

(2014) 10 J&K CK 0044

In the Jammu And Kashmir High Court

Case No : LPA No. 159 Of 2008, I.A. No. 286 Of 2008, LPA No. 178 Of 2009 and
I.A. No. 279 Of 2009

Haji Abdul Khaliq Dar and Others

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2015) 1 JKJ 381

Hon'ble Judges : M.M. Kumar, C.J.; Ali Mohd. Magrey, J.

Bench : Division Bench

Advocate : G.A. Lone, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Ali Mohd. Magrey, J.â?"These are two letters Patent Appeals preferred by the appellants-writ petitioners against the judgment dated 16.09.2008

passed by the learned Writ Court in OWP No. 283/2003, titled Haji Abdul Khaliq Dar & Ors. v. State of J & K & Ors., dismissing the writ

petition and adopted by the learned Writ Court by an order of even date to govern the other writ petition, OWP No. 289/2005, titled Ghulam

Qadir Wani & Ors. v. State of J & K & Ors., dismissing the said writ petition as well on the ground of similarity of the issues involved in the writ

petition. We have heard learned counsel for the parties, perused the record and considered the matter.

2. Since the learned Writ Court in its judgment under challenge in these appeals has given the genesis of the controversy and the factual

background of the matter in a great detail, it would be unnecessary to extensively restate the same in this judgment. However, a brief narration of

the grievances of the appellants-petitioners in each of the two petitions becomes imperative.

3. The dispute in both the writ petitions/appeals relates to declaration of certain landed properties situated at two places, namely, Tengpora

(Balmaloo), Srinagar, and Shankerpora, Tehsil Chadoora, District Budgam, Kashmir, belonging to four brothers, named, Assadullah, Qudratullah,

Azizullah and Allahdad sons of Mirza Fatehullah residents of village Bali, Tehsil Kotli, now in Pakistan Occupied Kashmir, as evacuees' property

by the Custodian under the provisions of the Jammu and Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006 (hereinafter,

Evacuees' Property Act). The pedigree of the land owners, as reflected in the averments of the two writ petitions, is as under:

LPA No. 159/2008 arising from OWP No. 283/2003:

4. The Custodian, Evacuee Property, Kashmir, Srinagar, issued notification dated 10.09.2002 under endorsement No. CEPS/JS/2002/177-73

dated 17.09.2002 read with corrigendum No. CEPK-JS/2002/2293-96 dated 29.10.2002 notifying land measuring 44 Kanals, 14 Marlas

belonging to evacuee Faqir-Ullah son of Assadullah Khan; land measuring 26 Kanals, 17 Marlas belonging to evacuees Mohd Sadiq, Mohd Iqbal

and Mohd Ishaq sons of Nasibullah; and land measuring 89 Kanals 08 Marlas belonging to evacuees Niyaz Mohd, Ghulam-Ullah, Hamidullah and

Lal Khan sons of Azizullah Khan, comprising Khewat No. 143 situated at Tengpora (Batmaloo) Srinagar, (totaling to 160 Kanals, 19 Marlas), as

evacuee property under the provisions of Evacuees' Property Act.

5. Subsequent thereto, the Custodian issued notices under sub-Section (2) of Section 6 of the Evacuees' Property Act under endorsement Nos.

CEPS-Ltg/2002/3521-24 dated 03.03.2003; CEPS-Ltg/2002/3535-37 dated 04.03.2003; CEPS-Ltg/2002/3612-14 dated 08.03.2003;

CEPS-Ltg/2002/3618-21 dated 08.03.2003; CEPS-Ltg/2002/3532-3 dated 04.03.2003; CEPS-Ltg/2002/3622-24 dated 08.03.2003; CEPS-

Ltg/2002/3528-31 dated 04.03.2003 to the petitioners, in groups, demanding surrender of possession of the properties specified in the respective

notices on the ground of the same having vested in the Custodian under Section 5 of the Evacuees' Property Act.

