery consisting of Custodians, Additional, Deputy and Assistant Custodians of Evacuee Property, is set up for each State by the State Government thereof. They are under the general superintendence and control of a Custodian-General appointed by the Central-Government who has, for his assistance, Deputy and Assistant Custodian-Generals, who are also appointed by the Central Government. The terms 'evacuee' and 'evacuee property' are defined in s. 2(d) and (f) and the Custodian is given power to determine and notify evacuee property under s. 7. All property declared as 'evacuee property' becomes vested in the Custodian under s. 8. The Custodian has under s. 9 the power to take possession of all the 'evacuee property' so vested in him. Section 10 enumerates the powers and

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duties of the Custodian generally and declares that he may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purposes of enabling him satisfactorily to discharge any of the duties imposed on him by or under the Act, and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto. One of the duties laid on the Custodian is the maintenance of accounts under s. 15. Section 15(1) says that the Custodian shall maintain a separate account of the property of such evacuee, possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof. Section 16 provides for restoration of property to the evacuee on his application and enjoins the Custodian to furnish the evacuee on demand with a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property. The general powers of management vested in the Custodian under s. 10 enable him to grant leases and make allotments out of evacuee property in favour of displaced landholders. This is subject to the power vested in him under s. 12(1) to vary or cancel leases or allotments of evacuee property. There are a number of other substantive and incidental provisions, which it is unnecessary to refer to for the purposes of this petition. Thus, the broad features of the administration of evacuee property law, as indicated from the provisions above noticed, are the following :

1. All evacuee property is vested in the Custodian.

2. He has the duty of managing the property and maintaining accounts for such management and has large administrative powers.

3. As incidental to such management he can grant leases and make allotments.

4. He has the power to vary or cancel leases and allotments.

5. The evacuee can come forward and apply for return of the evacuee property and such property is liable to be restored to him.

6. The Custodian, presumably on such restoration, has to furnish to the evacuee on demand a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property.

In addition to large administrative functions for the purposes of the Act, the Custodian has also the function of deciding various matters of a quasi-judicial nature, such as (1) whether a person is an evacuee or whether certain property is evacuee property ; (2) whether a transfer of evacuee property is or is not to be confirmed ; (3) whether a lease or an allotment is or is not to be cancelled or varied ; and (4) whether property is to be restored to the evacuee and so forth. The actions of the Custodian and his subordinates in exercise of their administrative as well as of quasi-judicial functions are subject to appeal and revision by the higher authorities under the Act as provided under ss. 24 to 27. Section 28 provides that orders made under the above sections shall be final and shall not be called in question in any original suit, application or execution proceeding. Section 46 bars the jurisdiction of the civil or revenue courts in respect of any matter which the Custodian-General or the Custodian is empowered by or under the Act to determine.

The history of some of the above statutory provisions as traceable from the corresponding provisions of the earlier legislation is significant. The provision vesting evacuee property in the Custodian was not enacted in the earlier East Punjab Ordinance IV of 1947. But it was enacted by the next legislative measure, East Punjab Act XIV of 1947, which declared the vesting of evacuee property, and provided that the property "shall continue to be so vested until the Provincial Government by notification otherwise directs." This last clause was substituted in 1948 by an Amending Act, by the clause "until it is returned to the owner in accordance with the provisions of

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section 12". This clause as to the duration of such vesting was omitted in the later Central legislation and was substituted by the phrase "shall continue to so vest". (See Central Ordinance XXVII of 1949 and Central Act XXXI of 1950). The earliest provision for return of evacuee property to the evacuee is in East Punjab Ordinance IV of 1947. Section 12 thereof provided that the owner of any property in the possession or control of the Custodian shall be entitled to restoration thereof upon application to the Custodian and on payment of excess, if any, of expenditure over receipts from the management of such property by the Custodian. In East Punjab Act XIV of 1947 which superseded this Ordinance, this right of restoration to the evacuee was qualified by virtue of s. 12(1) thereof which is as follows :

"On being satisfied that evacuees have returned or are returning to the Province, the Provincial Government may by notification in the Official Gazette authorise return of their immovable property to the owners in accordance with this section."

Sub-section (2) of s. 12 provided that any person claiming to be entitled to any such property may apply in writing to the Custodian who, after giving public notice and holding an enquiry, will make a formal order declaring the person to whom possession of the property may be delivered. In Central Ordinance XXVII of 1949 and in Central Act XXXI of 1950, the provision for restoration of property to the evacuee in s. 16 thereof is that the Custodian may, on application by the evacuee or his heir, restore to him the property subject to such terms and conditions as he may think fit to impose provided that the applicant produces a certificate from the Central Government that the property may be so restored if he is otherwise entitled to it. Thus it will be seen that while the earliest East Punjab Ordinance of 1947 recognised almost an unrestricted right in the evacuee to obtain restoration of property this was changed shortly thereafter by the East Punjab Act of 1947 which required that such return by the Custodian can only follow a

notification by the Provincial Government as to its being satisfied that evacuees have returned or are returning and authorising the return of the property. The Central legislation of 1949 and of 1950 however lessened the rigour of it by requiring only a preliminary certificate from the Central Government by the individual applicant concerned.

