

## CIVIL WRIT.

Before Bhandari C. J. and Khosla, J.

SANTA SINGH AND OTHERS.—Petitioners

versus

THE FINANCIAL COMMISSIONER, RELIEF AND  
REHABILITATION, PUNJAB, ETC.,—Respondents

Civil Writ No. 331 of 1952.

1954

July, 20th

*Administration of Evacuee Property Act (XXXI of 1950)—Section 26—Orders passed by the Custodian and Additional Custodian on similar petitions made to them by an allottee against cancellation of his allotment—which order to prevail—Administration of Evacuee Property (Central) Rules, 1950—Rule 14 (6)—Central Government Notification, dated 22nd July, 1952—Proviso to Rule 14 (6) added on 13th February, 1953—Instructions issued by the Central Government to State Governments on the 14th May, 1953—Effect and scope of—Rule 31(5)—Ordinarily—Meaning of—Discretion of the Custodian—Whether can be interfered with in a writ petition.*

B.S. presented two applications under section 26 of the Administration of Evacuee Property Act, 1950. one to the Additional Custodian on the 19th May, 1951, and the

other to the Custodian on the 17th October, 1951. The Custodian accepted the petition of B.S. on 23rd January, 1952 without issuing notice to the opposite party. The opposite party filed a writ petition in the High Court which was accepted and the Custodian was directed to pass the order in the presence of the parties. The Custodian gave notice to the parties and after hearing them affirmed his order of the 23rd January 1952, on the 16th October, 1952. In the meantime the Additional Custodian dismissed the petition of B.S. on the 21st August, 1952. The question arose which of the orders was to prevail.

*Held*, that when the Custodian passed an *ex parte* order in favour of the respondent on the 23rd January, 1952, he took action under subsection (1) of section 26 even though he did not comply with the requirements of law that no order should be passed without affording such person a reasonable opportunity of being heard. Since the Custodian took action on the 23rd January, 1952, and the Additional Custodian did not pass his order till 21st August, 1952, the orders of the Custodian passed on the 23rd January, 1952, and on the 16th October, 1952, must take precedence over the order of Additional Custodian.

*Held*, that in view of the proviso to sub-rule (6) of rule 14 of the Administration of Evacuee Property Rules, 1950, it was within the competence of the Custodian to cancel the allotment on the 16th October 1952.

*Held*, that the communication issued by the Government of India on the 14th May, 1953, to the State Government did not acquire any statutory force but merely enunciated a certain policy on the subject of amending sub-rule (6) of rule 14 pending the advice of the Law Ministry, but apparently the policy was not given effect to and no rule framed in pursuance of the decision.

*Held*, that although rule 31 (5) of the Administration of Evacuee Property Rules declares that a "petition for revision, when made to the Custodian, shall ordinarily be filed within thirty days of the order sought to be revised", the use of the expression 'ordinarily' appears to indicate that in special circumstances it may be filed after the

expiry of this period. It is open to the Custodian to entertain a revision petition after the expiry of thirty days as he has a discretion in the matter and the exercise of such discretion cannot be interfered with by the High Court under the provisions of Article 226.

*Raleigh Investment Co., Ltd. v. The Governor-General in Council* (1), *Ebrahim Aboobakar v. Custodian General of Evacuee Property* (2), *Reg v. Income-tax Commissioner* (3), and *Duni Chand Hakim v. Deputy Commissioner, Karnal* (4), relied on.

*Petition under Article 226 of the Constitution of India, praying that—*

- (i) *A writ of certiorari may be issued quashing the order of respondent No. (1), dated 16th October, 1952, by which he cancelled the land in the name of the petitioners' father S. Gurdit Singh from village Andlo, district Ludhiana;*
- (ii) *A writ of prohibition may be issued restraining the respondents from dispossessing the petitioners of the land allotted to them in Village Andlo or in any other way interfering with their possession thereof. Any other direction or order may be given which may be expedient in the circumstances of the case.*
- (iii) *Pending the decision of this case interim stay of further proceedings for dispossession of the petitioners out of the lands in question may be issued.*

**H. S. GUJRAL, for Petitioners.**

**S. M. SIKRI, Advocate-General, A. M. SURI and B. S. CHAWLA, for Respondents.**

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- (1) A.I.R. 1947 P.C. 78
  - (2) A.I.R. 1952 S.C. 319
  - (3) (1888) 21 Q.B.D. 312
  - (4) A.I.R. 1954 S.C. 150

## ORDER

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BHANDARI, C. J. The only point for determination in the present case is whether the Custodian of Evacuee Property was justified in cancelling a certain order of allotment.

