

Rameshwar Nath Gupta
 v.
 Shrimati Kanta Devi,
 etc.

 Bhandari, C. J.

that the respondent alone can be required to pay the expenses of the petitioner and not vice versa. This contention is, in my opinion, wholly devoid of force. The Legislature has stated quite clearly that the Court may "on the application of the wife or the husband order the respondent to pay to the petitioner the expenses of the proceeding". The obvious meaning of this provision of law is that if the wife makes an application under section 24 of the Act of 1955, the Court is at liberty to direct the husband to pay the expenses of the proceeding; and if the husband makes an application under the said section the Court is at liberty to direct the wife to pay such expenses. The expressions 'petitioner' and 'respondent' appearing in this section refer clearly to the petitioner and the respondent in the application under section 24. Any other construction would lead to strange and anomalous results. The husband has presented a petition for the dissolution of his marriage with his wife and the wife has made an application under section 24 that she should be allowed reasonable expenses for defending herself. It is only reasonable that the husband who is respondent to the application under section 24 and who is a man of means should pay her the said expenses. I would uphold the order of the learned District Judge and dismiss the petition with costs. Ordered accordingly.

CIVIL WRIT

Before Kapur and Bishan Narain, J.

BAL MUKAND AND OTHERS,—*Petitioners*

v.

THE PUNJAB STATE AND OTHERS,—*Respondents*

Civil Writ No. 387 of 1955.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Whether takes away the powers

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of the Custodian or the Custodian-General under the Administration of Evacuee Property Act—Orders passed by the Custodian or Custodian-General after the coming into force of the Displaced Persons (Compensation and Rehabilitation) Act—Whether with Jurisdiction.

Held, that the coming into force of the Displaced Persons (Compensation and Rehabilitation) Act has taken away the powers of the Custodian-General and now vest in another authority and there is no provision for continuing the proceedings which had been taken under the Administration of Evacuee Property Act and, therefore, an order passed by the Custodian-General is without jurisdiction.

(Case referred to a Division Bench by Hon'ble Mr. Justice Bishan Narain, vide order, dated the 23rd March, 1956). Petition under article 226 of the Constitution of India, praying for a writ of certiorari or any other writ for quashing the order, dated the 13th September, 1955, of respondent No. 2 allotting house No. 26, in village abadi to respondent No. 4 and restraining the respondent No. 3 from ejecting the petitioners from the house till the decision of this petition.

J. N. SETH, for Petitioners.

S. M. SIKRI, Advocate-General and H. L. SARIN, for Respondents.

ORDER

Bishan Narain, J.—One of the points raised Bishan Narain, J. in this petition is that the Deputy Custodian-General could not pass any order on the revision pending before him after 24th March, 1955, in view of S. 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. This point is being raised very frequently in this Court and I think it will be convenient if it is decided by a larger Bench. Let the case be placed before Hon'ble Chief Justice for orders.

JUDGMENT

Kapur, J.—This is an application made under Kapur, J. article 226 of the Constitution of India by three

Bal Mukand brothers, Bal Mukand, Rattan Lal and Raj Kumar
 and others minor, sons of Pt. Hari Ram, for a writ of
v. certiorari to quash an order made by Mr. Tara
 The Punjab Chand Aggarwal, Deputy Custodian-General,
 State dated the 13th September, 1955. The matter was
 and others originally placed before my learned brother, Bishan
 Kapur, J. Narain, J., but considering the importance of the
 case he referred it to a Division Bench.

The dispute relates to House No. 26 in village Karyan Pehlwan in the tahsil and district of Ferozepore. It appears that by a single sanad land measuring 83 standard acres and $13\frac{1}{4}$ units was allotted in the names of the petitioners, although for the purpose of calculating the area to be allotted to each one of the brothers the cut was made as if they were separate. On the 21st April, 1951, the house in dispute was allotted to the three brothers as the biggest allottees. Bahadur Chand, opposite party No. 4, took an appeal to the Authorised Deputy Custodian but the allotment of the house in favour of the petitioners was maintained by order dated the 21st February, 1952. On the 3rd November, 1953 the Deputy Custodian-General remanded the case to the Authorised Deputy Custodian with a direction for re-allotment as claimed, but on the 2nd December, 1954, the Authorised Deputy Custodian again held that the three brothers were entitled to the house, being the biggest allottees. The Deputy Custodian-General by his order of the 13th September, 1955, considered that each one of the brothers was a separate allottee and therefore, the brothers were not bigger allottees than Bahadur Chand and therefore directed that the house should be allotted to Bahadur Chand. The three brothers have come to this Court and their plea is that because of the enactment of the

Displaced Persons (Compensation and Rehabilitation) Act of 1954 (Act No. 44 of 1954) the Deputy Custodian-General at the date of the order, i.e., 13th September, 1955, had become *functus officio qua* the matters which fell under the Administration of Evacuee Property Act as the property had vested in the Union under the Displaced Persons (Compensation and Rehabilitation) Act and, therefore, the order was without jurisdiction.

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In order to determine the question which has been raised, it is necessary to examine the scheme of the Displaced Persons (Compensation and Rehabilitation) Act and the rule and orders made thereunder. Under section 12 of this Act the Central Government has been given the power to acquire any evacuee property for rehabilitation of displaced persons. Section 12(1) gives this power in the following words:—

“12(1). If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.”

