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**(1952) 02 P&H CK 0005**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Miscellaneous No. 103 of 1951**

Vasdev

APPELLANT

Vs

Custodian General and Others

RESPONDENT

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**Date of Decision :** 07-02-1952

**Acts Referred:**

Administration of Evacuee Property (Central) Rules, 1950 — Rule 14  
Administration of Evacuee Property Act, 1950 — Section 9  
Constitution of India, 1950 — Article 226, 227  
Pepsu Evacuees (Administration of Property) Act — Section 14, 14(2), 14(3), 9  
Pepsu Evacuees (Administration of Property) Rules — Rule 13  
Transfer of Property Act, 1882 — Section 106, 111, 116

**Citation :** AIR 1953 P&H 26

**Hon'ble Judges :** Teja Singh, C.J;Passey, J

**Bench :** Division Bench

**Advocate :** D.S. Nehra, for the Appellant; Narindar Singh, for Custodian General, Banwari Lal, for Costodian, Gurbux Singh and Jawahar Singh, for the Respondent

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## Judgement

1. One Vasdev has made this petition Under Article 226, Constitution of India and Clause 60 of Ordinance No. X of 2005 for issue of writs of certiorari, prohibition, etc. against the Custodian of Muslim Evacuee Property, Patiala and the Custodian General of India, New Delhi.

2. The facts of the case are that Sheikh Kharaiti, a Muslim of Patiala, owned shop No. 15 in Ward No. 4 of the city. He leased this shop to Ram Lal, father's brother of the Petitioner on 9-7-1946 for a period of three years. Later on, Sheikh Kharaiti left Patiala and went away to, Pakistan. The Custodian of Muslim Evacuee Property made an effort to get hold of the shop from Ram Lal on the plea that it was a Muslim Evacuee property and had vested in him. Ram Lal protested and wrote

to the Custodian that the shop having been leased to him by the original owner his possession could not be disturbed. In the alternative he contended that he

should be allowed to retain the shop till the period of his tenancy expired and if the Custodian insisted upon taking hold of the shop the same should be allotted to him till the end of Bhadon, 2006 Bk. i.e. till the middle of Sept. 1949. On 28-1-1948 the Custodian informed Ram Lal that the shop could be leased to him only for a year. At first Ram Lal would not agree but ultimately he accepted the Custodian's offer and on 2-3-1948 executed in his favour a document whereby he become the lessee of the shop under the Custodian for a period of one year and subject to the conditions given in the document. Though the term of the lease expired on 1-3-1949 and Ram Lal did not execute any fresh document he continued thereafter the possession of the shop remained with him till his death which took place on 19-5-1950 and he continued to pay rent to the Custodian. On the very day Ram Lal died Jowahar Singh who is a displaced person from Pakistan applied to the Custodian that the shop be allotted to him. It was at this stage that the Petitioner appeared on the scene. He opposed Jowahar Singh's application and represented that as he was the heir and legal representative of Ram Lal deceased and the latter had also made a will in his favour leaving his entire property to him he had taken possession of the shop and was entitled to keep it so long as he continued to pay the rent.

The Assistant Custodian after holding an inquiry into the matter reported that the Petitioner's allegations were correct and that he was entitled to retain the possession of the shop but at the same time recommended that Jowahar Singh being a displaced person half of the shop might be allotted to him. The Custodian by his order dated 12-12-1950 accepted Jowahar Singh's petition & rejecting the Petitioner's representation called upon him to vacate the shop. The Petitioner made a revision petition to the Custodian General against the order of the Custodian but failed. After that he made two review petitions to the Custodian General but they both met the same fate. The present petition was made to this Court on. 15-5-1951.

3. It is contended on behalf of the Petitioner that neither the Custodian nor the Custodian General had any jurisdiction to have the shop vacated by Vasdev or to allot it to Jowahar Singh and the first point urged in this connection is that the shop was not a Muslim evacuee property. Now it cannot be denied that the shop belonged to a Muslim who migrated to Pakistan because of the communal disturbances and consequently so far as the ownership is concerned the shop was a Muslim evacuee property. This point is conceded by the Petitioner's counsel but he argues that since Sham Lal had taken the shop on lease from the original owner, his rights remained intact and did not vest in the Custodian. He further contends that on Ram Lal's death, Vasdev stepped into his shoes as his next heir and his position was the same as that of Ram Lal.

