

(1989) 04 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 259 of 1985 and C.M.P. No. 539 of 1985

Ghulam Mustaffa and Another

APPELLANT

Vs

Custodian General Evacuee Property Jammu and Others

RESPONDENT

Date of Decision : 12-04-1989

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 100

Jammu and Kashmir Evacuees (Administration of Property) Act, 2006 — Section 9(2)
(1)

Citation : AIR 1990 J&K 76

Hon'ble Judges : Mazhar Ali Shah, J

Bench : Single Bench

Advocate : S.A. Salaria, for the Appellant; H. Rehman and R.P. Bakshi, for the Respondent

Final Decision : Allowed

Judgement

M.A. Shah, J.—Petitioners in this writ petition are aggrieved by the order passed by the Custodian General, respondent No. 1, on February

16, 1985, confirming the order passed by the respondent No. 2 on May 2, 1983, whereby the present petitioner's allotment on evacuee property

has been cancelled and the Assistant Custodian is directed to get house vacated and put respondent No. 3 in its physical possession.

2. House in dispute is situated at Reasi which was declared as an evacuee property in the year 1969 and a notification thereof u/s 6 of the J & K

State Evacuees (Administration of Property) Act, 2006, (for short hereinafter called the Act) respondent No. 3 after the said declaration by his

application dated June 16, 1969, under S. 8 of the Act made before the Custodian Evacuee Property Jammu, claimed that the house in question

be restored in his favour as he is the only legal heir surviving and entitled to

succeed over the property left by M/s. Abdul Majid, Abdul Hamid and Abdul Rashid sons of Abdullah Khan. It is further alleged that on the directions of the then Custodian the case was proceeded and enquired by the then Assistant Custodian Reasi who submitted his report with the recommendations that the respondent No. 3 is the only legal heir of the house having blood relations with the owners who have since been killed during the riot of 1947. Thereupon the authorised Deputy Custodian respondent 2 with a notice to the petitioners who were admittedly in possession as lessees of the house in question found that out of the owners one Shri Abdul Rashid was alive and resides in Pakistan. Learned Deputy Custodian, therefore, refused to restore the property in favour of the respondent 3. However, allotted the same in his favour under Clause (1) and Sub-section (2) of Sections 9 of the Act read with Rule 22 of the Rules framed under the said Act based on a Government Order No. A-653-60 dated 6-5-1950, and cancelled the allotment from the name of the tenants by the same order directing the Assistant Custodian Reasi to get the house vacated by his order dated May 2, 1983.

3. Petitioners who are in possession of the house in question preferred the revision against the said order of the Deputy Custodian, authorised before the Custodian General, respondent No. 1, who by his order dated February 16, 1985, 'upheld the order passed by respondent No. 2 based on the said government order No. A-653-50 dated 6-5-1950 and maintained the directions with regard to the cancellation of the allotment in favour of the petitioners ordering the Assistant Custodian to get the house vacated. Petitioners challenge both the said orders in this petition.

4. The petition is contested by the respondents. Only respondent No. 3 filed his counter and no counter has been filed on behalf of the respondents 1 and 2 controverted the allegations made by the petitioners. It has been contended by the respondent No. 3 in whose favour the orders impugned have been passed that the present petitioners have no locus standi to file the present writ petition. Contesting on merits it is contended that the house in question belongs to Abdul Reashid son of Abdullah Khan who is declared as an evacuee and executed also a power of attorney in favour of the respondent No. 3 to seek restoration and possession of property. The controversy in question entirely arises between Custodian and the

person claiming restoration wherein allottee or the tenants nowhere come into picture to oppose the restoration. The order passed by the

respondent No. 2 and confirmed by respondent No. 1 is fully supported in his counter by the respondent No. 3 who claims its possession on the

basis of his relations with the evacuee Abdul Rashid.

5. Learned counsel for the petitioner while arguing the petition strongly urged that the approach of the respondents for making restoration order in

favour of the respondent No. 9 cannot either be supported under the provisions of Sections 9, Sub-section (2) of the Act or the Rules made

thereunder nor under the Government Order No. A653-50 of 1950, as the respondent No, 3 does not fall in any of the category of the heirs

mentioned in the said government order and cannot, therefore, claim its possession or restoration as the case may be. It is, further submitted that

on the face of the order passed by Authorised Deputy Custodian it is apparent that the petitioners who are admittedly the tenants have been

deprived of the right of holding the property in their possession on a valid allotment made in their favour and the cancellation thereof cannot either

be supported under any of the provisions of the Act or Rules made thereunder. The order is also violative of the principles of natural justice as the

Custodian himself refused to grant the prayer of respondent No. 3 u/s 8 of the Act and, therefore, the question cannot be canvassed as suggested

in the counter by the respondent No. 3 that the controversy is only between Custodian and himself in which petitioners have no locus standi to

contest.