The petitioners in the present case are the four sons of S. Gurdit Singh while the respondents are the Financial Commissioner, Relief and Rehabilitation, and one Bakhshish Singh, a displaced person from West Punjab. Both Gurdit Singh and Bakhshish Singh were temporary allottees of land in village Andlo of the Ludhiana District. At the time of quasi-permanent allotment Bakhshish Singh being a smaller allottee was left in the village while Gurdit Singh being the biggest allottee was ousted and was allotted land in village Bassani of the same district. Gurdit Singh requested the Additional Deputy Commissioner, Rehabilitation, to review the order transferring his allotment from Andlo to Bassani and prayed that his allotment in the former village be restored. The Additional Deputy Commissioner acceded to this request and on the 24th January, 1950, he allotted a plot of land in village Andlo to Gurdit Singh along with the other members of his family.

But the allotment of land to Gurdit Singh in village Andlo made it necessary for the authorities to dislodge Bakhshish Singh, respondent and allot land to him in another village. The respondent was dissatisfied with the order of the Additional Deputy Commissioner and sought the intervention of the Authorised Deputy Custodian on the 26th July, 1950. The latter rejected his application on the 10th April, 1950. Bakhshish Singh accordingly presented two applications

under section 26 of the Administration of Evacuee Property Act, 1950, one to the Additional Custodian on the 19th May, 1951 and the other to the Custodian on the 17th October, 1951. The application presented to the Custodian came up for a hearing on the 23rd January, 1952, in the absence of Gurdit Singh. The Custodian passed an *ex parte* order in favour of Bakshish Singh and cancelled the allotment in favour of Gurdit Singh (who had died a short time before) without issuing notice to his sons, the petitioners. The petitioners accordingly applied to this Court for the issue of an appropriate writ and on the 24th July 1952 a Division Bench of this Court set aside the Custodian's order of the 23rd January, 1952 on the ground that the said order had contravened the mandatory provisions of section 26 as it was passed without affording the petitioners reasonable opportunity of being heard. The Custodian was directed to comply with the provisions of law and the petitioners were directed to appear before him on a certain date. The Custodian heard the parties on the 16th October, 1952, cancelled the order of allotment in favour of the petitioners and affirmed his order of the 23rd January, 1952. The petitioners are dissatisfied with this order and have presented a fresh application under Article 226 of the Constitution for the issue of an appropriate writ.

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The principal point for decision, which has been somewhat obscured by the raising of a number of subsidiary issues is whether the Custodian's order, dated the 16th October, 1952, cancelling the petitioner's allotment can be regarded as valid in the eye of law. Its validity has been challenged on three grounds. First, that it contravenes the provisions of section 26, secondly, that it was passed in contravention of the provisions of Rule 14(6) of the Administration of

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Evacuee Property (Central) Rules, 1950, and thirdly that it was passed in contravention of the instructions issued by the Central Government on the 14th May, 1953.

The first objection can be easily disposed of. Subsection (1) of section 26 of the Act of 1950, confers concurrent revisional powers on the Custodian, Additional Custodian and Authorised Deputy Custodian. These powers have been subjected to two conditions, namely (1) that the Custodian, Additional Custodian or Authorised Deputy Custodian shall not pass an order under this subsection revising or modifying any order prejudicial to any person without giving such person a reasonable opportunity of being heard; and (2) that if any one of the officers mentioned above takes action under this subsection, it shall not be competent for any other officer to do so.