6. The appellants challenged the aforesaid notifications in writ petition, OWP No.

283/2003, inter alia, on the grounds that:

i) that the property notified had been in possession of the appellants-writ petitioners and their predecessors-in-interest as tenants from the time of

second settlement which was duly reflected in the Record of Rights prepared in 1976 BK (corresponding to 1919 CE) and the subsequent

Jamabandi prepared in 1990-91 BK (1933-34 CE). The tenancy of the appellants and their predecessors-in-interest was also reflected in the

Girdawari of 2000 BK (1943 CE) which is before the Evacuees' Property Act came into effect;

ii) that, part of the aforesaid land, measuring 22 Kanals 7 Marlas was purchased by the predecessors-in-interest of appellants-writ petitioners 13

to 23 from one of the co-sharers of the Khewat, namely, Ghulam Hassan Khan son of Allahdad Khan resident of Shaheed Gunj, Srinagar, by

virtue of sale deed executed, and registered by Sub-Registrar, Srinagar, on 21.07.1958. Further, some parcels of the aforesaid notified land were

gifted from time to time to some of the appellants by Mirza Aslam Khan and Abdul Razak sons of Naseebullah Khan Residents of Bagh-i-Mehtab,

Tehsil Chadoora, District Budgam, Kashmir. The details of such transfers of the land were given in the writ petition from paragraphs 4 to 20

thereof;

iii) that the appellants-writ petitioners had acquired indefeasible title to the remaining part of the land which stands mutated in their respective names

under the provisions of J & K Agrarian Reforms Act, 1976 (Agrarian Reforms Act);

iv) that Sections 4 and 8 of the Agrarian Reforms Act, in so far as the same exclude evacuees' land from their application are discriminatory and hit

by Article 14 of the Constitution;

v) that the original owners of the land shown in the revenue records as residents of village Bali Tehsil Kotli, now falling in Pakistan Occupied

Kashmir (POK), had never resided there and that the persons named in the notifications and their co-sharers had not left the State at any point of

time;

(Underlining supplied)

vi) that no enquiry or survey was conducted by the Custodian before issuing the impugned notification;

vii) that Section 6 of the Evacuees' Property Act confers an unguided and drastic power on the Custodian to declare any property as evacuee

property; it is, therefore, ultra vires the Constitution;

viii) that the provisions of Sections 6 and 7 of the Evacuees' Property Act, with the passage of time, have become redundant and have to be

declared so in the same manner as has been done with respect to Section 8 of the said Act by the Supreme Court in Ghulam Qadir Vs. Special

Tribunal and Others, ;

ix) that the original notification declaring the land in question as evacuees' property being invalid, the surrender notices issued to the petitioners

suffer from the same vice.

7. The respondents on notice, appeared before the Writ Court, filed their reply and resisted the writ petition.

LPA No. 178/2009 arising from OWP No. 289/2005:

8. It may be observed here that whereas the writ petition, OWP No. 283/2003 related to the land situated at Tengpora (Batmaloo), Srinagar, the

land involved in writ petition, OWP No. 289/2005, is situated at Shankerpora, Tehsil Chadoora, District Budgam, Kashmir. The original owners

of the land at both places had been the same. This writ petition, OWP No. 289/2005, was filed by 40 petitioners challenging the Warrant under

Section 7 of the Evacuees' Property Act issued by the Custodian under endorsement No. CEPS-JS-1181-82 dated 29.07.2004 directing that the

persons named therein be evicted forthwith from the properties mentioned therein and the possession thereof taken over.

9. In the said writ petition, it was averred that Fakeerullah Khan (Faqir-Ullah) son of Assadullah; Niyaz Mohammad and Lal Khan sons of Aziz

Khan (Azizullah), land holders of Shankerpora, Tehsil Chadoora, before partition of India, were living permanently at village Bal (should be Bali)

Tehsil Kotli. Their other co-sharers, namely, Mohammad Razak, Mohammad Aslam and others, were, however, living at Bagh-i-Mehtab, Tehsil

Chadoora, Kashmir. On account of the political developments of 1947, Faqirullah and other land holders named above, being the residents of

village Bali Tehsil Kotli, were unable to come to Srinagar. The lands owned by them were mostly held in possession by their tenants, including the

predecessors-in-interest of the appellants-writ petitioners. (Underlining supplied)

10. Faqirullah and others held the land in ownership more than the ceiling of 182 Kanals prescribed under the provisions of Jammu and Kashmir

Big Landed Estates Abolition Act, Svt. 2007 (1950 CE) (hereinafter referred to as the Big Landed Estates Abolition Act). Thus, the huge area of

land owned by them came under the mischief of the provisions of the said Act. The remaining land which remained in their ownership was notified

by the Custodian vide notification published in Government Gazette on 13th Badoon, 2009 BK (which corresponds to the CE year 1952),

according to which 331 Kanals, 10 Marlas of land comprising various survey numbers mentioned therein situated at Shankerpora and Bagh-i-

Mehtab, Tehsil Chadoora, Budgam, Kashmir belonging to Raja Faqir-ullah Khan and other evacuees was notified under the Evacuees' Property

Act.