Under sub-section (2) of section 12 after a notification has been made in regard to any particular property, the right, title and interest of the

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evacuee are extinguished and the evacuee property vests absolutely in the Central Government free from all encumbrances. By sub-section (4) of this section all evacuee property so acquired forms part of the compensation pool.

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Section 13 makes provision for the payment of compensation to an evacuee in respect of his property acquired under section 12. By section 14 a compensation pool is constituted for payment of compensation to displaced persons. This compensation pool vests in the Central Government under sub-section (2) of section 14.

Section 16 makes provision for the management of the compensation pool and sub-section (2) of this section provides for the appointment of officers to be called managing officers or for a corporation to be called a managing corporation, which shall be a body corporate having perpetual succession. In section 17 are given the functions and duties of managing officers and managing corporations.

Under section 19 the managing officer or managing corporation has the power to vary or cancel leases or allotment of any property acquired under this Act and section 20 gives the power to a managing officer or a managing corporation, as the case may be, to transfer property out of the compensation pool and this may be done by sale, by lease, by allotment and in the case of shares of an evacuee in a company by transfer of such shares and lastly in such other manner as may be prescribed.

Under section 21 any sum due to the Custodian in respect of any evacuee property acquired under this Act is recoverable in the same manner as arrears of land revenue.

Powers of officers appointed under this Act are given in section 26 of the Act and section 27 gives finality to the orders made under the Act.

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Chapter V of the Act deals with miscellaneous matters. Under section 29 special protection from ejection is given to certain classes of persons and under section 36 of this Act jurisdiction of civil Courts is barred in respect of certain matters which under the Act can be determined by the Central Government or any officer or authority appointed under the Act. Under section 40 power is given to the Central Government to make rules.

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Under section 12 of this Act notification has been issued in regard to property which the Central Government has decided to acquire and in the schedule attached thereto are included all rural houses in village abadis in the State of Punjab and the house in dispute falls under this category. This notification is S. R. O. 698, dated the 24th March, 1955, published in the Gazette of the 2nd April, 1955. It is printed in 1955 Lahore Law Times in Part VI at page 115.

Rules have been made under various sections of this Act. Under section 40 rules were made which are given in S. R. O. 1363, dated the 21st May, 1955, published in Part VI of 1955 Lahore Law Times at page 47. Powers of managing officers are given in Chapter 17 of the rules. Under section 29 which deals with special protection from ejection, a notification was made on the 27th September, 1955. This notification is S. R. O. 2219, dated the 27th September, 1955.

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It is contended that as a result of the Displaced Persons (Compensation and Rehabilitation) Act the powers of the Custodian have come to an end and therefore the Deputy Custodian-General on the date when he made the order had not the power to make it. It is, therefore, necessary to refer to certain corresponding powers in the Administration of Evacuee Property Act. The powers given in section 15 of the Displaced Persons (Compensation and Rehabilitation) Act correspond to powers given in section 17 of the Administration of Evacuee Property Act. The powers under section 19 of the Displaced Persons (Compensation and Rehabilitation) Act are similar to powers given in section 12 of the Administration of Evacuee Property Act which deals with powers to vary or cancel leases or allotments. The powers under section 12 of the Administration of Evacuee Property Act are now vested under section 19 of the Displaced Persons Compensation Act in the managing officers or the managing corporations. It appears, therefore, that the consequences of the enactment of the Displaced Persons Compensation Act and the notifications thereunder made the power of the Custodian to be no longer in force. Under section 10 of the Displaced Persons Compensation Act the rights of a person, to whom property has been allotted under certain notifications and which forms part of the compensation pool and, therefore, vests in the Central Government, continue to be the same on which he held the property immediately before the date of the acquisition, but the persons who can now deal with the property are the managing officers or the corporations and the power to cancel or vary leases and allotments vests in the managing officers or the corporations and is no longer in the Custodian. Similarly all amounts which were due to the Custodian in res-

pect of any evacuee property prior to the date of the acquisition under the Displaced Persons Compensation Act vest in the Central Government. In my view the coming into force of the Displaced Persons Compensation Act has taken away the powers of the Custodian-General and now vest in another authority and there is no provision for continuing the proceedings which had been taken under the Administration of Evacuee Property Act and therefore any order passed by the Custodian-General is without jurisdiction.

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Reference is made to section 6(e) of the General Clauses Act, but in my opinion the effect of the various sections of the Displaced Persons Compensation Act does show that it is not covered by section 6 of the General Clauses Act because a different intention appears. The position of evacuee property after the passing of the Displaced Persons Compensation Act is that it vests in the Central Government and the Central Government will under the Act appoint various officers for the management and carrying out the various duties which are now required to be carried out under the Act and one of the duties is varying or cancellation of allotments. It cannot be said that this power in spite of the fact that the property vests in the Central Government continues to vest in the Custodian. I would hold that the Deputy Custodian-General on the date he passed the order against the present petitioners had no jurisdiction to pass the order and it being without jurisdiction, I would quash it. As the case is not free from difficulty, the parties will bear their own costs in this Court.

Bishan Narain, J.—I agree.

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J.