4. I shall first deal with the position of Ram Lal. It is correct that he was the lessee of Kharaiti and even though Kharaiti became an evacuee, the lease in favour of Ram Lal was not affected thereby, but instead of sticking to his lessee rights, Ram Lal agreed to give them up and became a tenant of the Custodian.

The Petitioner's counsel maintained that the execution by Ram Lal of the fresh deed of lease in favour of the Custodian on 2-3-1948 did not affect his previous tenancy and he still continued to be the lessee holding under Kharaiti. This does not appear to me to be correct and in my judgment the case is covered by Section 111, T.P. Act which lays down that a lease of Immovable property determines, "inter alia", by implied surrender. The Act was not in force in this State in 1948, but the principles of it were applicable. The following is the illustration of the determination of a lease by implied surrender given in the Act below Section 111:

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

5. As will be clear from what has been given above, at the time Ram Lal agreed to be a lessee under the new deed of lease that he executed in Custodian's favour, the term of his old lease had not yet expired. In fact it was to remain in force till 8-7-1949, i.e. for about a year and a half more and the new lease was only for one year. In addition, the terms of the new lease were in several respects different from those of the old lease. In the circumstances, there cannot be the slightest doubt that by executing the new lease, Ram Lal surrendered the old lease and consequently the latter lease determines on that day.

6. The question now is what was Ram Lal's position after the expiry of the deed of lease that he executed in favour of the Custodian on 2-3-1948. The respondent's counsel argues that because no fresh lease deed was executed, Ram Lal became a trespasser, but I do not find it possible to agree with him. It is mentioned in the petition and there is an affidavit of the Petitioner in support of this allegation that Ram Lal continued to pay rent to the Custodian regularly even after the expiry of his lease and the latter accepted it. The Custodian's counsel does not deny this fact. Accordingly the doctrine of holding over applied and the lease in favour of Ram Lal was renewed with this difference that instead of being a lease for a fixed period, it was changed to one from month to month. Section 116, T.P. Act deals with the effect of holding over. The words of the section are:

If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.

7. Illustration (a) to the section reads as follows:

A lets a house to B for five years, and B underlets the house to C. The five years expire, but C continues in possession of the house and pays the rent to A: C's lease is renewed from month to month.

8. As in the case of Section 111, the principles of Section 116 are also applicable here and in view of regular payment of rent by Ram Lal to the Custodian and the acceptance of the same by the latter, new relationship of landlord and tenant was created between them. This view is supported by a decision of the Federal Court in - AIR 1949 124 (Federal Court)

9. The matters, however, did not rest there. On 5-7-1949 the Custodian of Muslim Evacuee Property of the Patiala & East Punjab States Union issued the following notification:

In exercise of the powers conferred on me u/s 14. Sub-section (2), Patiala & East Punjab States Union Evacuees (Administration of Property) Ordinance No. 13 of 2006, and as enjoined by the imperative provisions of Sub-section 3 of the same section, I hereby cancel all allotments made and terminate all leases of Evacuee Property of every description sanctioned by the Custodian or any Rehabilitation Authority in favour of persons other than displaced persons or members of essential Government services after 15th August, 1947, and authorise the Deputy Commissioner, and the Assistant Custodians of the District to get the premises vacated after giving reasonable notice to such allottee or lessee and when the same are required for rehabilitation of displaced persons.

10. The notification also provided inter alia that

if any person refuses to surrender possession on demand by any of the officers authorised by the notification, he shall be liable to be ejected by the use of all force necessary for securing compliance with such orders regarding delivery of possession as provided in Section 9, Clause (2) of the Ordinance.

11. Ordinance No. 13 of 2006 had come into force in the Union with effect from 21st June 1949 when it was published in the Government Gazette. Section 14 of the Ordinance dealt with grant and cancellation of leases and Sub-section (3) of this section, under which the Custodian issued the notification, read as below:

In particular and without prejudice to the generality of the foregoing provisions the; Custodian, or the Rehabilitation Authority or any other person duly authorised by the Custodian in this behalf shall cancel any allotment of evacuee property, terminate any lease given in favour of any person other than a displaced person or a member of any Essential Government service and shall proceed to get the premises vacated after giving a reasonable notice to such allottee or lessee.

