In our opinion the judgment of the High Court was erroneous on both questions which were referred to it and they should both have been decided in favour of the appellant.

The emoluments received by Sheel Chandra were in the nature of salary and therefore assessable under s. 7 of the Income Tax Act and not under s. 10 of the Act as profit and gains of business and the salary was the income of the individual, i.e., Sheel Chandra and not the income of the Hindu undivided family.

We therefore allow this appeal and set aside the judgment and order of the High Court. The appellant will have its costs in this Court as well as in the High Court.

B.R.T.

LETTERS PATENT APPEAL.

Before Bishan Narain and I. D. Dua, JJ.

WADDU MAL GIAN CHAND MASAND—*Appellant.*

versus

CANTONMENT BOARD, JULLUNDUR,—*Respondent*

Letter Patent No. 429 of 1958

1960

April 28th

Code of Civil Procedure (Act V of 1908)—Section 9—Suit for a permanent injunction against the cantonment Board restraining it from recovering the octroi tax on the ground that its demand was unauthorised, contrary to law and ultra vires *the provisions of the Cantonments Act—Whether entertainable by a civil court—Cantonments Act (II of 1924)—Sections 84 to 88—Effect of—Specific Relief Act (I of 1877)—Sections 54 and 55—Permanent injunction in such a suit—Whether should be granted.*

Held, that the finality under the provisions of sections 84 to 88 of the Cantonments Act, 1924, attaches only to the assessments made under the Act and, if the assessment is not under the Act, then obviously these provisions would not operate as a bar to a citizen coming to a civil court to obtain relief to which he may be found otherwise entitled. Where it is found that the octroi duty was not determined in accordance with the provisions of the Cantonments Act and bye-law No. 15 of the Octroi Bye-laws and even with respect to its recovery the provisions of sections 90, 91, and 92 were not complied with, the conclusion is irresistible that the imposition in question and its recovery are both unauthorised and in violation of or at least not in accordance with the essential statutory provisions. In such circumstances a suit for a permanent injunction against the Cantonment Board restraining it from recovering the amount of octroi tax from the plaintiff is clearly entertainable by a civil court. The importance of jeaously scrutinising the jurisdiction conferred on executive or administrative bodies and giving no wider interpretation than is necessary to any limitation of power of the civil court cannot be minimised.

Held, that where imposition of a tax is unauthorised and not in accordance with the statutory provisions permitting it, the citizen is fully entitled to relief by way of injunction from the Courts and this relief cannot be denied to him on the ground that he did not co-operate with the taxing authority. It is one of the basic principles in our system of Government that a subject should not be taxed unless the language of the statute clearly and indubitably makes him liable to be taxed and the liability is determined in accordance with the essential statutory provisions. The plaintiff, in the present case, is entitled to the injunction prayed for in view of the legal position and the facts found with regard to imposition and recovery of the octroi tax demanded from him.

Appeal under Clause 10 of the Letters Patent from the judgment and decree of Hon'ble Mr. Justice A. N. Grover, dated the 9th May, 1958, passed in R.S.A., No. 262 of 1953, affirming that of Shri Sham Lal, Senior Sub-Judge, with enhanced appellate powers, Jullundur, dated the 20th March, 1953, who reversed that of Shri Inder Jit Pipat, Sub-Judge IV Class, Jullundur, dated the 27th February,

1952 *(whereby the plaintiff's suit was decreed with costs) and dismsissing the plaintiff's suit with costs througout.*

S. D. BAHRI AND AMRIT LAL BAHRI, ADVOCATES for the Appellant.

N. N. GOSWAMI AND RAJ KUMAR AGGARWAL, ADVOCATES, for the Respondent.

JUDGMENT

DUA, J.—The only question, which falls for decision in this case is whether or not the civil courts have jurisdiction to entertain and adjudicate upon the present suit. Dua, J.