Next, it may be noticed that neither East Punjab Ordinance IV of 1947 nor East Punjab Act XIV of 1947 which replaced it refer to or define either the word 'lease' or 'allotment'. These two words were for the first time defined only by the amending East Punjab Ordinance XVI of 1948 and it was made clear therein that an allotment was different from a lease. From the historical background it would appear likely that the word 'allotment' was used for the grant of property to displaced land-holders while 'lease' was intended to denote a temporary grant to other displaced persons. But even so the temporary character of the right involved in the word 'allotment' was specified by defining 'allotment' as meaning the grant by the Custodian of a *temporary* right of use and occupation of evacuee property to any person otherwise than by way of lease. This temporary character of the right was reiterated also in East Punjab Ordinance IX of 1949 and in Central Ordinance XXVII of 1949. It is only in Central Act XXXI of 1950 that by s. 2(a) thereof the word 'temporary' in the definition of the word 'allotment' was dropped and 'allotment' is defined as meaning the grant by a person duly authorised *of a right* of use or occupation of an immovable evacuee property to any other person but does not include a grant by way of a lease. Thus the legislation of 1950 for the first time contemplated that allotment may be otherwise than temporary. This Act as well as the previous Central Ordinance completely omitted the definition of the word 'lease'. These changes were apparently necessitated by the fact that, in between, Punjab Government notification dated July 8, 1949, came into operation providing for what has become subsequently known as quasi-permanent allotment.

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The provisions of that notification and the legal effect thereof will be noticed in due course.

We may next trace the provisions in the various Acts relating to the power of cancellation of allotments in so far as they appear from the body of the main Ordinances and Acts themselves, leaving aside—for the time being—the rules framed thereunder. It may be mentioned that in the rest of the judgment in noticing the statutory provisions which deal with leases and allotments together, all reference to leases are omitted for the sake of simplification. The earliest provision in this behalf is s. 9-A of East Punjab Act XIV of 1947 which was inserted into it by East Punjab Ordinance XVI of 1948 replaced by East Punjab Act XLIX of 1948. Sub-section (2) of s. 9-A provides that notwithstanding anything contained in any enactment for the time being in force, the Custodian may cancel any allotment or amend the terms of any agreement on which any evacuee property is held or occupied by any person, whether such agreement was entered into before or after the coming into force of East Punjab Ordinance XVI of 1948. It is further provided by sub-ss. (3) and (4) thereof, that if a person is in unauthorised possession of any evacuee property the Custodian may treat such person either as a tenant or as a trespasser and that a person treated as a trespasser, on concellation of allotment, shall, on demand surrender possession to the Custodian. The subsequent East Punjab Ordinance IX of 1949, Central Ordinance XXVII of 1949 and Central Act XXXI of 1950 contain substantially the same provisions relating to cancellation of allotments. It may be mentioned that all these legislative measures had a section relating to rule-making power right from the time of East Punjab Act XIV of 1947 and also a provision that the provisions of the Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith in any enactment other than that Act. (See ss. 22 and 18-B of Esta Punjab Act XIV of 1947 and ss. 55, 56 and 4 of Central Act XXXI of 1950.) By virtue of this

rule making power, the Provincial Government and the Central Government made rules from time to time, which will be noticed presently.

From the above history of alterations at short intervals in some of the main relevant provisions, it is clear that the legislation was being adjusted from time to time with reference to the exigencies and difficulties of the different problems which had to be grappled with, both in the matter of internal administration as also on account of inter-dominion conferences between Pakistan and India. It may be mentioned that during the two year period between the first Provincial legislation in 1947 and the first Central legislation in 1949 there were as many as six-inter dominion conferences, *i.e.*, in January 1948, April 1948, July 1948, December 1948, April 1949 and June 1949.

Stopping here it will be seen that the position, in its general aspect, is that all evacuee property is vested in the Custodian. But the evacuee has not lost his ownership in it. The law recognised his ultimate ownership subject to certain limitations. The evacuee may come back and obtain return of his property, as also an account of the management thereof, by the Custodian. Such return which was originally contemplated without any restriction, is subsequently dependent on a notification or a certificate of the Central Government. Until such return the Custodian may manage the property by granting allotments in favour of displaced persons. The nature of an allotment is clear from its definition that it is grant of the right of use and occupation. This in the first instance was contemplated as being only temporary. By a later definition, it was made wider so as not to be restricted to a temporary use and occupation. But the allotment is clearly subject to the power of cancellation thereof vested in the Custodian, which will entitle him to obtain its possession. Such rules were undergoing alterations from time to time. In such a situation it would *prima facie* be difficult to

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recognise the allottee of any evacuee property, in so far as his position is governed by the main provisions of the Evacuee Property Administration Acts (unaffected by any specific rules applicable to any particular class of property or any specific arrangement or contract), as a person having some kind of property or having a recognised interest therein which by itself constitutes 'property'. It is more in the nature of a licence which is liable to be cancelled by the grantor. It may be mentioned that there appear to be certain rules made by the East Punjab Government dated August 6, 1948, under East Punjab Act XIV of 1947 as amended in 1948 relating to cancellation of allotments. But the text of these rules was not available to us. However this may be, it is urged that certain other legislative measures and statutory rules made in exercise of the statutory powers, have made a difference in the position arising in respect of allotments of agricultural lands granted in favour of displaced persons in East Punjab who left landed property in West Punjab. It is, therefore, necessary to review the same.