11. According to the appellants-petitioners, Mohammad Razak Khan and Mohammad Aslam Khan (sons of Assadullah) co-sharers of Faqirullah

and others made an application before the Custodian, Kashmir, for allotment of aforesaid notified land, which was rejected vide order dated

29.01.1971 with direction of management and administration of the evacuees' property by the department itself. By the said order, it is averred,

the tenants holding the land on behalf of Faqirullah and others were asked to pay rent to the department in accordance with Government Order

No. RA-611/59 dated 22.09.1989.

12. It is averred that the land of Faqirullah and others, which had come under the mischief of the Big Landed Estates Abolition Act was in

possession of tenants before 1947. This included the area falling under survey Nos. 133 and 133/1 of village Shankerpora.

13. The case of the petitioners was that the land comprising survey Nos. 133 and 133/1 did not vest in the Custodian because it had escheated to

the State under Big Landed Estates Abolition Act and was in possession of forefathers of the petitioners as tenants and devolved on them. The

petitioners in paragraph 7 of the writ petition have given details of the parcels of land claimed to be in their possession.

14. The petitioners sought quashment of the impugned order dated 29.07.2004 and prayed for a mandamus commanding the respondents not to

interfere or prefer any claim with regard to the land covered by survey Nos. 133

and 133/1 situated at Shankerpora, claiming the same to have vested in them by operation of the Big Landed Estates Abolition Act. The petitioner also prayed for a writ of prohibition against the respondents.

The aforesaid reliefs were prayed for on the grounds that:

i) that the original land holders were permanent residents of village Bali, Tehsil Kotli and that they had not migrated or left the Valley because of the

circumstances which led to the passing of the Evacuees' Property Act. Their case, therefore, does not fall within the mischief of the said Act;

ii) that the petitioners and their predecessors-in-interest had been in possession of one or the other parcel of land covered by survey Nos. 133 and

133/1 before 1947 as tenants; therefore, it has become their property by operation of the provisions of the Big Landed Estates Abolition Act. It

was averred that the land wrongly continued to be recorded in the name of ex-owners, namely, Faqirullah and others which fact, however, would

not, in any manner, deprive them from ownership over the land having vested in them;

iii) that the Government has an obligation to remedy the wrong by directing attestation of mutation of ownership in favour of the petitioners;

iv) that the proceedings initiated by the Custodian are without jurisdiction.

15. Appellants in LPA No. 178/2009 in paragraph No. 2 of the memo of appeal have stated that their writ petition was admitted to hearing on

09.11.2006 and the respondents had failed to file their reply, therefore, the writ petition ought to have been allowed, but the learned Writ Court on

a mistaken belief dismissed the writ petition on the ground that the issues involved in the two writ petitions were the same. The appellants have

stated that there is no similarity in the two cases and that the learned Single Judge has wrongly dismissed the petition by holding that the field is

covered by the judgment delivered in OWP No. 283/2003. Again, in paragraph 7 of the memo of appeal, the appellants have alleged that the

appellants' writ petition, OWP No. 289/2005, was neither clubbed/consolidated with the other writ petition, OWP No. 283/2003, nor were any

arguments addressed in the case. It is also alleged that the judgment was also not announced at the time of delivery of judgment in OWP No.

283/2003 and that the appellants came to know about the judgment from the office of Custodian on 18.11.2008, i.e., after the expiry of period of

limitation.

16. The above allegations are, however, belied by the record as well as the Court Cause List issued for the week commencing from 14.07.2008

to 19.07.2008, a copy whereof has been produced before us during the course of arguments.

17. The minutes of OWP No. 283/2003 reveal that on 18.05.2007 the said writ petition was ordered to be listed for hearing higher up in the

relevant column along with OWP No. 289/2005 and, thereafter, all the orders subsequent to order dated 18.05.2007 were recorded only in

OWP No. 283/2003, being the lead case. A perusal of the above cause list reveals that the two writ petitions, OWP No. 283/2003 and OWP

No. 289/2005, were finally listed as the first case under the head ""Final Hearing"" at item No. 31 as connected matter and the name of Mr. G.A.