12. It will thus be seen that Section 14 of the Ordinance made it obligatory on the part; of the Custodian to cancel all allotments and terminate all leases in favour of all persons other than displaced persons or members of any Essential Government service and in view of the fact that Ram Lal was neither a displaced person nor a member of any essential Government service, his lessee rights came to an end by virtue of the notification.

13. Our attention was drawn by the Petitioner's counsel to the provisions of

Ordinance. No. 17 of 2006 promulgated on 31-7-1949 which took the place of Ordinance No. 13 of 2006 and those of the Central Ordinance No. 27 of 1949 which superseded the Patiala Ordinance No. 17 of 2006, as also to Rule 13 of the rules framed under the latter Ordinance by which the rights of old tenants were protected. I have given careful consideration to these Ordinances as well as Rule 13, but none of them can help the Petitioner, because Ram Lal's lessee rights had been put an end to by the proclamation issued by the Custodian u/s 14 of the Ordinance that was then in force, and neither the provisions of the latter Ordinance nor the rules framed under the Central Ordinance could revive those rights. I may also mention that Rule 13 would not make the Custodian's notification determining Ram Lal's lease illegal even if Rule 13 applied to the case. Clause (1) of Rule 13 says that:

the Custodian shall not ordinarily vary the terms of a lease subsisting at the time he takes possession of. immovable property or cancel any such lease or evict a person who is lawfully in occupation of such property under a lease granted by the lessor before he became an evacuee and not in anticipation of becoming an evacuee unless the Custodian is satisfied etc.

Two things were contemplated by the Rule (1) variation of the terms of subsisting lease or its cancellation; and (2) eviction of a person who is lawfully in occupation of any property under a lease. So far as Ram Lal was concerned, the question of his eviction did not arise at all, because according to the terms of the notification he was allowed to remain in possession till the shop was required by a displaced person, and as regards his lease it was not the Custodian who varied its terms, but Ram Lal himself surrendered it by executing a fresh lease in Custodian's favour. This means that at the time the Custodian issued the notification Ram Lal was his tenant holding the shop under the lease of 2-3-1948 and not under the original lease that he had executed in favour of Kharaiti.

Our attention was also drawn by the Petitioner's counsel to certain observations made by me in - "Kartar Singh v. The Custodian" Cri. Misc. 1 of 1951 (Pepsu) which are capable of the interpretation that the right of a person to hold a property under a lease granted to him by the original owner was not affected by the notification issued by the Custodian u/s 14 of Ordinance No. 13 of 2006, even though he was not a displaced person. The facts of that case were different from those of the present one. There we were dealing with a petition under Article 227 of the Constitution and we were asked to quash the order of the Custodian in exercise of powers of superintendence which Article 227 gives a High Court over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. The respondent in that case belonged to the Union & was not a displaced person. With all this, the Custodian had refused to eject him from the property which was in his possession. I refused to set aside the Custodian's order and while pointing out that the powers of a High Court under Article 227 were different from those of an appellate or revisional Court, I also mentioned that the Custodian's order could not be regarded as illegal and

without jurisdiction. Apart from this, the precise effect of the notification. upon leases in favour of persons other than displaced persons and Government servants was not fully discussed before us in that case and having now given the matter my careful consideration, I hold that neither the subsequent Ordinance nor Rule 13 of the Central Ordinance can, in any way, improve the position of a person whose lease was determined by the notification in question.

14. The other point argued by the Petitioner's counsel is that since Ram Lal continued to pay rent to the Custodian and the latter accepted it without objection even after the issue of the notification, the doctrine of holding over governed the case and a fresh relationship of lessee and lessor between the Custodian and Ram Lal came into existence. In my opinion the conditions that were brought about by the determination of the lease on account of the Custodian's notification were quite different from those that existed at the determination of Ram Lal's previous lease by efflux of time. As I understand the doctrine of holding over, it means that when a person takes a property on lease from another for a fixed period and continues in possession after the period of lease, if he continues to pay the rent and the landlord accepts it without any objection, it is presumed that the landlord impliedly accepts him as his lessee. It must, however, be understood that the conduct of the landlord merely raises a presumption and the presumption can be rebutted by the unequivocal declaration on the part of the landlord that though he allows the tenant to remain in possession, he does not accept him as his tenant, or by some other conduct of his which is inconsistent with the continuance of the relationship of landlord and tenant. In the present case, the existing relationship between the Custodian and Ram Lal did not come to an end by efflux of time but by virtue of" the former's notification and in that notification it was laid down (1) that the lessee rights of Ram Lal came to an end; and (2) that he could remain in possession till the shop was required for a displaced person. The effect of this is that after the issue of the notification Ram Lal ceased to be a lessee and his possession of the shop was that of a licensee. This is the view that the learned Custodian General took and I hold it was the correct view.