The first measure for the resettlement of the displaced land-holders of West Punjab on evacuee lands was the East Punjab Refugees (Registration of Land Claims) Ordinance, 1948 (E.P. Ordinance VII of 1948) which was replaced by East Punjab Refugees (Registration of Land Claims) Act, 1948 (E.P. XII of 1948). It is in pursuance of the rules framed under this Act that what is known as the *Parcha* claim and the form therefor were standardised calling for accurate information as regards quite a large number of details which had to be taken into consideration in determining the land to be allotted to a displaced land-holder. This was followed by the East Punjab Displaced Persons (Land Resettlement) Ordinance, 1949 (E.P. Ordinance XIV of 1949) which was replaced by the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (E. P. XXXVI of 1949). This Act was meant "to provide for the allotment of evacuee lands in East Punjab". The right of an allottee to possession of the

land allotted subject to payment of rent, etc., to the Custodian or his right to a share in the rent from the present holder thereof (that is, the cultivating occupant), if any, and other incidents arising from such possession were specified in this Act. In between these two Acts, notification No. 4892/S dated July 8, 1949, was issued by the Punjab Government in exercise of the rule-making power vested in it under cls. (f) and (ff) of sub-s. (2) of s. 22 of East Punjab Act XIV of 1947 as amended in 1948. This notification sets out the statement of conditions on which the Custodian could grant allotments of land vested in him. This notification is virtually the charter of the rights of allottees. It is the basis of what has come to be known as the quasi-permanent allotment. In the rules set out in this notification a 'displaced person' is defined as 'a land-holder in West Punjab etc.' and it is specified that, "an allotment shall be made in favour of a displaced person and for a period for which the land remains vested in the Custodian." The word 'allottee' is defined as including "heirs, legal representatives and lessees of the allottee. It may be mentioned in this context that East Punjab Displaced Persons (Land Resettlement) Act, 1949, mentioned above, which was passed shortly after these rules were notified also defines the word 'allottee' and says that allottee means "a displaced person to whom land is allotted by the Custodian under the conditions published with East Punjab Government notification No. 4892/S dated July 8, 1949 and includes his heirs, legal representatives and sub-lessees." Thus the definitions of the word 'allottee' in the rules of July 8, 1949 and under the Act passed shortly thereafter recognise not only that an allotment is to be in favour of a displaced land-holder for the period the land is vested in the Custodian but that it enures for the benefit of his heirs and legal representatives. Therefore, the first incident of allotment implicit in this is the heritability of the rights of the allottee which constitute quasi-permanent allotment under the above mentioned notification of July 8, 1949. Various other rights are specified in

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cls. 3, 4, 5, 7 and 8 of the said notification. These will be summarised later. But it is to be noticed that the allotment itself is subject to resumption under cl. (6) thereof. Before considering the nature of the interest which these various clauses of the notification confer on the quasi-permanent allottee, it is necessary to see how far this notification of July 8, 1949, is affected by subsequent legislation and the rules framed thereunder.

Now the East Punjab Evacuee Property Administration Acts were repealed and replaced by Central Ordinance XXVII of 1949 and Central Act XXXI of 1950. Both the Central Ordinance and Central Act had each a section, s. 53 and s. 55 respectively, under which the Central Government may delegate its rule-making power to the State Government. In exercise of such delegated power the State Government issued a notification No. 1554-Cust. dated February 6, 1950, the relevant portion of which is as follows :

"The Provincial Government is pleased to notify that Statement of Conditions issued by the Custodian and published under the notification No. 4891/S and 4892/S dated the 8th July, 1949, shall be deemed to be and shall continue to remain in force as rules framed by the Provincial Government under sub-section (2) of section 53 of the Central Ordinance No. XXVII of 1949 under delegation from the Central Government under Notification No. 3094-A/Cus/49 dated 2nd December, 1949, subject to the following modifications and amendments :

(i) The rules as stated in the Statement of Conditions under notification Nos. 4891/S and 4892/S dated the 8th July, 1949, shall be called the Administration of Evacuee Property (Rural) Rules, 1949.

(ii) *Definition.* (a) The word 'ACT' defined in the said Statement of Conditions shall mean the Administration of Evacuee Property Ordinance, 1949 (Ordinance No. XXVII of 1949).

....."