Lone was shown as counsel for petitioners against both the petitions. Order dated 18.07.2008 on the minutes of OWP No. 283/2003 thus

records ""Heard. Reserved"". Consequently, when the two writ petitions were clubbed together, figured at one and the same serial of the cause list

showing the name of the counsel against both the petitions, it cannot lie in the mouth of the concerned appellants that their petition was not

consolidated/clubbed with OWP No. 283/2003 or that the said petition was not heard. The allegation that the final order/judgment passed in

OWP No. 289/2005 was not announced on the day when the judgment passed in OWP No. 283/2003 was delivered also is belied by the record

since both, the judgment passed in OWP No. 283/2003 and the order recorded on OWP No. 289/2005, bear one and the same date, viz.

16.09.2008. Further, from the grounds taken in the writ petition, OWP No. 289/2005, it becomes axiomatic that the basic issues relating to the

status of the original land owners etc., involved in the other writ petition, OWP No. 283/2003, were very much raised in that petition too and,

therefore, it cannot be said that there was no similarity in the issues involved in the two writ petitions.

18. Perusal of the judgment rendered by the learned Writ Court reveals that the following issues were raised during the course of arguments:

i) that in view of the judgment of the Supreme Court in Ghulam Qadir Vs. Special Tribunal and Others, , Sections 6 and 7 of the Evacuees'

Property Act have become redundant;

ii) that the provisions of Section 3(a) and Section 4-A of the Agrarian Reforms Act are ultra vires the Constitution;

iii) that since Section 6 of the Evacuees' Property Act gives vast and unbridled powers to the Custodian to declare any property as evacuee

property, without any enquiry into the matter, it offends the basic structure of the Constitution;

iv) that the impugned notifications have been issued on extraneous considerations and in contravention to the provisions of law.

19. After noticing the various provisions of the Evacuees' Property Act and the Division Bench Judgment of this Court in Mohd. Ramzan Bhat Vs.

Custodian General and Others, , the learned Writ Court in its impugned judgment has recorded the following finding:

From the provisions of the Act, it would appear that the Act applies to three classes of evacuees:

First: a) Any person who on account of setting up of the Dominions of India and Pakistan has on 1st day of March, 1947 left the State and went to

a place which falls outside the territory of India;

b) Any person who, on account of civil disturbance or the fear of such disturbances, leaves the State and goes to a place which falls outside the

territory of India.

Second: Any person residing in Pakistan or that part of Kashmir which is under the operational control of Pakistan due to which he is unable to

occupy, supervise or manage in person his property in the State. This also includes a person whose property in the State has ceased to be

occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorized person.

Third: Any person who has acquired right or interest in any evacuee property after 14th August, 1947.

Under Section 5 of the Act, all evacuee property situate in the State shall be deemed to have vested in the Custodian. Under the Section vesting is

automatic and it does not depend upon the notification of such property by the Custodian.

Once notification under Section 6 of the Act is issued and the Custodian proceeds in the matter under Section 6 and 7 of the Act, the Act gives

persons affected right to claim the possession of the property involved to seek its restoration. Section 8 gives right to the interested person to

prefer a claim to the Custodian in respect of the evacuee property on the ground that the property is not evacuee property or his interest in the

property has not been affected by the provisions of the Act. Similarly Section 14 enables an evacuee or his heir to apply for restoration of the

property.

The issue seeking relief under section 8 came under consideration by the Apex Court in Ghulam Qadir Vs. Special Tribunal and Others, . It was

felt that the section was being misused by the parties as such the Court found that the section has become redundant now. Feeling concerned over

the abuse of section 8 of the Act, the Court through it necessary that resort to the section in future should be put to an end by declaring that

Sections 8 and 14 have served the purpose for which they had been provided in the Act and since they have outlived their utility, the authorities

should not in future entertain any application made under Section 8 for a claim being made to any evacuee property. The Court observed...