The plaintiff instituted the present suit for a permanent injunction against the defendant, Cantonment Board Jullundur Cantonment, through the Executive Officer, restraining it from recovering the sum of Rs. 8,156-4-0, as octroi tax. It is stated in the plaint that the defendant had filed a complaint against the plaintiff under section 82 of the Cantonments Act, sometime in March, 1949, on the ground that on 4th of December, 1948 the plaintiff had imported twenty-five trucks and five motor-cars within the limits of Jullundur Cantonment without paying octroi duty and that the plaintiff was convicted by the Magistrate and his appeal was dismissed by the Sessions Judge. It is then averred that the defendant had also applied to the Cantonment Magistrate for the recovery of Rs. 8,156-4-0 and that the Magistrate concerned had issued a warrant of arrest against the plaintiff. This demand for the levy of Rs. 8,156-4-0 is alleged by the plaintiff to be unauthorised, contrary to law and *ultra vires* the provisions of the Cantonments Act; it is thus said to be irrecoverable. It is expressly asserted that the amount of duty payable was never legally determined to be Rs. 8,156-4-0.

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On the merits also the plaintiff denied having imported within the limits of Jullundur Cantonment twenty-five trucks and five motor-cars as represented by the defendant. On the contrary it is asserted that these twenty-nine vehicles were brought direct to Jullundur City, where terminal tax was duly paid. It is further pleaded that these vehicles had been brought from Bombay for the purposes of sale and that having actually been sold, even if some octroi duty was payable it has become refundable under the law. Cause of action was stated to have have accrued on 2nd of August, 1950, when the plaintiff came to know of the warrant for realizaion.

This claim was resisted on behalf of the Cantonment Board and the pleadings gave rise to the following issues:—

(1) Whether the plaintiff brought 25 trucks and 5 motor-cars in the area of Cantonment Board ?

(2) If so, to what tax is the defendant entitled ?

(3) Whether the demand for the tax in dispute is ultra *vires* and illegal ?

(4) Whether the suit is not maintainable in this Court ?

(5) Whether a notice under the law is necessary ?

(6) If so, what is the effect of the non-service of the notice ?

(7) Whether the suit is time-barred ?

The trial Court decreed the plaintiff's suit with costs and granted the injunction prayed for. Under issue No. 1 it was found that only eight trucks were brought in cantonment area. On issue No. 2, after noticing the evidence of D.W. 2

that the octroi tax was assessed after the order by Shri S. N. Bhanot, Magistrate had been passed on 2nd of August, 1949, it was held that even though no action had been taken by the defendant under section 82(2) and (3) of the Cantonments Act, the only course left open to it was to proceed under section 90, which course it did not adopt. In the absence of the bill or notice under the Cantonments Act, the defendant could not be presumed to be entitled to any tax in respect of the vehicles brought within the Contonment Board. On this finding the decision on issue No. 2 went against the defendant. In view of the decision on issue No. 2 the demand and the warrant in question were also held by the trial Court to be *ultra vires*, illegal and beyond the scope of the authority of the defendant; the provisions of sections 90 and 91 of the Cantonments Act, were held to have been contravened. In support of this conclusion reliance was placed by the trial Court on the decisions reported as *Municipal Committee, Montgomery* v. *Master Sant Singh* (1), and *Lachhman Singh* v. *Natha Singh, etc.*, (2). Issue No. 4 also, in view of the decisions under issues Nos. 2 and 3, went in favour of the plaintiff and against the defendant. In support of this conclusion also the Court relied on the two Full Bench decisions of the Lahore High Court mentioned above and on *Qumar-ud Din, etc.*, v. *Kishan Das* (3). Issue No. 5 was not pressed by the defendant, because of the provisions of section 273(4) of the Cantonments Act. Issue No. 6 was similarly not pressed as it did not arise in view of the finding on issue No. 5. Issue No. 7 relating to limitation was also not pressed by the defendant with the result that this issue was also

(1) A. I. R. 1940 Lah. 377 (F. B.).
(2) A. I. R. 1940 Lah. 401 (F. B.).
(3) A. I. R. 1945 Lah. 223 (F. B.).

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decided against the defendant. As already observed, on the findings mentioned above the plaintiff's suit was decreed.