The above rules of July 8, 1949, have, therefore, continued to be operative as rules made under the

Central Ordinance. On the repeal of the Central Ordinance by Central Act XXXI of 1950 and by virtue of s. 58 thereof these rules continue to be in force as though they are rules made under the Central Act of 1950. Further, the Central Government framed rules on September 28, 1950, entitled Administration of Evacuee Property (Central) Rules, 1950, which will be noticed presently. Later, in exercise of the delegated rule-making power vested in the Provincial Government under s. 55 of the Central Act, the Punjab Government framed rules dated August 29, 1951, entitled "Instructions for review and revision" of land allotment." These two sets of subsequent rules would affect the rules of July, 1949, to the extent that any of them are inconsistent with the earlier rules. A comparison of the subsequent rules with the earlier rules of July 8, 1949, shows that the later rules do not concern any of the matters provided by the earlier rules of 1949 (and 1950) excepting as regards the provisions relating to resumption—which virtually is cancellation—of allotments. Hence the rules of July 8, 1949, continue to be in force except to that extent, if any. The portion which has undergone, if any, variation by subsequent rules may now be noticed.

The provision for resumption in the rules published by the Punjab Government in its notification of July 8, 1949, is as follows :

"6. The Custodian, or as the case may be, the Rehabilitation Authority shall be competent to resume, amend, withdraw, or cancel the allotment on any of the following grounds :

(a) It is contrary to the orders of the East Punjab Government, or the instructions of the Financial Commissioner, Rehabilitation, or the Custodian, Evacuee Property, East Punjab ;

(b) The allottee has infringed or appears to be preparing to infringe any of the terms of allotment ;

(c) The allotment was obtained by false declaration or insufficient information or is contrary to the purpose of rehabilitating the displaced persons ;

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(d) The area allotted or occupied by the allottee is more than he was authorised to take on allotment or occupy under the instructions issued by the East Punjab Government or the Financial Commissioner, Rehabilitation, or the Custodian, Evacuee Property, East Punjab ;

(e) Where the claims of other parties with respect to the land have been established or accepted by the Custodian or the Rehabilitation Authority ;

(f) When the allottee has been convicted of an offence under the Act ; or

(g) If the allottee fails to take possession of the land within the time as may be allowed by the Custodian or the Rehabilitation Authority, or after having taken possession, fails to cultivate the land or a part thereof."

The next set of rules are those made under Central Act XXXI of 1950. Rule 14 of Central Rules, 1950, is the following :

"14. (1). .....

(2) In case of an allotment granted by the Custodian himself, the Custodian may evict a person on any ground justifying eviction of a tenant under any law relating to the Control of Rents for the time being in force in the State concerned, or for any violation of the conditions of the allotment.

(3) The Custodian may evict a person who has secured an allotment by misrepresentation or fraud or if he is found to be in possession of more than one evacuee property or in occupation of accommodation in excess of his requirements.

(4) ....."

It will be seen that the above provisions are not in themselves powers of cancellation or modification of allotment but are supplementary thereto authorising eviction of an allottee under the circumstances indicated therein. The next set of rules in this connection are rules dated August 29, 1951, enacted by the Punjab Government in exercise of powers delegated to it by the Central Government under s. 55 (1) of Central Act

XXXI of 1950. In so far as these rules relate to allotments cls. (a) to (g) of r. (1) thereof are virtually the same as those relating to resumption in the notification of July 8, 1949. The additions thereto in the 1951 rules are the following :

"(1) The Custodian shall be competent to cancel or terminate any allotment or vary the terms of any allotment or agreement and evict the allottee in any one of the following circumstances :

(a) to (g).....

(h) that it is necessary or expedient to cancel or vary the terms of an allotment for the implementation of resettlement schemes and/or rules framed by the State Government ; or for such distribution amongst displaced persons as appears to the Custodian to be equitable and proper : or

(i) that it is necessary or expedient to cancel or vary the terms of an allotment for the preservation, or the proper administration, or the management of such property or in the interests of proper rehabilitation of displaced persons.

(2) Anything done or any action taken in exercise of any power conferred by the previous rules shall be deemed to have been done or taken under these rules, as if they were in force on the day on which such thing was done or action was taken."

A close scrutiny will show that as regards resumption or cancellation of (quasi-permanent) allotments made under the notification of July, 8, 1949, the Central Rules of 1950 do not make any alteration by r. 14 thereof but give only supplementary powers of eviction in certain contingencies. The rules of August 29, 1951, made by the Punjab Government under delegated authority will be found on comparison to be substantially the same as those enumerated in cl. (6) of July, 8, 1949, notification under the heading 'Resumption' with the addition of cls. (h) and (i) and with an additional clause giving retrospective operation to the new rules.

Rule 14 of the Central Rules, 1950, has been subsequently modified by notification No. S. R. O. 1722 dated

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October 29, 1951, by adding sub-r. (6) which is as follows :

"Where any State Government has, in exercise of the powers delegated to it, made any rules under clause (i) of sub-section (2) of section 56 of the Act which are inconsistent with this rule, such rules shall prevail over this rule."