20. The next contention that was raised before the learned Writ Court by Mr. Lone was that Section 8 of the Evacuees' Property Act had outlived

its utility and on the same analogy Sections 6 & 7 of the Act, too, have outlived utility and should be declared redundant now. In this connection,

Mr. Lone relied on the judgment of the Supreme Court in Ghulam Qadir v. Special Tribunal (supra). On this point, the learned Writ Court has

recorded the following finding:

In order to examine the contentions of Mr. Lone regarding the application of the judgment on Section 6 and 7 of the Act, it may be noticed here

that this Court in the year 1978 dealt with a similar issue in Mahmood Ahmad's case S.A. No. 2 of 1978 decided on 21.7.1988 where this Court

too found that section 8 has outlived its utility. The State feeling aggrieved with the judgment filed SLP against it before the Supreme Court where

the Court allowed the appeal and set aside the judgment of this Court. The Court in the case reported as State of Jammu and Kashmir and Others

Vs. Mahmood Ahmed and Others, , agreed with the arguments of the Advocate General that on the ground that Section 8 is closely interlinked

with Section 6 of the Act which deals with the powers of a Custodian to notify a

property as evacuee property under the Act and in as much as

Section 6 has currency even now because notifications could still be made under the section in appropriate cases to notify a property as evacuee

property, Section 8 also will have to be retained and made use of by genuinely affected parties. The Court further found that the High Court was

wrong in taking the view that Section 8 has outlived its utility. The Court observed....

21. Finding no force in the contention of Mr. Lone, the learned Writ Court further observed as under:

The judgment in Mahmood Ahmad's case (supra) has not been referred to in Ghulam Qadir's case. Both the Benches are of the same strength.

Since Mahmood Ahmad's case has not and could not have been overruled by a co-ordinate Bench in Ghulam Qadir's case, the former judgment

still holds the field. But even if it is held otherwise, as suggested by Mr. Lone, the judgment in Ghulam Qadir's case can be of no help to the

petitioners, as the pleas taken in the present case are entirely different from the one discussed in that case.

The argument of (Mr.) Lone is based on the assumption that the process of migration has ended now as the Act related to and governed cases

arising out of the developments which took place on the eve of the partition of the country in 1947 and are not relevant now but the learned

counsel loses sight of the fact that under the definition of 'evacuee' under section 2(c), the term applies also to a person who leaves the State even

after 1947, on account of civil disturbances or the fear of such disturbances. Thus the provision is continuing one, and if any person leaves the

State on account of civil disturbance or fear of such disturbance, for any place outside the territories now forming part of India, even now he will

fall within the definition of evacuee and property left by him will automatically come under the definition of 'evacuee property', the same will assume

in the authorities under the Act and they will get jurisdiction to manage it.

22. On the issue of Sections 3(a) and 4-A of the Jammu and Kashmir Agrarian Reforms Act, 1976 being ultra vires the Constitution, the learned

Writ Court, relying on the judgment of the Supreme Court in State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., and Tar Mohammad

and Others etc. etc., Vs. Union of India and Others, , has held that in view of the

Division Bench judgment of this Court in *Tilak Raj v. Custodian, Jammu*, 1979 JKL 179 : JKJ Soft JKJ/15366, and the reasoning given therein, the relevant provisions of the Agrarian Reforms Act cannot be held discriminatory in nature.

23. As to the contention that the Custodian has not conducted any enquiry and that the orders made by him without formal enquiry are a nullity, the learned Writ Court, relying on the Division Bench judgment of this Court in *Mohd. Ramzan Bhat Vs. Custodian General and Others*, has held as under:

...A reading of Section 6 of the Act along with Section 7 of the Administration of Evacuee Property Act, 1950 (the Central Act) would show that

while an enquiry is required under the Central Act before a notification under the Section is issued, no such enquiry is required under the State Act.

The reason being that once a person holding property becomes an evacuee and his property becomes evacuee property under Section 2(c) and

(d) of the Act, the vesting of property in the Custodian under the Act is automatic and it does not require any enquiry...

24. Secondly, noting the provision of Section 8 of the Evacuees' Property Act and relying on the judgment of the Supreme Court in *Custodian of*

Evacuee Property Punjab and Others Vs. Jafran Begum, the learned Writ Court held as under:

Once the vesting of evacuee property in the Custodian takes place and the Custodian issues notification under Section 6, the affected party has

got remedy available under section 8 to make a claim about the property that the same does not fall within the definition of 'evacuee land' or that

his interest in the property is not affected.

25. Further holding that there is an inbuilt mechanism provided by the Act to exclude arbitrariness on the part of the Custodian, the learned Writ

Court has held as under:

...Under the scheme of the Act though the Custodian has got powers to issue notifications under Section 6 of the Act but such order is subject to

revision and appeal. Affected parties have even got right to apply for restoration of the property.

