

(1958) 09 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 52 of 1958

Makhan Singh and Others

APPELLANT

Vs

Custodian General, Evacuee Property and Others

RESPONDENT

Date of Decision : 08-09-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Jammu and Kashmir Evacuees (Administration of Property) Act, 2006 — Section 39(2)

Citation : (1958) 09 J&K CK 0001

Hon'ble Judges : K.V. Gopalakrishnan Nair, J

Bench : Single Bench

Advocate : Lok Nath Sharma, for the Appellant; A.G. and Janki Nath Bhat, for Respondents 2 and 3, for the Respondent

Judgement

K.V. Gopalakrishnan Nair, J.—This is a petition for a writ of certiorari. Certain land was allotted to Respondents 2 and 3 who are refugees

from Pakistan. The date of this allotment is not stated in the petition, but it appears from the affidavit filed by the second Respondent before the

Custodian General that the allotment was some time in the year 1947. The exact date of the allotment is, however, not very material to the present

proceeding. On 16-4-56, the Provincial Rehabilitation Officer cancelled the allotment in favour of Respondents 2 and 3 and made, a fresh

allotment of the same land in favour of the Petitioners. Respondents 2 and 3 moved the Dy. Custodian General, Evacuee Property for cancellation

of the order. They, however, did not succeed. Thereupon they moved the Custodian General who by his order dated 24-5-1958 set aside the

order of the Dy. Custodian General and thereby restored the original allotment in favour of Respondents 2 and 3. The Petitioners who are

aggrieved by the Custodian General's order have moved this Court to quash the order by certiorari.

2. The main grounds on which the Petitioners have relied are: (1) that the order of the Custodian General dated 24-5-1958 is without jurisdiction

inasmuch as no land within the State could be allotted to Respondents 2 and 3 ""who are not displaced persons from the Pakistan-held territory of

the State and who did not hold land there."" and (2) that Respondents 2 and 3 as refugees from Pakistan have been allotted land in the East Punjab

State in lieu of their claim for land in Pakistan and that they are not therefore entitled to allotment of land in the State of Jammu and Kashmir. The

Respondents have challenged the validity of both these grounds.

3. The Petitioners learned Counsel placed considerable reliance on para (1) of the Allotment Rules made in Cabinet Order No: 578-C of 1954

dated 7-5-1954. It reads:

Only such displaced families as already held land in the Pakistan-occupied territory of the State, and whose main source of livelihood was income

from such land shall be eligible to be settled on evacuee or Government land.

He urged that Respondents 2 and 3 did not hold any land in the Pakistan-occupied territory of the State and as such they are not entitled to be

allotted any evacuee or Government land within the State. That Respondents 2 and 3 did not hold land in Pakistan occupied territory of the State is

common ground. Therefore, if the matter rested here, the Petitioners must be held to have a good case. But it is seen that even before the

Allotment Rules of 1954 were made, the Government had adopted certain set of rules regarding allotment of lands to refugees. The learned

Advocate General for the Respondents invited my attention to the rules formulated in Cabinet Order No. 913-C dated 7-8-1951.

This itself was in supersession of Cabinet Order No: 1476-C of 1950. Thus it is seen that a body of rules governing allotment of lands to refugees

was in existence in the State even before the rules of 7-5-1954 were framed. It is clear that the allotment of land to Respondents 2 and 3 was

made much before the Cabinet Order of 7-5-1954 came into force. The question then is whether the prior allotment made in favour of

Respondents 2 and 3 ceases to have force and effect after the Cabinet Order of 7-5-1954 came into being? If the previous allotment was not

nullified by the subsequent rules of 7-5-1954, there is every ground for not interfering with that allotment.