This obviously is intended to indicate that if there is any inconsistency as regards the power of cancellation between the Central Rules and the latter delegated State Rules, the State Rules are to override the Central Rules. Now, all these rules relating to the power of cancellation which derive their authority from the rule making power given by the Provincial and Central Acts must, according to the ordinary rules of construction be read so as to harmonise with the powers of cancellation under the Act itself. It follows that r. (6) relating to resumption of allotments under the notification of July, 8, 1949, as it originally stood until February 6, 1950, must be read with s. 9-A of East Punjab Act XIV of 1947 as amended in 1948, in so far as it relates to allotment. Similarly Central Rules of 1950, and the delegated State Rules of 1950 and 1951 must be read to harmonise with s. 12 of Central Act XXXI of 1950, in so far as they relate to allotments made under the notification of July 8, 1949. Reading these powers of cancellation under the Act and the Rules together, it will be found that the power of cancellation of such allotments is wide and varied and depends to a substantial extent on administrative orders and considerations. Rule 14 of Central Rules, 1950, underwent alterations in July, 1952, and February, 1953. These are subsequent to the date of cancellation of the allotment in the present case and have no direct bearing on the present case.

Pausing here and summarising the position as it obtained till July 22, 1952 (when further relevant rules were framed) as regards the rights under the (quasi-permanent) allotment scheme introduced by notification of July 8, 1949, may be stated thus. (References given as against each are to the relevant provisions of the notification of July 8, 1949).

1. The allottee is entitled to right of use and occupation of the property until such time as the property remains vested in the Custodian. (Clause 3(1).

2. The benefit of such right will enure to his heirs and successors. (Definition of 'allottee'.)

3. His enjoyment of the property is on the basis of paying land-revenue thereupon and cesses for the time being. Additional rent may be fixed thereupon by the Custodian. If and when he does so, the allottee is bound to pay the same. (Clause 3(3).)

4. He is entitled to quiet and undisturbed enjoyment of the property during that period. (Clause 8.)

5. He is entitled to make improvements on the land with the assent of the Custodian and is entitled to compensation in the manner provided in the Punjab Tenancy Act. (Clause 7.)

6. He is entitled to exchange the whole or any part of the land for other evacuee land with the consent of the Custodian. (Clause 5.)

7. He is entitled to lease the land for a period not exceeding three years without the permission of the Custodian and for longer period with his consent. But he is not entitled to transfer his rights by way of sale, gift, will, mortgage or other private contract. (Clause 4(c).)

8. His rights in the allotment are subject to the fairly extensive powers of cancellation under the Act and rules as then in force prior to July 22, 1952, on varied administrative considerations and actions such as the following Clause 6 and subsequent rules of 1951.):—

(a) That the allotment is contrary to the orders of the Punjab Government or the instructions of the Financial Commissioner, Relief and Rehabilitation, or of the Custodian, Evacuee Property, Punjab ;

(b) That the claims of other parties with respect to the land have been established or accepted by the Custodian or the Rehabilitation Authority ;

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(c) That it is necessary or expedient to cancel or vary the terms of an allotment for the implementation of resettlement schemes and/or rules framed by the State Government ; or for such distribution amongst displaced persons as appears to the Custodian to be equitable and proper ;

(d) That it is necessary or expedient to cancel or vary the terms of an allotment for the preservation, or the proper administration, or the management of such property or in the interests or proper rehabilitation of displaced persons.

It is noteworthy that the powers of cancellation include the liability of the allotment to be cancelled, if it is secured by false declaration or insufficient information, and also if the allottee is convicted under the provisions of the Evacuee Property Administration Acts. (Clause 6(c) and (f).).

Taking all the above incidents together as to the position of a displaced land-holder to whom evacuee agricultural land has been allotted under the notification of July 8, 1949, there can be no doubt that he is in a definitely better legal position than the allottee of other kinds of property under Central Act XXXI of 1950 and the Central Rules of 1950, who, as already shown, is more or less in the position of a licensee.

But even so, it is still far short of what can be considered as being in itself 'property' either in the widest sense or in a limited sense. It is very strenuously urged that though this might appear to be so if one has regard only to the legislation and to the statutory rules up to July 22, 1952, the position of such an allottee emerges more definitely and clearly in the light of further legislation and subsequently amended rules. It is urged that this later legislation was in implementation of the original Press Communique dated February 7, 1948, which was understood to hold out the assurance of allotments conferring permanent property. On this contention the later legislation has also been brought to our notice. In view of the insistence with which this contention has been urged

and the importance of the question it is desirable to notice the same and to consider the effect thereof without deciding whether the later legislation and the Press Communique are relevant for the decision of the matters involved in this case.

The earliest change in the pre-existing situation, as above noticed, was brought about by two notifications, S. R. O. 1290 dated July 22, 1952, and S. R. O. 351 dated February 13, 1953, as a result of which sub-r. (6) of r. 14 of the Central Rules of 1950 stood amended by the substitution of a new sub-rule which is as follows :

"(6) Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in each of the States of Punjab and Patiala and East Punjab States Union *shall not exercise the power of cancelling any allotment of rural evacuee property on a quasi-permanent basis*, or varying the terms of any such allotment, except in the following circumstances :

(i) where the allotment was made although the allottee owned no agricultural land in Pakistan ;

(ii) where the allottee has obtained land in excess of the area to which he was entitled under the scheme of allotment of land prevailing at the time of allotment ;

(iii) where the allotment is to be cancelled or varied—

(a) in accordance with an order made by a competent authority under section 8 of the East Punjab Refugees (Registration of Land Claims) Act, 1948 ;

(b) on account of the failure of the allottee to take possession of the allotted evacuee property within six months of the date of allotment ;

(c) in consequence of a voluntary surrender of the allotted evacuee property, or a voluntary exchange with other available rural evacuee property or a mutual exchange with such other available property ;

(d) in accordance with any general or special order of the Central Government ;

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Provided that where an allotment is cancelled or varied under clause (ii), the allottee shall be entitled to retain such portion of the land to which he would have been entitled under the scheme of quasi-permanent allotment of land :

Provided further that nothing in this sub-rule shall apply to any application for revision made under section 26 or section 27 of the Act, within the prescribed time, against an order passed by a lower authority on or before 22nd July, 1952."