In the present case, where a notification has been issued under section 6 of the Act in respect of land claimed by/allegedly in possession of the

petitioners, the petitioners have got remedy available to them under the provisions of the Act. The present petition(s) in these circumstances is not maintainable. The petitioners' contention that the land in question is not an evacuee land as the same has been purchased/got through gift by them from the original owners. Such issues being issues of fact cannot be looked into by this Court while exercising writ jurisdiction. Otherwise also jurisdiction to examine that the land is not evacuee property and that the petitioners' interests have not been affected, falls within the domain of the Custodian under Section 8 of the Act and this Court or a Civil Court cannot look into, determine or decide such issues.

26. With regard to the contention that notification dated 10.9.2002 had been issued on extraneous considerations, the learned Writ Court has recorded that the learned counsel has not referred to any material which could substantiate his plea.

27. Similarly, as regards the contention that the notices of demand of possession had been issued in contravention to the provisions of law, the learned Writ Court recorded that Section 7 of the Act gives powers to the Custodian to take possession of evacuee property vested in him under Section 5 of the Act. The Custodian has got powers even to use such force as is necessary for taking possession of such property.

28. These appeals were argued by the learned counsel on the very same legal issues determined by the learned Writ Court in its impugned judgment, except that in LPA No. 178/2009 arising from writ petition, OWP No. 289/2003, it was submitted that appellants' case is altogether different from the case of appellants-petitioners in LPA No. 159/2008 in that the title to the land had been lost by its original owners by operation of Big Landed Estates Abolition Act and that the same had vested in the appellants-petitioners and their predecessors, being the tenants thereof.

Therefore, the Custodian had no jurisdiction to deal with the said properties.

29. So far as the other issues are concerned, we have minutely gone through the judgment of the learned Writ Court and find that the learned Single Judge has elaborately dealt with the issues in accordance with the law and we do not see any illegality or irregularity in the impugned judgment. Consequently, there is no scope for any interference.

30. We may, however, add that after the impugned judgment was delivered by

the learned Writ Court on 16.09.2008, another learned Single

Judge of the Court noticed that two co-ordinate Bench judgments of the Supreme Court dealing with Section 8 of the Evacuees' Property Act

were at variance with each other. Resultantly, the learned Single Judge referred the following two questions to a larger Bench:

1. In view of the Hon'ble Apex Court judgment passed in Ghulam Qadir Vs. Special Tribunal and Others, and State of Jammu and Kashmir and

Others Vs. Mahmood Ahmed and Others, what is the existing position regarding applicability of Section 9 of the Evacuee Property Act?

2. In case the provision is deemed to have become redundant what is the alternative remedy available to the aggrieved/interested party?

The Reference was heard and answered by a Division Bench of this Court by order dated 25.03.2009 in Mirza Mohammad Masood Khan and

Others Vs. State of J. and K. and Others, in the following manner:

4 In State of Jammu and Kashmir and Others Vs. Mahmood Ahmed and Others, , a Bench of the Supreme Court comprising two Hon'ble

Judges, was concerned directly as to whether Section 8 of the Act has outlived its utility after more than 40 years since the Act was enacted. The

Hon'ble Supreme Court observed that Section 8 of the Act is closely interlinked with Section 6 of the Act, which deals with the powers of the

Custodian to notify a property as evacuee property under the Act, and inasmuch as Section 6 is in currency even now, because notifications can

still be made under that Section in appropriate cases to notify a property as evacuee property, section 8 also will have to be on the statute book.

The Hon'ble Court, therefore, in no uncertain terms, pronounced that Section 8 will remain operative until such time Section 6 remains.

5. In the instant case too, the notification was published in 1963, 18 years therefrom, i.e., in 1981, the application was filed by the petitioner

contending that the property as notified is not an evacuee property. The aforementioned judgment of the Hon'ble Supreme Court was rendered on

April 13, 1989 and the writ petition was filed in 1997. In the circumstances, as on the date of presentation of the writ petition, the law which was

governing the field is embodied in the said judgment of the Hon'ble Supreme Court. During the pendency of the writ petition, a Bench of the

Hon'ble Supreme Court comprising of two Hon'ble Judges in the case of Ghulam

Qadir Vs. Special Tribunal and Others, , held that Section 8 of

the Act has outlived its utility and is presently a redundant piece of legislation still existing on the statute book. While making the said observation,

the Hon'ble Supreme Court did not take notice of its earlier judgment rendered in the case of State of J & K v. Mehmood Ahmad and others

(supra). Further, while making the said observation, the Hon'ble Supreme Court in the latter judgment referred to above, did not take notice of

Section 6 of the Act and the relationship in between Section 8 and Section 6 of the Act. We would, therefore, safely follow the judgment of the

Hon'ble Supreme Court rendered in the case of State of J & K v. Mehmood Ahmad and others (supra) and, accordingly, shall proceed on the

basis that Section 8 of the Act is not only on the Statute book, it is a living piece of legislation.