On appeal by the Cantonment Board the learned Senior Subordinate Judge reversed the judgment and decree of the Court of first instance and dismissed the plaintiff's suit with costs throughout. He held that civil courts had no jurisdiction to hear the case, the only remedy for the plaintiff being to move the Deputy Commissioner. The learned Judge was influenced by the fact that on 22nd of February, 1949 the Cantonment Board at a meeting resolved that notice be given to Mr. Masand to pay octroi duty within seven days, failing, which he would be prosecuted. With respect to the plea of time bar also the learned Senior Subordinate Judge gave a decision against the plaintiff. Surprisingly enough the Court completely failed to notice that issue No. 7 had not been pressed by the counsel for the defendant in the Court of first instance. The decision on issue No. 1 was also upset by the Senior Subordinate Judge, who held that the plaintiff had in fact imported all the vehicles in question within the cantonment area and was, therefore, liable to pay octroi duty on those vehicles. As a result of these findings the appeal was allowed and the plaintiff's suit dismissed as already observed.

The plaintiff feeling aggrieved filed a second appeal in this Court, which came up for hearing before a learned Single Judge, who dismissed it leaving the parties to bear their own costs before him. On the question of the jurisdiction of the Civil Courts to entertain the present suit the learned Judge distinguished the Full Bench decision in the case of *Municipal Committee, Montgomery* v. *Master Sant Singh* (1), on the ground that

(1) A. I. R. 1940 Lah. 377 (F. B.).

there the tax in question was demanded from a person, who was merely a hirer of lorries and, therefore, the action of the Committee was illegal and *ultra vires*, with the result that a Civil suit was competent. The general observations in that decision were described by the learned Single Judge to be mere *obiter*. The basis of the decision of the learned Single Judge is clear from the following observations:—

> "It is fairly obvious that it is not open to the Civi Courts to decide, how much assessment should have been made of the octroi duty in question. The further question whether the vehicles in dispute were imported within the limits of the Cantonment Board or not would again be a matter of detail, which will be for the assessing authorities to decide, and which could be agitated in appeal under the relevant provisions of the Cantonments Act, if the plaintiff was dissatisfied with the demand which had been made. Even if it were open to the Civil Court to go into that matter, it has been decided by the learned Senior Subordinate Judge that the vehicles in suit had been imported within the Cantonment area".

Another point urged on behalf of the plaintiff-appellant was that assuming that the vehicles in question were actually imported they could only be liable to octroi duty if they had been imported for consumption or use. In support of this contention reference was made on behalf of the plaintiff to a notification of 14th of July, 1926. This contention was also repelled by the learned Single Judge for the reason that it was open to the

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plaintiff to raise this point in appeal or otherwise and that he should have satisfied the Cantonment Board that the vehicles in question were not meant for consumption or use inside the limits of the Cantonment Board. Proof of the allegation that these vehicles had been sold was also found wanting by the learned Single Judge. On the third contention that the suit was within time, the learned Single Judge agreed with the plaintiff's counsel that the suit should be held not to be barred by time. The argument that no assessment order was passed by the Cantonment Board, nor any bill presented as required by the statutory provisions and that no amount was ever determined to be payable as octroi duty, was also repelled on the ground that the Board had made every possible effort to get the necessary documents from the plaintiff and in view of the latter's attitude and conduct the Board had no alternative except to take recovery proceedings under the provisions of the Cantonments Act. The learned Single Judge generally agreed with the way in which the learned Senior Subordinate Judge had dealt with the matter and it was also observed that the recovery proceedings, having been aken for a definite amount, showed that the amount of duty had been actually determined. The learned Judge in Single Bench was considerably influenced by the non-co-operating attitude of the plaintiff and indeed he further held that this matter could also have been agitated by the plaintiff before the Cantonment Board, who could have compelled the assessing authorities to arrive at an exact amount of octroi duty demanded from him. On these findings, as already observed, the plaintiff's second appeal was dismissed.