This takes us to an examination of the rules dated 7-5-54. Paragraph (3) of these rules definitely recognizes the previous allotments made to

persons other than the displaced persons who fall under para (1) of the Rules. Paragraph (3) by necessary intendment confirms, subject to the

restrictions mentioned therein, the previous allotments in favour of persons other than those mentioned in para (1). The case of Respondents 2 and

3 falls under para (3). It cannot therefore be said that the previous allotment made in favour of Respondents 2 and 3 ceases to be of force and

effect after the rules dated 7-5-1954 came into force. It follows that the first ground of attack raised by the Petitioners has to fail.

4. The next ground of attack is based almost entirely on para (12) of Cabinet Order dated 7-5-1954. Para 12 reads as follows:

(i) No family shall retain with itself more than one allotment of land exceeding the unit prescribed in para 2, or made under a valid order before the coming into force of this order.

(ii) If any family has secured more than one allotment of land as indicated in Clause (i) in its favour, it may within one month of the date of the

commencement of this order communicate the fact to the Tehsildar of the Tehsil in which it has been allotted land or to the Provincial Rehabilitation

Officer, indicating at the same time the particular allotment which it wants to retain with itself. Upon such information being communicated, the

Tehsildar or the Provincial Rehabilitation Officer shall cancel the spurious allotment or allotments made in favour of such family.

(iii) If such family suppresses the information and the Tehsildar of the P.R.O. either himself or through information received from any other source

and after such enquiry as may be necessary comes to know of the allotment or allotments secured by such family he shall have the power to cancel

them and such family shall forfeit its right to claim allotment of land in its favour in future." The argument on behalf of the Petitioners is that as some

land has been allotted to Respondents 2 and 3 in the State of East Punjab, they fall within the mischief of para (12) and consequently the allotment

made in their favour in this State ought to be cancelled. This argument requires a consideration of the scope of para (12). Does this paragraph only

contemplate more than one allotment of land within the State of Jammu and Kashmir or does it also contemplate one or more allotments of land

outside the State? On a plain reading of the paragraph it seems to me that it contemplates only allotments of land within the State of Jammu and

Kashmir. It is not legitimate to construe para (12) as embracing transactions of allotments outside the State of Jammu and Kashmir.

The reference in sub-para (2) of para 12 to "the Tehsildar of the Tehsil" and to "the Provincial Rehabilitation Officer" only reinforces this

conclusion. The power which this sub-para confers on the Tehsildar or the P.R.O. to "to cancel spurious allotment or allotments" further supports

the conclusion. What is more is that there is nothing in the rules to indicate that it purported to take note of allotments made outside the limits of the

State by other Governments. The rules are statedly made "in exercise of the powers conferred on the Government by Sub-section (2) of Section

39 of the Jammu and Kashmir Evacuees' (Administration) of Properties Act, 2006.

This Act has operation only within the State and the rules framed under this Act cannot obviously have any wider application. I do not think it

necessary to labour this point further. The authority under which rules are made, the scope of the rules, the language in which the rules are couched

and the intention of the rules as can be gathered from their plain language, all go to show that Rule (12) does not justify cancellation of an allotment

made within the State on the ground that another allotment has been made to the same person by another Government outside the State. In this

view, the second ground of attack of the Petitioners cannot prevail.

5. I must, however state that the counsel for Respondents 2 and 3 strenuously urged that the allotment of land made by the East Punjab

Government in favour of Respondents 2 and 3 was not at all availed of by them and that it must for all practical purposes be deemed to be non-

existent. It appears from the record that Respondents 2 and 3 never took possession of the lands in East Punjab. The order of the Dy. Custodian

General further shows that as a result of the failure on the part of Respondents 2 and 3 to take possession of the land allotted to them in East

Punjab, that land was auctioned on contract basis by the authorities in that State for one year.

The case of Respondents 2 and 3 has all along been that they do not want any

land in the Punjab, that they had no intention of taking possession of any land there, and that they always have desired to be in personal enjoyment of the land which was allotted to them in this State, where they have been permanently residing. The attitude of Respondents 2 and 3 in relation to the land which was allotted to them in East Punjab is only consistent with this stand. In substance, therefore, there is good ground for saying that Respondents 2 and 3 have practically abandoned the land allotted to them in East Punjab and have been content to hold the land which they obtained in this state as refugees.