6.

7. Though it is true that by reason of provisions of Section 5 of the Act evacuee properties vest in the Custodian and the properties which have

thus vested are required to be notified in terms of Section 6 of the Act, but Section 6 of the Act clearly indicates that despite such vesting the

Custodian may not be in defector possession of the vested property. The said Section makes it amply clear that a person, who is in possession of

the vested evacuee property, on demand, is required to surrender possession thereof to the Custodian and, at the same time, Section 8 of the Act

makes it clear that the person who has been asked to surrender possession may also exercise right under Section 8 of the Act and for that matter

can make an application within thirty days from the date of demand requiring surrender of possession. In view of the nature of the provisions

contained in Section 6 and Section 8 of the Act, which have been declared to be living sections, there may be situations which under no

circumstances may fall under Article 142 of the Limitation Act and, accordingly, in relation thereto Section 28 of the Limitation Act also would

have no application.

8. Furthermore, the Statute contemplates that the contentions as raised by a person purporting to exercise his rights under Section 8 are to be

considered and decided by the Custodian. The Custodian has been authorized by the Statute to condone the delay in making an application under

Section 8 of the Act for reasons to be recorded. It would, therefore, be appropriate on the part of the Custodian to decide the same in terms of the power vested in him by a living Statute.

9. We, accordingly, answer question No. 1 by holding that the Custodian having been authorized by a living Statute to consider and decide the matters pertaining to Section 8 of the Evacuee Property Act, including questions pertaining to delay in filing such an application, should do so, and answer question No. 2 by holding that the provisions of Section 8 of the Act have not become redundant and, accordingly, the remedy available under Section 8 of the Act is still available to a person entitled to exercise right under the said Section.

The Division Bench of this Court has thus set the matter at rest and we are not inclined to reopen the issue, more so when the same is supported by the Apex Court judgment in the case of State of Jammu and Kashmir v. Mehmood Ahmad (supra). Same holds true for Sections 6 and 7 of the Act, being living pieces of legislation.

31. Coming to the argument of the learned counsel that by operation of Big Landed Estates Abolition Act the original owners had lost title to the land and that the same had vested in the appellants-petitioners and their predecessors, being the tenants thereof, and, therefore, the Custodian had no jurisdiction to deal with the said properties, it hardly needs reiteration that under Section 8 of the Evacuees' Property Act, the appellants-petitioners have a remedy before the Custodian to prefer a claim on either of the grounds that the property is not evacuee property or that their interest in the property has not been affected by the provisions of the Act. If the appellants think that by operation of the Big Landed Estates Abolition Act the original owners had lost their title to any portion of the land and that any such property was not evacuee property, their remedy lies before the Custodian under Section 8 of the Evacuees' Property Act, not before this Court.

32. Accordingly, agreeing with the reasons recorded by the learned Writ Court and upholding the impugned judgment, these appeals are dismissed together with the connected CMPs as being without any merit. Interim directions, if any, subsisting in the two appeals shall stand vacated.

33. No order as to costs. Before parting with the judgment, it is seen that some

of the appellants-petitioners in LPA No. 178/2009 arising from OWP No. 289/2005 have filed another writ petition, OWP No. 1976/2013, and have obtained an order of status-quo dated 30.12.2013 with regard to land comprising survey Nos. 133 and 133/1 situated at Shankerpora which has also been the subject matter of controversy in LPA No. 178/2009 connected with OWP No. 289/2005. Record of the aforesaid writ petition was called for by us for perusal. Apparently, the issues involved therein are covered by the instant judgment. However, since the writ petition was neither clubbed with these appeals, nor heard by us, we direct the Registry to list the same before an appropriate Bench having the roster two weeks hence for disposal in accordance with law. Meanwhile, respondents therein may file their reply to the writ petition. The learned Writ Court is requested to ensure that the writ petition is decided expeditiously, preferably within a period of one month from the date it is first listed for consideration hereafter.