The present appeal under the Letters Patent is directed against the order of the learned Single

Judge and Mr. Bahri has vehemently contended that the decision with respect to the absence of jurisdiction in the Civil Courts to entertain and adjudicate upon the present suit is contrary to law and, therefore, unsustainable. He has drawn our attention to the relevant provisions of the Cantonments Act, and has tried to show that the octroi duty, which is being sought to be levied and realized through the coercive process was never determined in accordance with the provisions of the Cantonments Act, with the result that the demand is wholly unauthorised and outside the statute and, therefore, liable to be challenged in Civil Courts. He has to begin with taken us through sections 81 and 82 and 83 of the Cantonments Act, which deal with the subject of octroi, terminal tax and toll. Section 81 lays down that every person bringing or receiving any goods, etc., within the limits of any cantonment in which octroi or terminal tax or toll is leviable, shall when so required by an officer duly authorised by the Board in this behalf, permit inspection of the imported goods and give information relating to them. Section 82 deals with the evasion of octroi or terminal tax and provides for punishment for such evasion. Section 83 strictly speaking does not concern us, because it makes a provision for leasing the collection of octroi, etc. Section 84, to which also reference was made at the Bar, makes a provision for appeals against the assessment or levy of, or against the refusal to refund any tax under the Cantonments Act. Such an appeal lies to the District Magistrate or to such other officer as may be empowered by the Government in this behalf. Section 88 provides that the order of an appellate authority confirming, setting aside or modifying an order in respect of any valuation or assessment or liability to assessment or taxation shall be final. Then we come to the sections which deal with the

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subject of 'Payment and Recovery of Taxes'. Section 89 provides for payment of tax, imposed under the Cantonments Act, on such dates and in such instalments, if any, as the Board may, by public notice, direct. Section 90 lays down that when any tax has become due, the Executive Officer shall cause to be presented to the person liable for the payment thereof a bill for the amount due, and every such bill shall specify the particulars of the tax and the period for which the charge is made. Under section 91, if the amount of the tax for which any bill has been presented is not paid within thirty days of the presentation, the Executive Officer may cause to be served upon the person liable a notice of demand. Under section 92 if within thirty days from the service of the notice of demand the tax is not paid or no sufficient cause is shown for non-payment to the satisfaction of the Executive Officer, such sum may be recovered under a warrant. Under section 96 a provision is made, among other modes, for recovery of a tax by means of a suit in the Court of competent jurisdiction. Our attention was also drawn to the provisions of section 259 of the Act, according to which, notwithstanding anything elsewhere contained in the Act, arrears of tax, etc., are made recoverable on application to a Magistrate having jurisdiction in any place where the person from whom such tax is recoverable may for the time being reside, by the distress and sale of any movable property belonging to him. Our attention was also invited to bye-law No. 15 of the Octroi Bye-laws of the Jullundur Cantonment Board, which is in the following terms:—

"*Agency and Method of Assessment.* (1) The octroi payable in respect of goods imported otherwise than by rail for con-

sumption or use within octroi limits shall be assessed—

(a) by the officer-in-charge of the barrier of import if—

(i) the octroi is leviable by weight or by toll, or

(ii) the octroi is leviable *ad valorem* and the goods are either entered in the list of prices current, or, if not so entered, are of such value as the Cantonment Authority may prescribe for the purposes of this bye-law, or

(b) by the Octroi Superintendent.

(2) When octroi leviable *ad valorem* is to be assessed by the officer-in-charge of the barrier of import, he shall, if the goods, in respect of which octroi is to be assessed, are entered in the list of prices current, calculate their value at the value entered in such list less fixed deduction of 25 per cent, and if the goods are not so entered, he shall calculate the value entered in such list less a fixed disposal with due regard to the value declared by the importer.

(3) When octroi leviable *ad valorem* is to be assessed by the Octroi Superintendent, he shall, if no invoice is presented with the goods, calculate the value of the goods on the information at his disposal, with due regard to the value declared by the importer, and if an invoice is presented he shall calculate

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the value on the value in the invoice plus the cost of freight unless he has reason to suspect that the invoice is not genuine, in which case he shall proceed as if no invoice had been presented".

The counsel also submitted that at the relevant time the notification in force was No. 20688 of the 14th of July, 1926, according to which the vehicles brought within the Jullundur Cantonment for consumption or use alone were dutiable. He laid great stress that vehicles brought within the limits of Jullundur Cantonment for purposes of sale were only subjected to octroi duty by means of a Gazette notification dated 3rd of February, 1951. The vehicles in question, having not been imported for purposes of consumption or use, according to Mr. Bahri, were not liable to octroi duty, with the result that the amount claimed by the Board is *ultra vires* on this ground as well.