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Mr. Gujral contends that as the Additional Custodian dismissed Bakhshish Singh's petition on the 21st August, 1952, he must be deemed to have taken action under subsection (1) of section 26 and consequently that the Custodian had no power to take action under the same subsection on the 16th October, 1952. There appears to be a certain amount of force in this contention, but it must be remembered that the first occasion on which the Custodian took action on the respondent's petition was not on the 16th October, 1952, but on the 23rd January, 1952. On this date he heard the respondent in the absence of the petitioners and made an *ex parte* order in favour of the respondent. Indeed it was in view of this *ex parte* order that this Court was compelled reluctantly to set aside the order of the Custodian on the 24th July, 1952 and to ask him to make an order in the presence of the parties. It will thus

be seen that the first officer to take action under section 26 was the Custodian who passed an order on the 23rd January, 1952 and not the Additional Custodian who passed an order on the 21st August, 1952. As the Custodian had taken action on the 23rd January, 1952, and as in view of the provisions of section 26 it was not competent for any other officer to do so, it is obvious that the order passed by the Additional Custodian on the 21st August, 1952, was void and of no effect. Mr. Gujral contends that as the Custodian's order, dated the 23rd January, 1952, was passed in the absence of the petitioners and in contravention of the provisions of the first proviso to subsection (1) of section 26 this order cannot be deemed to be an order passed under section 26. This contention appears to me to be devoid of force. In *Raleigh Investment Co. Ltd. v. The Governor-General in Council* (1), their Lordships of the Privy Council who were construing the expression "assessment made under the Act" appearing in section 67 of the Income-tax Act, 1922, observed as follows :—

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"Under the Act the Income-tax Officer is charged with the duty of assessing the total income of the assessee. The obvious meaning, and in their Lordships' opinion the correct meaning, of the phrase 'assessment made under the Act' is an assessment finding its origin in an activity of the assessing officer acting as such. The circumstance that the assessing officer has taken into account an *ultra vires* provision of the Act is in this view immaterial in determining whether the assessment is 'made under the Act'. The phrase

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describes the provenance of the assess-  
ment: it does not relate to its accu-  
racy in point of law. The use of the  
machinery provided by the Act, not the  
result of that use, is the test."

I entertain no doubt whatever that when the  
Custodian passed an *ex parte* order in favour of  
the respondent on the 23rd January, 1952, he took  
action under subsection (1) of section 26 even  
though he did not comply with the requirements  
of law that no order should be passed against a  
person without affording such person a reason-  
able opportunity of being heard. I would accord-  
ingly hold that as the Custodian took action on the  
23rd January, 1952, and as the Additional Cus-  
todian did not pass his order till the 21st August,  
1952, the orders of the Custodian passed on the  
23rd January, 1952, and on the 16th October, 1952,  
must take precedence over the order of the Addi-  
tional Custodian.

The second and perhaps the most important of  
the three objections is that the order of the  
Custodian, dated the 16th October, 1952, cannot  
be implemented (a) because the power to cancel  
allotments was taken away by the Central  
Government by means of a notification, dated the  
22nd July, 1952, and (b) because on the 14th  
May 1953, the Central Government issued a direc-  
tion that the orders passed before the 22nd July,  
1952 and not implemented till the 6th May, 1953,  
shall be kept in abeyance and were not to be im-  
plemented after that date. In order to appreci-  
ate these objections it would be desirable to set  
out the provisions of law which are applicable to  
this case. In exercise of the powers conferred by  
section 56 (2) (1) the Central Government have  
promulgated a set of rules known as "The Admin-  
istration of Evacuee Property (Central) Rules,



1950." Rule 14 of the said rules sets out the circumstances in which leases and allotments may be cancelled or varied. On the 22nd July, 1952, the Central Government amended this rule by the addition of a new sub-rule which is in the following terms :—

" (6) Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in each of the States of Punjab and Patiala and East Punjab States Union shall not exercise the power of cancelling any allotment of rural evacuee property on a quasi permanent basis, or varying the terms of any such allotment, except in the following circumstances :—"

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Then follow three clauses which are not relevant to the decision of this case.

On the 13th February, 1953, the Central Government added the following proviso to sub-rule (6), viz :—

" Provided further that nothing in this sub-rule shall apply to any application for revision made under section 26 of the Act within the prescribed time against an order passed by a lower authority on or before the 22nd July, 1952."

On the 14th May, 1953, the Government of India addressed a communication to the Punjab Government concerning the notification of the 22nd July, 1952, according to which orders passed after a specified date were to be implemented only in case they fell under the category of undeserved and

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excessive allotments. They observed that on re-consideration they had taken the following decision :--

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“(i) All orders passed before 22nd July, 1952, but not implemented until 16th May, 1953, shall be kept in abeyance except in the following cases :—

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(a) Undeserved allotment ;

(b) excessive allotment ;

(c) allotment cancelled under section 8 of the East Punjab Refugees (Registration of Land Claims) Act, 1948.