This amendment has undoubtedly the effect of modifying the power of resumption or cancellation vested in the Custodian authorities in respect of quasi-permanent allottees by virtue of the pre-existing rules and to confine such power within narrow limits as specified therein. But whether the restrictions on this power of cancellation can be harmonised with the power to vary or cancel allotments vested in the Custodian under s. 12 of Central Act XXXI of 1950 is, a matter not without some difficulty. It may, however be assumed that if possible, the latest amendment of r. 14 of Central Rules, 1950, by the insertion of the amended sub-r. (6) therein will have to be harmonised with the main section by a process of construction so as *not* to nullify the beneficient provisions specifically enacted in mandatory language. It is noteworthy that the language of the new sub-r. (6) of r. 14 operates only as a restraint on the exercise of the power of cancellation vested in the Custodian and not as a negation of the power itself and it may, therefore, well be that there is no inconsistency. The choice of the language appears to be intentional. On the other hand it may be noticed also in this context that there have been some amendments in 1953, 1954 and 1956 of s. 16 of Central Act XXXI of 1950 relating to return of the evacuee property to the evacuee which continue to recognise his right to return of the property and have made some alterations in the details of the procedure applicable thereto. The continuance of the right of return may well imply the continued existence of the power to cancel the allotment.

The next important legislative measure is the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (XLIV of 1954). By s. 12 of this Act it is provided as follows :

"If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3).....'

It may be noticed that by virtue of Central Government notification No. S.R.O.697 dated March 24, 1955, under sub-s. (1) of this section, *all evacuee property allotted under the Punjab Government notification dated July* 8, 1949, has been acquired by the Central Government excepting certain specified categories in respect of which proceedings were pending. It does *not* appear that the properties which are the subject matter of the present application have been acquired under this notification, probably because the dispute about them is still pending. Section 13 of the Act provides as follows :

"There shall be paid *to an evacuee compensation in respect of his property acquired under section* 12 in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakisthan."

Section 14 makes provision for constituting a compensation pool for the purpose of payment of *compensation* and rehabilitation grants *to displaced persons.* The

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evacuee property acquired under s. 12 forms part of this compensation pool. Section 10 is important and provides *inter alia* that where any immovable property has been allotted to a displaced person by the Custodian under conditions published by the notification of the Government of Punjab No. 4892-S dated July 8, 1949, and such property is acquired under the provisions of the Act and forms part of the compensation pool, *the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition.* It is further provided that the Central Government *may for the purpose of payment of compensation to such displaced person, transfer to him such property* on such terms and conditions as may be prescribed. Section 40 provides for the rule-making power. Sub-section 1(a) thereof enables the Central Government to make rules providing for the form and manner in which and the time within which, an application for payment of compensation may be made and the particulars which it should contain. It may be noticed that "compensation" referred to in s. 10, in so far as it relates to a displaced person, obviously refers to the compensation for loss of his property in Pakistan and is not the recognition of a right to compensation for deprivation of his interest, if any, in the allotted property by cancellation. Rules have been made by the Central Government called the Displaced Persons Compensation and Rehabilitation Rules, 1955 published by notification dated May 21, 1955. Rules 71 and 73 relate to verified claims which do not seem to refer to agricultural lands. "Verified claims" relate to urban immovable property as the definition thereof in the Displaced Persons (Claims) Act, 1950 (XLIV of 1950) shows. Rule 72 (1) relates to an allottee of agricultural land having no verified claim and is relevant. Rule 72(2) provides that if the Settlement Officer is satisfied that the allotment is in accordance with the quasi-permanent scheme, he may pass an order transferring the land allotted to the allottee in