Now bye-law No. 15 of the Octroi Bye-laws of the Jullundur Cantonment Board (Exhibit D.W. 2/1) postulates assessment of octroi payable in respect of goods imported, otherwise than by rail, for consumption or use within octroi limits:

(a) by the officer in charge of the barrier of import;

(b) by the Octroi Superintendent.

It is common ground that there is no order of assessment either by the officer in charge of the barrier of import or by the Octroi Superintendent. What is contended is that there is a resolution by the Cantonment Board, a copy of which is placed on the record and marked as Exhibit D.W. 3/1, which should be construed to be an assessment

on the motor trucks and motor-cars imported by the plaintiff. This document merely shows that by the amended resolution dated 22nd of February, 1949, t was resolved to give seven days' notice to Messrs Masand Motors to pay the octroi-tax due from them and, failing compliance, to prosecute them. It admittedly does not show that the amount of octroi was determined by the Board, and indeed it is conceded by the respondent that the Cantonment Board never determined the amount due. The learned counsel on behalf of the respondent has argued that it is open to the Cantonment Board to determine the duty payable and that when the Superintendent sent the papers to the District Magistrate for recovery of a specified amount he should be deemed to have determined the amount, which determination should be considered to be final under the provisions of the Cantonments Act, and, therefore, the only course open to the plaintiff was to go up in appeal against such determination. While developing this point Mr. Goswamy has submitted that notices were given to the plaintiff-appellant to bring their invoices to enable the Cantonment Board to determine the amount due, and since those notices were not complied with, it was open to the Cantonment Board through its Superintendent at any moment to calculate and determine the amount for the purpose of realising the same through the District Magistrate. In support of this submission reliance has been placed on the provisions relating to appeals contained in sections 84 to 88.

It may be observed that the finality under these provisions attached only to the assessments made under the Act and, if the assessment is not under the Act, then obviously these provisions would not operate as a bar to a citizen coming to a civil Court to obtain relief, to which he may be

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found otherwise entitled. Under section 9, Code of Civil Procedure, the Courts have jurisdiction to try all suits of a civil nature excepting those of which their cognizance is either expressly or impliedly barred. It is agreed that in the present case the jurisdiction of the civil Courts is not expressly barred. As observed by Lord Thankerton in *Secretary of State* v. *Mask and Company* (1), the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act, have not been complied with, or the statutory tribunal has not acted in confirmity with the fundamental principles of judicial procedure. In my opinion the octroi-duty in the instant case was never determined in accordance with the provisions of the Cantonments Act and bye-law No. 15 of the Octroi Bye-laws. Not only was the duty never determined according to the statute, but even with respect to its recovery the provisions of sections 90, 91, and 92 were not complied with. It is admitted that a bill for the amount due was never presented to the appellant for the payment thereof. The conclusion is, therefore, irresistible that the imposition in question and its recovery are, both unauthorised and in violation of or at least not in accordance with, the essential statutory provisions. In view of the legal position and the facts stated above, it is difficult for me to conclude that the civil courts have no jurisdiction to entertain the present suit. The importance of jealously scrutinising the jurisdiction conferred on executive or administrative bodies and of giving no wider interpretation than is necessary to any

(1) 67 I. A. 222.

limitation of power of the Civil Court cannot be minimised.

It is contended on behalf of the Board that even if the civil Court has jurisdiction to entertain the suit and adjudicate upon the dispute, it is not a fit case in which the discretionary relief by way of injunction should be granted, because the plaintiff has not co-operated with the Cantonment Board and is, therefore, disentitled to equitable and discretionary relief. I have no hesitation in repelling this contention on the short ground that where imposition is unauthorised and not in accordance with the statutory provision permitting it, the citizen is fully entitled to relief by way of injunction from the Courts. It is one of the basic principles in our system of Government that a subject should not be taxed unless the language of the statute clearly and indubitably makes him liable to be taxed and the liability is determined in accordance with the essential statutory provisions. In the present case it is obvious that the octroi-duty demanded has not been assessed or determined in accordance with the mandatory provisions of the Cantonments Act. As a matter of fact there is no material on the present record to suggest the basis on which the sum of Rs. 8,156-4-0 is being claimed as octroi-duty. The counsel on behalf of the Board was not in a position to inform us of the make or manufacture of the trucks and the cars imported with the result that he found it equally impossible to show their price. In these circumstances I cannot persuade myself to hold that the duty claimed was ever determined under the Act; and if it was not so determined under the Act, it can obviously not be considered to be due under the Act. On these findings it is difficult to understand how the ratio of *Master Sant Singh's* (1) *case* can be held

(1) A.I.R. 1940 Lah 377 (F. B.).

