
(1986) 07 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 434 of 1981

Zia-ud-Din & two ors

APPELLANT

Vs

State of Jammu & Kashmir & five ors.

RESPONDENT

Date of Decision : 03-07-1986

Acts Referred:

Jammu and Kashmir Evacuees (Administration of Property) Act, 2006 — Section 30A

Citation : (1986) JKLR 324 : (1987) KashLJ 748

Hon'ble Judges : M.A.Shah, J

Bench : Single Bench

Advocate : M.Abdul Qayoom, H.M.Sadiq, G.J.Balla, Advocates appearing for the Parties

Judgement

1. A piece of land comprising Survey Nos. 235, 238, 457, 239 and 745 measuring 10 kanals and 10 marlas situated at village Gagloosa, Tehsil

Kupwara was declared as Evacuee property under the provisions of the Evacuees' (Administration of Property) Act, 2006 (hereinafter called the

Act) belonging to one BahauudDin Shah, who has gone to Pakistan. The petitioners claimed themselves to be the cousin of the said Evacuee

BahaudDin Shah. By this writ petition under Section 103 of the State Constitution, the petitioners have prayed for a writ of certiorari for the

quashing of order passed by Revenue MinisterRespondent No. 2 in the present petition on October 5, 1981 and also for a writ of mandamus for

the directions to respondents 1 to 5 for the implementation of order passed by Respondent No. 3 regarding the land in question, by which the

same has been allotted in the name of the petitioners, Respondent No. 6 claims herself to be the wife of Evacuee BahaudDin Shah, in whose

favour the said land was allotted in pursuance of Government Order NO.

RA/611/50 dated 651950 being the nearest relation in possession of the land. On an application filed by the petitioners before TehsiJdar (Assistant Custodian). Kupwara on the allegation that Respondent No. 6 intends to dispose of the Evacuee land and also sublet the same, the allotment be cancelled. The Tehsildar (Assistant Custodian,) Kupwara vide his order dated 19101977 cancelled the allotment of Respondent No. 6 and allotted the land in favour of the petitioners.

2. Respondent No. 6 filed the revision against the said order before the Custodian General, who by his order dated 631978 forwarded the case to the Custodian Kashmir for disposal according to law, who on 2751978 dismissed the revision in default. The Custodian on an application filed by respondents on 29578, by his order dated 1981978 restored the revision. Against the said order, a revision was brought to the Custodian General assailing the restoration, The Custodian General by his order dated June 30, 1979 set aside the order of the Custodian allowing the revision petition of the petitioners and maintained the order passed by the Assistant Custodian on 19101977. Respondent No. 6 where upon filed the revision under Section 30A of the Act before the Revenue Minister incharge of the Evacuee property. Respondent No. 2 the Revenue Minister by his order dated October5, 1981 allowed the revision, set aside the orders passed by the CustodianGeneral as well as by Tehsiidar (Assistant Custodian) The petitioners being aggrieved by the order of the Revenue MinisterRespondent No. 2 have filed this writ petition before this court impleading the State of Jammu and Kashmir, Revenue Minister Incharge Evacuees Property, Custodian General, Custodian Kashmir, Assistant Custodian, Kupwara and Mst. Sara Bano as the party respondents praying for the relief as quoted above.

3 The petition is contested by the respondents, who have filed their counter affidavits.

4. At the time of hearing, learned counsel for the petitioners concentrated His arguments on the scope of Section 30rA of the Act alleging that the Revenue Minister has no jurisdiction to entertain a revision against order passed by the Custodian General in exercise of the powers conferred on him under Section 30 of the Act as under subSection (6) a finality is attached to the orders passed by the Custodian General or the Custodian, as

such the order is liable to be quashed. Elaborating his arguments, it has been pointed out that subsection (6) of Section 30 of the Act categorically

lays down as follows:

30 (6) Subject to the foregoing provisions of this section any order made by the Custodian General or the Custodian shall be final and shall not be

called in question in any court by way of appeal or revision or in any original suit application or execution proceeding",

5. Whereas on a plain reading of Section 30A of the Act, it is apparent that the Minister incharge of the Evacuee Property has been entrusted with

the powers of revision to call for the record of any proceeding, in which any Custodian or Custodian General has passed an order under the

provisions of the Act. Learned counsel for the respondents relying on the said provision in reply submitted that the arguments advanced by the

learned counsel for the petitioners are misconceived in law It is Submitted that the provisions of subsection [6] of Section 30 of the Act controls

the provisions of that Section only and not in any way create a bar G.I the exercise of powers by the Minister incharge under Section 30A of the

Act, which has been incorporated by way of amendment in 1978.