6. Learned counsel for the respondents 1 and 2 supporting the order submitted that the orders in question impugned in the present writ petition are

validly passed by the respondents 1 and 2. These orders cannot be assailed by the petitioners as they have no vested rights in the property in

question and are holding only in the capacity of tenants on an allotment made in their favour, the provisions of the Act have been rightly resorted to

by handing over the management under the provisions of Sections 9(2) read with Rule 22 of the Act in favour of the respondent No. 3 with which

petitioners have no concern.

7. While respondent No. 3 in addition to the arguments advanced on behalf of the respondents 1 and 2 learned counsel submitted that a tenant

being a 3rd person in the matter of making over the management or in his words the restoration in favour of the respondent No. 3 has no concern

and had thus no right to be heard. He places reliance on the case of Banarasi Lal v. Custodian General Evacuee Property, reported in

8. On the close scrutiny of the rival contentions, I find that the stand of the respondents cannot be supported on any hypothesis of either of the Act

or of the authority cited. It is not disputed that the relief which was claimed by respondent No. 3 u/s 3 of the Act was denied to him. The authority

of Banarasi Lal can only be pressed into service when a rightful claimant u/s 8 gets an order of restoration in his favour. In those circumstances, no

doubt, a person in possession as a lessee or a tenant has no locus standi to agitate against the order because in that case the dispute can be said

between the custodian and the respondent because the lessee had the right to remain in possession so long as the real owner did not turn up. It is

because the capacity of the Custodian is nothing but of manager to preserve the property of an evacuee and exercise all the rights over it conferred

on him under the Act. Similarly, if any order is passed under Sections 9(2) of the Act, the Custodian only is empowered to entrust the management

of the property and such a person cannot exercise the power of getting physical possession unless the allottee or lessee in possession is evicted in

accordance with the provisions of the Act and the Rules framed thereunder and after following the procedure prescribed therein. In the instant case

as per admitted position, the property being an evacuee property it is not restored to any of its owners. The order itself shows that the respondent

No. 3 is held entitled to get the mere management of the property in terms of Clause (1) of Sub-section (2) of Sections 9 of the Act, which runs as

follows :--

9(2). Without prejudice to the generality of the provisions contained in Sub-section (1) of the Custodian may for any of the purposes aforesaid:

(a) carry on the business of the evacuee;

(b) to appoint a Manager for the property of the evacuee, or for carrying on any business or undertaking of the evacuee and authorise ' the

Manager to exercise any of powers of the Custodian under this section.

A bare reading of the above provisions will show that the manner in which respondent No. 2 passed the order and applied the said provisions

which is maintained by the respondent No. 1 is misplaced under law because 1 under the said sub-clauses only the management can be entrusted

to exercise to powers of the Custodian and a physical possession in that event will pass to such a Manager unless the allotment or the lease is

cancelled or terminated in accordance with the procedure prescribed u/s 10 of the Act or Rule 14 of the Rules. Under the circumstances none of

the authorities cited by the learned counsel for the respondent No. 3 can be pressed into service.

9. Adverting to scope of Government Order No A-653-50 dated 6-5-1950 suffice it to say that the respondent No. 3 as projected in the order of

the Custodian and argued by Mr. Bakshi learned counsel for the respondent No. 3, is a distinct relation and not the relations falling within the said

order. The relationship shown with the evacuee is that mother of Abdul Majid and Abdul Rashid ""was a real sister of Shah Wali Khan, the father

of respondent No. 3. It clearly indicates that the respondent No. 3 does not fall in any of the following categories specified in the Government

order which are as follows in order of priority :--

(1) Parents;

(2) Wife or widow;

(3) Direct descendants, male or female;

(4) Brothers or Brothers minor children.

Respondent No. 3 cannot be said to have any claim based on the said Government order as he does not fall in any of the above noted categories,

being distinctly related to the evacuee. As to the effect of such an order I need not dwell upon its legality which is left open to be decided in some

appropriate case. It is thus clear that the order of cancellation of the allotment of the petitioners and the directions to the Assistant Custodian,

Reasi, to get the house vacated from them is in clear violation of the principles of natural justice because they have been condemned unheard and

even violative of the provisions of the Act and the Rules made thereunder. The rule of Audi Alteram Partem is fully applicable even to the

proceedings before the quasi-judicial and administrative Tribunals and cannot be denied to the present petitioners as held by the respondent No. 2,

Deputy Custodian Authorised and upheld by the respondent No. 1, the Custodian General. Both the orders are, therefore, illegal and without

jurisdiction which are hereby quashed.

10, The petition succeeds and is hereby allowed. The orders impugned passed respectively by the Deputy Custodian Authorised respondent No.

2 on May 2, 1983, and upheld in revision by the respondent No. 1 by his order dated February 16, 1985 are hereby quashed leaving the parties to

bear their own costs. This also disposes of CMP 539/ 85, and the respondents are restrained from dispossessing the petitioners from the house in

question except in accordance and following the procedure prescribed under law after giving the opportunity of being heard.