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inapplicable to the present case. According to that case the jurisdiction of a civil Court cannot be ousted when the demand made is not authorised by the Act. The following observation of Din Mohammad J. is worth reproducing:—

> "I may add that the argument advanced by the appellant that here the tax itself was lawful, and that its recovery alone was defective in so far as it was being made from a wrong person, suffers from the fallacy that firstly it makes an erroneous distinction between 'tax' and 'demand' and secondly, it treats lawful a demand which was *ab initio* unlawful".

Tek Chand J. in his judgment has very succinctly expressed the legal position thus—

> "A Municipal Committee is a creature of the statute. It is brought into existence by, or under the authority of, an express legislative enactment to have control over municipal affairs within defined local limits and can exercise such powers of legislation, taxation and regulation as are entrusted to it by the Legislature.
>
> If in the exercise of these powers the committee makes a mistake, it will merely be a case of erroneous exercise of jurisdiction, and the aggrieved party must seek his remedy in the manner, and from the forum, provided in the statute. If, however, its action is in excess of, or in contravention of the powers, conferred on it by the statute, the subject has his ordinary remedy to seek relief

in the civil Courts, unless their cognizance is either expressly or impliedly barred."

A little lower down the learned Judge speaks thus—

"There is no doubt that in the present case, the assessment of the plaintiff-respondent by the Municipal Committee, Montgomery, was not under the Act, but was in contravention of its provisions."

I am in respectful agreement with the law as laid down in the above decision, and in my humble opinion it fully covers the case in hand.

With respect to the challenge that the vehicles were not imported for consumption or use, and that at the relevant time, according to the relevant notification, vehicles imported for the purpose of sale were not liable to octroi, learned counsel for the Cantonment Board merely repeated the contention that if it was so, then the only remedy open to the assessee was to go up in appeal under the provisions of the Act and that no independent suit is competent. He has also, in addition, contended that this point was not raised in the Courts below and that being a question depending on facts, it should not be allowed to be raised at this stage. I think there is some force in this last contention and that the appellant should not be permitted to raise it on Letters Patent appeal.

For the reasons given above this appeal succeeds and allowing it I would reverse the judgments and decrees of the learned Single Judge and of the learned Senior Subordinate Judge and restore those of the trial Court except that the

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parties are directed to bear their own costs throughout.

BISHAN NARAIN, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL.

Before Bishan Narain and I. D. Dua, JJ.

R. L. AGGARWAL AND OTHERS,—*Appellants.*

versus

DARSHAN LAL AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 479 of 1958

1960

May 2nd

Evacuee Interest (Separation) Act (LXIV of 1951)—Sections 2(d), 6, 8 and 17—Proceedings under the Act taken—Determination whether the evacuee had any interest in the property—Whether to be made by the Custodian or the Competent Officer—Conditions precedent to taking proceedings under the Act.

Held, that it is for the Competent Officer to determine whether a given property is or is not composite property in accordance with the provisions of sections 8 and 17 of the Evacuee Interest (Separation) Act, 1951, and it is not correct to say that this matter must be decided by the Custodian under the Administration of Evacuee Property Act. Under section 6 of the Evacuee Interest (Separation) Act the Competent Officer has jurisdiction to determine the evacuee's interest and then to separate it only if the property concerned is composite property as defined in the Act and not otherwise. Therefore, a party, whether custodian or a claimant, approaching the Competent Officer must prove that the property in dispute is composite property.

Held, that section 8(2) of the Evacuee Interest (Separation) Act, 1951, embodies a rule of estoppel based on general principles of *res judicata*. The Competent Officer is enjoined by this provision not to reopen the "determination and decision" of the Custodian that the property or