permanent ownership as compensation and shall also issue to him a *sanad* in the form specified in the Appendix XVII or XVIII, as the case may be, granting him such rights. A scrutiny of the *sanad* which is printed at page 70, Appendix VII, of the Displaced Persons Compensation and Rehabilitation Rules, 1955 issued by the Government of India, Ministry of Rehabilitation , shows that it is only under this *sanad* that an allottee obtains permanent property in the land which originally belonged to the evacuee and which was allotted to him under the quasi-permanent allotment scheme. This *sanad* is the culmination of the hopes and expectations of allottees held out under the Press Communique dated February 7, 1948, and confirms, if any, the view that until such stage has been reached the allottee has no such interest in the evacuee lands which can by itself constitute "property" within the meaning of the protected fundamental rights. It is admitted by the learned counsel for the petitioners that the petitioners in this case have not yet been able to obtain any *sanad* under these rules for the lands originally allotted to them and cancelled by the impugned orders of the Custodian and the Deputy Custodian-General. He urges, however, that having regard to the whole scheme and on the assumption that the orders of cancellation, which he challenges, are erroneous, they would in the ordinary course have obtained the *sanad* for the lands that and the right to relief under Art. 32 must be determined on that footing. Great stress is laid on the fact that under the scheme of Central Act XLIV of 1954, even if evacuee property is acquired under s. 12 thereof, the quasi-permanent allottee is entitled to continue in possession of the property under s. 10 on the same conditions as before so long as the property remains vested in the Central Government. Stress is also laid on the fact that he can apply for transfer of the property to himself under r. 72(2) of the rules made under the Act in payment of compensation payable to him in lieu of his property left in West Punjab and that such application for transfer is normally to be granted and a *sanad* issued

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to him. In this context, learned counsel for the petitioners relies on the well-known principle, viz., where a discretionary power is vested in a statutory authority, to act in certain circumstances for the benefit of certain person or class of persons (as in s. 10 of Central Act XLIV of 1954 and r. 72(2) of the rules thereunder) the exercise of such power in favour of such a person, where the requisite conditions exist, is obligatory and not optional, as laid down in the case in *Julius* v. *Lord Bishop of Oxford* (1). This principle, however, has no application in the present case. While it is true that under s. 10 an allottee under the quasi-permanent allotment scheme has the benefit of continuing in possession thereof and may obtain transfer on application, such benefits are subject to the powers exercisable under s. 19 of the same Act and r. 102 of the rules framed thereunder. It may be noticed that in respect of the evacuee property which has been acquired under s. 12 and which forms part of the compensation pool under s. 14, the Central Government may appoint under s. 16 of the Act, for the management thereof, Managing Officers or Managing Corporations. Section 19 of the Act further provides as follows:

"19. *Powers to vary or cancel allotment of any property acquired under this Act.*

(1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or amend the terms of any allotment under which any a evacuee property acquired under this Act is held or occupied by a person, whether such allotment was granted before or after the commencement of this Act.

....."

Rules 102 of the rules framed under the Act is as follows:

"102. *Cancellation of allotments:* A managing officer or a managing corporation may in respect of

(1) (1880) 5 App. Cas. 214.

the property in the compensation pool entrusted to him or to it, cancel an allotment or vary the terms of any such allotment if the allottee—

(a) has sublet or parted with the possession of the whole or any part of the property allotted to him without the permission of a competent authority, or

(b) has used or is using such property for a purpose other than that for which it was allotted to him without the permission of a competent authority, or

(c) has committed any act which is destructive of or permanently injurious to the property, or

(d) for any other sufficient reason to be recorded in writing.

Provided that no action shall be taken under this rule unless the allottee has been given a reasonable opportunity of being heard."

These are in terms wide enough to include quasi-permanent allotments. This shows that notwithstanding the previlege of the quasi-permanent allottee to continue in possession under s. 10 and the scope he has for obtaining a transfer under the same section and r. 72(2) of the rules made thereunder, his allotment itself is liable to be cancelled under s. 19 and r.102. Hence he has no such right to obtain a transfer which can be given effect to within the principle of *Bishop of Oxford's case* (1). He does not, therefore, appear to have an indefeasible right to obtain transfer of the very land of which he is the quasi-permanent allottee, if such land is acquired under s. 12 of the Act. Thus the position of quasi-permanent allottee, whether before July 22, 1952, or after that date, is that his rights, such as they are, either under the notification of July 8, 1949, or under s. 10 of Central Act XLIV of 1954, are subject to powers of cancellation exercisable by the appropriate authorities in accordance with the changing requirements of the evacuee property law and its administration. Hence the quality of the interest of the displaced allottee in

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evacuee agricultural land allotted to him appears to be substantially the same for the present purpose and the real question is whether such interest constitutes "property" within the meaning of Arts. 19, 31 (1) and 31(2) of the Constitution.

The above detailed consideration of the various incidents of a quasi-permanent allotment show clearly that the sum total thereof does not in any sense constitute even qualified ownership of the land allotted. At best it is analogous to what is called *jus in re alienâ* according to the concept of Roman Law and may be some kind of interest in land. The basic features of that interest are that the ultimate ownership of the land is still recognised to be that of the evacuee and the allotment itself is liable to resumption or cancellation with reference to the exigencies of the administration of evacuee law. The interest so recognised, is in its essential concept, provisional, though with a view to stabilisation and ultimate permanence. The provisional characteristic of this interest emerges from the fact that there have had to be a series of inter-Dominion conferences to settle on governmental level the problems arising out of evacuee property in either country. The stabilisation had to await the results of such conferences. Thus both with reference to the internal necessities of the administrative problems inherent in the process of settling the displaced persons on the evacuee lands with reference to various considerations and policies and the external problem of arriving at understandings between the two governments, these rights had to be so regulated from time to time and had an element of unstability, though they were being progressively invested with the characteristics of stability. An interest in land owned by another in such a situation cannot be fitted into any concept of 'property' in itself. The concept of a bundle of rights in agricultural land constituting by itself 'property' is the outcome of a stable and settled state of affairs relating to such bundle of rights. Historical jurisprudence shows that even the concept of individual property in agricultural land was the

outcome of stable and settled conditions of society. It is also relevant to observe that the incidents of quasi-permanent allotment are entirely statutory. Subjection to the power of cancellation by the Custodian in whom the property is vested is one of such incidents and determines the quality thereof. Therefore, having given our best consideration, we are unable to hold that the interest a of quasi-permanent allottee is 'property' within the concept of that word so as to attract the protection of fundamental rights.