(ii) No other order passed prior to 22nd July, 1952 and not implemented before 6th May, 1953, shall hereafter be implemented until a direction to the contrary is issued by the Central Government.”

In paragraph No. 3 of this communication it was stated that the Ministry of Law was being consulted with a view to making necessary amendments in the relevant rules to give effect to the decision mentioned above.

A In support of his contention that the orders of the 16th October, 1952, cannot be implemented Mr. Gujral has placed three submissions before us. It is stated in the first place that the administration of Evacuee Property Rules framed by the Central Government are repugnant to the provisions of section 12 of the Administration of Evacuee Property Act inasmuch as they tend to fetter the discretion which has been conferred upon the Custodian by section 12 to cancel any allotment or to terminate any lease or to amend

the terms of any lease or agreement under which any evacuee property is held or occupied by a person. A similar objection was raised in Civil writs Nos. 653 to 656 of 1950, before a Division Bench of this Court consisting of Weston, C.J., and Falshaw, J., but was rejected. Secondly, it is contended that the Custodian had no power to cancel the allotment on the 16th October, 1952, as the power of cancellation was taken away by a notification issued by the Central Government on the 22nd July, 1952. In putting forward this argument Mr. Gujral appears to have ignored the proviso to sub-rule (6) of rule 14 which was added by the Central Government on the 13th February, 1953 and which is in the following terms :—

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“ Provided further that *nothing in this sub-rule shall apply to any application for revision, made under section 26 of the Act, within the prescribed time, against an order passed by a lower authority on or before the 22nd July, 1952.*”

Thirdly, it is argued that as the revision petition of Bakhshish Singh, respondent, was presented on the 17th October, 1951, when the order against which it was presented was dated the 10th April, 1951, it was hopelessly barred by time. It is true that rule 31 (5) of the Administration of Evacuee Property Rules declares that a “petition for revision when made to the Custodian shall ordinarily be filed within thirty days of the order sought to be revised” but the use of the expression ‘ordinarily’ appears to indicate that in special circumstances it may be filed after the expiry of thirty days. The Custodian in the present case entertained it after the expiry of thirty days and it seems to me that he was perfectly within his rights in doing so. He had a power to exercise his discretion in the matter and he exercised it in

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 v. *Ebrahim Aboobakar v. Custodian General of Evacuee Property* (1), their Lordships of the Supreme Court observed as follows :—

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“Whether an appeal is competent, whether a party has *locus standi* to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate Court so constituted.”

Relying on certain observations of Lord Esher M. R. in *Reg v. Income-tax Commissioner* (2), their Lordships of the Supreme Court held that even if the appellate Court decides these questions wrongly a writ cannot be issued against it for quashing the order. I am clearly of the opinion that in view of the proviso to sub-rule (6) of rule 14 it was within the competence of the Custodian to cancel the allotment on the 16th October, 1952.

The objection taken by the petitioners to the effect that the communication issued by the Government of India on the 14th May, 1953, has been vested with statutory authority and must be complied with is equally untenable. This communication came up for consideration before their Lordships of the Supreme Court in *Duni-chand Hakim v. Deputy Commissioner, Karnal* (3), and following observations appear to paragraph 9 :—

“This correspondence merely shows that the Central Government enunciated a certain policy on the subject of amending sub-rule (6) of rule 14, pending the

(1) A.I.R. 1952 S.C. 319  
 (2) (1888) 2 Q.B.D. 313  
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advice of the Law Ministry, but apparently the policy was not given effect to and no rule was framed in pursuance of the decision. It is clear, therefore, that the Central Government merely issued interim instructions pending the amendment of the rule but no rule was framed to give effect to those instructions which in consequence did not acquire any statutory force. Mere stay of implementation of the orders contained in the statement of policy did not wipe out the effect of the cancellation."

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For these reasons I am of the opinion that the order of the Custodian, dated the 16th October, 1952, cannot be assailed on any of the grounds agitated before us in this petition. The petition must, therefore, be dismissed with costs and the order of stay vacated.

KHOSLA, J. I agree.