Even assuming that para (12) of the Cabinet Order dated 7th May 1954, applies to the present case, it will be legitimate to say that the spirit of that paragraph or a true construction of the letter thereof, does not affect Respondents 2 and 3 on account of the particular attitude adopted by them in respect of their land in East Punjab. I may notice at the end that the Petitioners have alleged that an opportunity was not given to them to file a counter-affidavit in reply to the affidavit filed by Respondents 2 and 3 before the Custodian General in that an adjournment asked for by the Petitioners was not granted to them by the Custodian General and that their case was disposed of in what the Petitioners have chosen to call great hurry.

This allegation was not seriously pressed at the Bar by the Petitioner's learned Counsel, and rightly so, because it seems to be devoid of merit.

Sufficient opportunity was given by the Custodian General to the Petitioners to place before him all the necessary evidence in their favour. This is

borne out by the Minutes of the proceedings before the Custodian General. If the Petitioners wanted to file a counter-affidavit, they had sufficient

time to do so, and they have to thank themselves if they failed to do so.

Further, any counter-affidavit of the Petitioners could at best have only asserted that the allotment in favour of Respondents 2 and 3 in East Punjab

does stand. This assertion by itself would not have advanced their case much further. The document produced by the Petitioners themselves shows

that Respondents 2 and 3 never took possession or any other advantage of the land allotted in their favour in East Punjab. What is even more

important is that assertion and counter-assertion in rival affidavits cannot affect the true interpretation of the provisions of para (12) of the Cabinet

Order dated 7th May 1954.

6. A telegram from Jammu is said to have been sent by Mr. Avtar Singh who appears to have been the Advocate for the Petitioners asking the

Custodian General for an adjournment, but it is admitted that no ground at all was indicated in the telegram for the adjournment, nor has any

ground for adjournment been even referred to in the petition (vide para 9 of the petition). In the circumstances, it cannot be said that the Custodian

General was unjustified in refusing the adjournment. I must also say that matters like this are not properly within the sphere of writ jurisdiction,

unless it be for the purpose of showing that there has been a failure of natural justice.

It cannot by any stretch of argument be successfully contended that the procedure adopted by the Custodian General was such as to amount to a

denial of natural justice. Indeed, such a contention was not urged at the Bar by the Petitioners' learned Counsel. I may also state in passing that the

allegation that the Custodian General acted in great hurry in disposing of the revision petition before him is not justified.

7. No ground other than those adverted to above was urged before me by the Petitioners' learned Counsel.

8. For the purpose of clarification I must point out that the present writ is not against the order of allotment in favour of Respondents 2 and 3 which

appears to have been made in their favour years ago. The writ is only against the order of the Custodian General setting aside the order cancelling

the allotment in favour of Respondents 2 and 3, on the ground that there is double allotment in their favour within the meaning of para 12 of

Cabinet Order dated 7-5-1954. Therefore, the question relating to the original allotment in favour of Respondents 2 and 3 does not really fall

within the scope of the present proceedings.

9. I am not able to see in this case any defect of jurisdiction or violation of the principles of natural justice or any error of law manifest on the face

of the record to justify interference in certiorari. I may also refer in this connection to the following passage from the decision of the Supreme Court

in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, at pp. 195-196:

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate

tribunals or bodies of officers act wholly without jurisdiction or in, excess of it, or in violation of the principles of natural justice, or refuse to

exercise a jurisdiction vested in them or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in

manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert

itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the

order to be made.

These observations are very apposite to the present case. It is not possible to say that the order of the Custodian General ""has resulted in manifest

injustice."" If anything, the quashing of the Custodian General's order is likely to result in injustice to Respondents 2 and 3. This is an added reason

for not interfering with the order of the Custodian General which has been challenged in these proceedings.

10. In view of the foregoing, this writ petition fails and is dismissed. In the circumstances of the case, I make no order as to costs.