Property, to fall within the scope of Art. 19(1) (f), must be capable of being the subject-matter of "acquisition and disposal". The interest of the quasi-permanent allottee arises by statutory grant to a specified class of persons and is not capable of acquisition by the ordinary citizen in any of the normal modes. Nor is it capable of disposal by the allottee himself in the normal modes by way of sale, mortgage, gift or will. Neither is the interest of the quasi-permanent allottee such as can be brought within the scope of Art. 31(2). Article 31(2) as recently amended, taken with Art. 31(2A) contemplates acquisition or requisitioning (and taking possession) as a result of transfer of the ownership or of the right to possession. It is true that the recent amendment came into operation on April 27, 1955, and the impugned orders of the Custodian and Deputy Custodian-General are on February 6, 1952, and May 1, 1954. But in view of the word "deemed" in the amended Art. 31(2A) it appears likely that the amendment was intended to be retrospective. Even assuming that it is not so, the words "taking possession" or "acquisition" in Art. 31(2) prior to the amendment are wholly inapt and inapplicable to the bundle of rights of the nature detailed above which constitute quasi-permanent tenure and it is difficult to apply to it the protection under Art. 31(2) either as it stood before the amendment or after te amehndment.

Learned counsel for the petitioners has urged that even if Arts. 19(1) (f) and 31(2) are not applicable, the

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petitioners can invoke the protection of Art. 31(1) which says that no person shall be deprived of his property save by authority of law. He relies on the judgment of one of us reported in the *State of West Bengal* v. *Subodh Gopal Bose* (1), where it was stated as follows :

"The word 'property' as used in Article 31(1) may have been intended to be understood in a wider sense and deprivation of any individual right out of a bundle of rights constituting concrete property may be deprivation of 'property' which would require the authority of law."

This is a view which was not shared by the other members of the Court in that decision. In any case it is clear that in order that Art. 31(1) may apply, it is not enough that there is 'deprivation' but it must also be deprivation without the authority if law. What has happened, however, in this case is not deprivation of the property without the authority of law even assuming that the bundle of rights constituting such an interest in land is 'property'. It is the working out of the right of resumption or cancellation which was one of the incidents of the property. The cancellation by the Custodian authorities was under the very law which created those rights. Even if the exercise of that authority can be made out to be wrong, it is still not open to question having regard to ss. 28 and 46 of Central Act XXXI of 1950. It is not an illegal usurpation of jurisdiction by the authorities concerned so as to constitute negation of the authority of law. In the present case what has happened is that the quasi-permanent allotment of the petitioners has been cancelled in order to work out readjustments consequent upon the order of the higher authority.

Learned counsel for the petitioners has strenuously urged that under the qusi-permanent allotment scheme the allottee is entitled to a right to possession within the limits of the relevant notification and that such right to possession is itself 'property'. That may be so in a sense. But it does not affect the

(1) [1954] S.C.R. 587,673.

question whether it is property so as to attract the protection of fundamental rights under the Constitution. If the totality of the bundle of rights of the quasi-permanent allottee in the evacuee land constituting an interest in such land, is not property entitled to protection of fundamental rights, mere possession of the land by virtue of such interest is not on any higher footing.

Learned counsel has also drawn our attention to a number of Acts and notifications of the Punjab Government to show that a quasi-permanent allottee has been treated as being in the same position as an owner of land itself for various purposes. Thus in r. 5 of the Land Revenue Rules under the Punjab Land Revenue Act, 1887 (Punjab Act XVII of 1887), a quasi-permanent allottee is classed with other land owners as being eligible for appointment as 2 *aildars*. Similarly by virtue of rules framed under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act L of 1948), a quasi-permanent allottee is liable to pay the cost of consolidation if such consolidation comprises lands in his occupation. These and other such provisions, however, have no bearing on the question at issue before us.

After the close of the arguments before us a recent decision of the Punjab High Court reported in *Suraj Parkash Kapur* v. *The State of Punjab* (1) has been brought to our notice and we have given our careful consideration to the same. That decision may be right on its merits, a matter about which we express no opinion. But, with respect, we are unable to agree with the view expressed therein that a quasi-permanent allottee has such an interest in the land allotted to him as to constitute "property", if it is meant to convey thereby that it is property which attracts the protection of fundamental rights under the Constitution.

For all the above reasons we are unable to hold that any fundamental right of the petitioners has been

(1) (1957) LIX P.L.R. 103.

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infringed. This petition is accordingly dismissed but, in the circumstances, without costs.

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

Petition dismissed.

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