

**(1971) 01 DEL CK 0036**

**In the Delhi High Court**

**Case No :** Letter Patent Appeal No. 42 of 1970

Parkash Kaur and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 12-01-1971

**Acts Referred:**

**Citation :** AIR 1971 Delhi 224 : (1972) ILR Delhi 303

**Hon'ble Judges :** V.D. Misra, J;H.R. Khanna, J

**Bench :** Division Bench

**Advocate :** R.L. Tandon, R.M. Mehta and M. Ahmed, for the Appellant;

## Judgement

V.D. Misra, J.

(1) This Letters Patent Appeal is directed against the judgment of T.V.R. Tatachari, J. allowing the Writ Petition filed by Mst.Bashiran.

(2) Wazir Mohd. and his son Jan Mohd. were owners of agricultural land comprising 106 Bighas 7 bids was 13 Biswansis in village Jabal and 68 Bighas 13 bids was 15 Biswansis in village Deoli in Tehsil Sadar District Mandi, Himachal Pradesh. Wazir Mohd. and Jan Mohd. were both killed Along with some other members of their family in the communal disturbances which took place in 1947 at the time of the partition of the country. Their property was taken over as Evacuee Property. Mst. Bashiran who was the only heir of these persons made an application u/s 16 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the "Evacuee Act") on March 17, 1954 for the restoration of this property. The Central Government passed an order no. 6(2)/Rest./56/1221 dated 12-11-1957 in the following terms :

"WHEREASMst. Bashiran daughter of Jan Mohd. has made an application to the Central Government that the evacuee property which have vested in the Custodian and to which applicant would have been entitled if the Administration of Evacuee Property Act, 1950 were not in force, may be restored to her. And whereas the Central Government is satisfied (i) That the conditions Where as

Mst. in the rules made in this behalf have been satisfied. (ii) That the evacuee properties described in the schedule are the properties of the applicant And (iii) That it is just and proper that the said evacuee properties should be restored to the applicant. Now, Therefore, the Central Government hereby declares the applicant to be entitled to the restoration of the evacuee property described in the Schedule and directs that action may be taken in regard to the said property u/s 20A of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 by the person authorised in this behalf."

(3) Inspire of this order neither the Central Government nor any of its officers took action u/s 20A of the Displaced persons Compensation & Rehabilitation) Act, 1954 (hereinafter referred to as the "Compensation Act").

(4) A notification u/s 12 of the Compensation Act was issued by the Central Government on March 31, 1956 acquiring all the evacuee agricultural lands in Mandi District while the application of Mst. Bashiran u/s 16 of the Evacuee Act was still pending. On February 26, 1959, the Managing Officer, Mandi passed an order allotting a portion of the said land to Mst. Phuimo. Another portion of the said land was allotted by the same Officer on February 27, 1959 in favor of Smt. Parkash Kaur. Smt. Bashiran filed appeals against the said orders before the Regional Settlement Commissioner, Himachal Pradesh which were dismissed on June, 1, 1959. Her revisions to the Chief Settlement Commissioner were also dismissed on May 25, 1960.

(5) MST. Bashiran filed a Writ Petition on September 3, 1960 against the order of the Central Government directing action u/s 20A of the Compensation Act and also the orders of allotment made by the Managing Officer, Mandi in favors of various persons including Mst. Phuimo and Smt. Parkash Kaur.

(6) The learned Single Judge while allowing the writ petition did not feel the necessity of deciding the question regarding the virus of Section 20A of the Compensation Act. Assuming that Section 20A of the Compensation Act, was intra vires, it was held that directions contained in the order of the Central Government dated 12th November 1957 that action be taken in respect of the property u/s 20A of the Compensation Act were invalid since no opportunity was given to the petitioner before passing this order. It was also held that the notification of the Central Government dated 31st March, 1956 issued u/s 12 of the Compensation Act in respect of the agricultural lands in Mandi District did not include the petitioners land and so the Managing Officer had no Jurisdiction to allot the same.

(7) The question of virus of Section 20A of the Compensation Act has been raised before us. It is contended that Section 20B of the Compensation Act, which is in similar terms as Section 20A of the Compensation Act, and has been declared ultravires by the Supreme Court in Lachhman Dass and Others Vs. Municipal Committee, Jalalabad and Others, Reliance is also placed on a judgment of the Punjab & Haryana High Court in Asa Ram and Others Vs. Central Government

and Others, holding section 20A of the Act ultra-vires. Mr. R.L. Tandon, learned counsel for the appellants, contends that there is a material difference between the provisions of Section 20A and Section 20B of the Compensation Act and so no help can be sought from Lachhman Boss's (1) case. He also contends that Asa Ram's (2) case does not lay down the correct law.