6. On hearing the rival arguments, I find force in the arguments advanced by the learned counsel for the respondents. On the principles of

interpretation of a particular statute, it is well settled that the interpretation put on a particular provision should be such which should make the

provision workable and not in such a manner so as to make it redundant. Under the entire scheme of the Act the legislature intended to vest the

power of revision in the Minister Incharge against the orders passed by the Custodian General, as the case may be under the provisions of this Act.

The word 'provision of this Act' in my opinion is wide enough to cover any order passed either by Custodian or Custodian General whether in

revision or in an appeal as provided by the Act. The provisions of subsection (6) of Section 30 of the Act attaches finality to the orders passed

under the foregoing provisions of subsection (1) to subsection (5) of the Act, as the import of the words ""this Section"" indicates. It does not create

any bar against the entertainability of the revisions under Section 30A of the Act. To infer such a bar under this Section will amount to absurdity

and will make the provision unworkable. It has been held by a Full Bench

decision of this Court in A. I. R. 1975 J&K 83:

Where the language of the provisions of a statute is absolutely clear and unambiguous, it is not open to interpret it by importing into it something

which is not there or by doing violence to the language of the section merely because certain anomalous results might follow or because of the

interpretation may lead to complicated consequences".

It necessarily follows that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather

than any notions which be intended by the court as to what is just or expedient. By reading of Section 30A of the Act as whole and giving their

natural meaning to the provisions contained therein, there is no doubt left that the legislature intended to provide the powers of revision to the

Minister against any order passed by the Custodian or Custodian General under the Act. Thus no restricted meaning can be inferred as argued by

the learned counsel for the petitioners. I find no substance in the arguments advanced by the learned counsel for the petitioners that the revisions

before the Minister was not maintainable. To hold that view will mean doing violence to the provision.

7. Learned counsel for the respondents on the scope of Section 30A of the Act, which is of wider import and extent than the limitation imposed by

Section 115 of the Code of Civil Procedure place their reliance on a Full Bench authority of this Court reported in 1972 J&K L. R. 41 (Baboo

Ram Vs. The Financial Commissioner & Ors.) Tested on the ratio of the above said authority, I find that respondent No. 2 acted within his

jurisdiction by examining the case on merits and the conclusions arrived at by him cannot be said to be beyond the scope of the power conferred

on it under the provisions of Section 30A of the Act. In so far as the allegation of the respondents regarding condonation of delay in filing the

revision before the Minister Incharge Respondent No. 2 for the reasons recorded regarding the non-supply of the copy of the impugned order

despite recorded requests by Respondent No. 6, I find force in the arguments advanced read with Rule 27 of the relevant Rules under the Act.

Respondent No. 2 was right in entertaining the revision and holding "the same as within time. Nothing substantial has been shown to contradict the

said findings. However, while maintaining the order impugned on merits as well

as on the ground that Section 30A of the Act empowers the Government to entertain the revision against the order of the Custodian General, I find that Respondent No. 2 while dealing with the matter in controversy failed to take into account the provisions of Rule 14 regarding cancellation on variation of the lease and allotment Clause (vi) of SubRule (3) of the said rules provides:

(vi) The allottee has sublet or permitted any other person to occupy the property allotted or leased out to him and also subclause (x) of the same subrule (x) the allottee is using the property for a purpose other than the one for which it was allotted or leased or keeping the property in disuse.

The above said provisions can be reported to at any stage by the Custodian and on a proof of the said breach, the Custodian is competent to cancel the lease or allotment, as the case may be after following the procedure prescribed Respondent No 2 while confirming the findings on merits has completely ignored the above said provisions which are subject of enquiry by the competent authority, for which no limitation is prescribed. If Respondent No. 6 is doing any violation of the conditions imposed while granting the lease by transferring the property or by subletting the same, the field will remain open for the Custodian to enquire into the matter to safeguard the Evacuee Property in accordance with the provisions of the Act and the rules framed thereunder. Thus I find that the petitioners are entitled to get the relief only to the extent without, getting any vested right for allotment in their favour that they shall be at liberty to agitate the breach, if any, before the competent authority, if the same continues without any impediment of the findings arrived at by the Respondent No. 2.

8. For the reasons stated herein above, the petition partly succeeds only to the extent of the scope of rule 14 as held in the preceding paragraph. The petition, therefore, stands disposed of accordingly with the above said findings, However, under the circumstances, parties are directed to bear their own costs. It also disposes of C. M. P. No. 865 of 1981' and C M. P. No. 437 of 1985.