15. Now suppose for the sake of argument that in spite of the notification Ram Lal continued to be a lessee of the shop on terms similar to those mentioned in the deed of lease that he executed in Custodian's favour on 2-3-1948. The question is whether Vasdev Petitioner can derive any benefit therefrom. The Petitioner's counsel argues that lessee rights being heritable, they devolved upon Vasdev on Ram Lal's death and the former also became a lessee of the Custodian. Now it is admitted that Ram Lal has left surviving him, in addition to Vasdev who is his brother's son, a daughter, daughter's sons and another brother. Being a Jain, Ram Lal was presumably governed by any other law. Under Hindu Law, daughters and daughter's sons are preferential heirs to a brother and a brother excludes the brother's son. In the circumstances I cannot understand how Vasdev could inherit the property left by Ram Lal in the presence of his daughter, daughter's sons and brother. It was urged that Ram

Lal had left a will in favour of Vasdev and consequently he could succeed to the property of the deceased as a legatee. The difficulty, however, is that according to the terms of the lease that Ram Lal had executed in favour of the Custodian, he had not power to transfer the lease and the will being a form of transfer it could not vest the legatee with Ram Lal's lessee rights. So if Vasdev took possession of the shop, as he says he did, he is a mere trespasser.

16. To sum up the whole position, the ownership rights in the shop in question vested in the Custodian, the rights that Ram Lal had in it by virtue of the lease granted to him by the original owner were surrendered by him and he became a lessee of the Custodian on the termination of the period of the lease that he obtained from the Custodian the nature of his lease changed from the lease of a fixed period to that from month to month, this lease was determined by the Custodian by a notification issued by him u/s 14 of Ordinance No. 13 of 2006. Thereafter Ram Lal remained in possession as a licensee and on Ram Lal's death, Vasdev took possession of the shop, but since he had no right to it whatsoever, he was a mere trespasser. In the circumstances I cannot understand how it can be urged that the Custodian had no power to eject Vasdev or that the order made by him was without jurisdiction. Had Ram Lal been alive, the shop having been vested in the Custodian and Ram Lal having accepted a lease from him, the Custodian could have determined his lease & asked him to vacate the shop. The position of Vasdev is even worse than that of Ram Lal and the Custodian had ample powers u/s 9, Administration of Evacuee Property Act, 1950, which is now in force in the State, to order his dispossession. The section lays down that "if any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

17. I may also add that in the notification that the Custodian had issued during Ram Lal's life-time it was laid down that possession of the shop would be taken when the same was required for a displaced person. Accordingly had Ram Lal been alive he would have been liable to be dispossessed, because the shop was required by Jawahar Singh who is a displaced person. Since Vasdev claims to be a legal representative of Ram Lal, on his own showing, he cannot have any better right than Ram Lal would have possessed had he been alive.

18. The second point raised by the Petitioner's counsel is that the requirements of Rule 13 of the Central Ordinance which has now been replaced by Rule 14 framed under the Administration of Evacuee Property Act, 1950, were not complied with. Since my view is that Vasdev is a trespasser and he is not holding the shop under any kind of lease either under the Custodian or under the original owner of the shop, the rule in question has no applicability to his notice u/s 9 of

the Act. Accordingly this point is also decided against the Petitioner.

19. Before concluding I wish to mention that one of the objections raised by the Advocate-General to the maintainability of the petition was that the High Court had no jurisdiction to issue a writ to the Custodian General under Article 226, because neither he resided nor had his headquarters within the territorial jurisdiction of the Court but later on he withdrew his objection and accordingly I do not consider it necessary to say anything about it.

20. For the reasons mentioned above, the petition fails and is dismissed with costs. Counsel's fee Rs. 100 in case of respondents 1 and 2.

Passey, J.

21. I agree.