(8) We have compared Section 20A and Section 20B of the Compensation Act. Whereas Section 20A deals with restoration of evacuee property on an application u/s 16 of the Evacuee Act, Section 20B deals with the restoration because of the order made by the Custodian General u/s 27 of the Evacuee Act. Whereas Section 20A was inserted in 1956, Section 20B was inserted in 1960. u/s 16 of the Evacuee Act, application for restoration of evacuee property may be made by any evacuee or any person claiming to be a heir of the evacuee to the Central Government or the person authorised by it. After giving a public notice in the prescribed manner and after causing an inquiry into the claim to be held according to rules, an order for the restoration of the property to the applicant must be passed if the Central Government or the authorised person is satisfied (i) that the conditions prescribed by rules made in this behalf have been satisfied ;(ii) that the evacuee property is the property of the applicant; and (iii) that it is just or proper that the evacuee property should be restored to him. Section 27 of the Evacuee Act lays down the powers of revision of the Custodian General against the orders passed by the Custodian of Evacuee Property under the Evacuee Act. Section 16 of the Evacuee Act was amended by Administration of Evacuee Property (Amendment) Act, 1954 (42 of 1954). Insertion of Sub-section (I-A) by this amendment laid down that no application u/s 16(i) of the Evacuee Act shall be entertained unless applicant had filed all appeals and revision applications permissible under this Act against the order declaring the property of the evacuee to be evacuee property and the Custodian-General has made a final order in the case ; and the application is made within sixty days of the final order or the Custodian-General. It was further provided that nothing contained in the sub-section shall apply to an application which was pending on the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

(9) Mr. R.L. Tandon contends that u/s 27 of the Evacuee Act, the Custodian General sets aside the order declaring the property of the evacuee to be evacuee property and so the result is as if the property never vested in the Custodian under the Act, but u/s 16 of the Evacuee Act no order is passed by the Central Government or the authorised Officer divesting the property which has legally come to vest in the Custodian. On this basis it is contended that in Lachhman Dass"(1i) case the Supreme Court while dealing with Section 20B proceeded on the ground that the rightful owner was entitled to have the property restored to him but the Central Government was enabled to deprive him of the property by Section 20B which was found to contravene Article 31(2) of the Constitution. u/s 16 of the Evacuee Act since the property continues to vest in Custodian, the rightful owner would not ordinarily be entitled to have the property restored to

him. We need not go into this distinction since it is conceded by Mr. Tandon that Mst. Bashiran had made the application u/s 16 of the Evacuee Act before its amendment by insertion of sub-section (I-A). As this Section stood before the said amendment, a person could file application for restoration of the property on the ground that it has been wrongly declared as evacuee property. Mst. Bashiran had stated in her Writ Petition that her father Jan Mohd. and her grand father Wazir Mohd were killed in disturbances in 1947 and that they never migrated to Pakistan. Since the property had been wrongly taken over as evacuee property she had made an application u/s 16 of the Evacuee Act. She was thus claiming restoration of the property as its rightful owner. The Central Government by its order dated 12th November, 1957 ordered the restoration of the property to her. In these circumstances the decision of the Supreme Court regarding the virus of Section 20B of the Compensation Act would hold equally good in a case like the present in respect of Section 20A of the aforesaid Act. We, are, Therefore, of the opinion that on the facts of a case like the present the provisions of Section 20A would offend against Article 31(2) of the Constitution and as such cannot be availed of by the authorities concerned.

(10) We are also in agreement with the learned Single Judge that the notification issued u/s 12 of the Compensation Act on 31st March, 1956 acquiring evacuee agricultural land in the District of Mandi did not affect the property in question and the Managing Officer had no jurisdiction to allot the same to appellant. The orders passed by the Managing Officer, Mandi allotting the portions of land in question to Mst. Phuimo and Parkash Kaur show that he had proceeded on the basis that the land did not fall within the specified categories of Rule 93 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 and so could be allotted to displaced person having verified claims of agricultural land only. Relevant portion of Rule 93 is in the following terms :

"93.The Central Government may acquire any property declared or deemed to have been declared as evacuee property under the Administration of Evacuee Property Act, 1959 (XXXI of 1959) (hereinafter in this rule referred to as the said Act) except any such property falling under any one or more of the following categories, namely; xx xx xx (ii) any such property in respect of which an application for the grant of a certificate under sub-section (1) of Section 16 of the Act is pending or in respect of which the period of limitation fixed for making such an application has not expired; xx xx xx

(11) This rule clearly shows that the property in respect of which an application u/s 16 of the Evacuee Act was pending could not be acquired by the Central Government. Admittedly, on the day, the notification u/s 12 of the Compensation Act was issued application u/s 16 filed by Mst. Bashiran was pending.

(12) Mr. R..L. Tandon contends that rule 93 is ultravires and so should not be looked into since the Central Government had no powers to cut down the ambit of Section 12 of the Compensation Act. Section 12 of the Act empowers the Central Government to acquire evacuee property for rehabilitation of Displaced

Persons by a notification in in the official gazette. These notifications could be issued in respect of (a) all evacuee property generally ; or (b) any class of evacuee property; or (c) all evacuee property situated in a specified area; or (d) any particular evacuee property. Section 40(2)(b) of the Compensation Act gives powers to the Central Government to make rules regarding "the circumstances in which and the conditions subject to which evacuee property may be acquired under this Act." The Legislature Had expressly given powers to the Central Government to make rules laying down the conditions subject to which the evacuee property may be acquired u/s 12 of the Act. This Rule 93 has been framed by the Central Government in terms of Section 40(2)(b) of the Act and cannot be held ultravires.

(13) The result is that the appeal fails and is dismissed with costs.

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