

(5) It is the case of the appellant that Beli Ram had become a statutory tenant and was entitled to the protection to remain in the premises for a period of two years. This position has not been controverted. All that has been contended is that the defendants who are the heirs of Beli Ram continued to enjoy the rights of the tenants. Beli Ram was plainly a statutory tenant and his rights are not heritable. In a case under the East Punjab Urban Rent Restrict Act (3 of 1949). It was held by the Hon'ble Chief Justice in *Gauri Shankar v. Smt. Shakuntla Devi and others* (1), "that a person having protection of a statute like the East Punjab Act 3 of 1949, is a tenant under the statute, and has no estate in the property in his possession and he has only a personal right to remain in possession because such right to possession is protected by the statute. On the death of such a person he transmits no estate to his heirs. He has no estate in the building and so his heirs inherit not even the right to possession of the building. What is true of the East Punjab Urban Rent Restriction Act (3 of 1949), is applicable equally to the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The plaintiffs have made out a case for possession and the lower appellate Court did not act according to law in reversing the decree granted by the trial Court. In this view of the matter the appeal must be allowed with costs and the decree of the trial Court restored. The defendants are given time upto 1st of November, 1969, to vacate the premises.

N.K.S.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit and C. G. Suri, JJ.

RANJIT SINGH,—*Petitioner.*

versus

THE CUSTODIAN-GENERAL OF EVACUEE PROPERTY AND OTHERS,—
Respondents.

Civil Writ No. 1708 of 1966

October 8, 1969.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 7 and 27—Administration of Evacuee Property (Central) Rules (1950)—Rule 31(5)—Power of revision by the Custodian-General—Whether controlled by

(1) 1968 P.L.R. 87.

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

time factor—Such power—Whether can be exercised after number of years—Period fixed in Rule 31(5)—Whether binding—Evacuee Interest (Separation) Act (LXIV of 1951)—Section 18—Finality attaching to the decision of Competent Officer—Extent of—Custodian-General—Whether has the jurisdiction to revise the order of the Custodian on which that decision is based.

Held, that section 27 of the Administration of Evacuee Property Act, 1950, confers a plenary power of revision on the Custodian-General and it authorises him to exercise his revisional power either *suo moto* or on application made to him in that behalf at any time. The phrase 'at any time' indicates that the power of the Custodian-General is not controlled by any time factor but only by the scope of the Act within which the Custodian functions. In rule 31(5) of the Administration of Evacuee Property Rules, the use of the word 'ordinarily' indicates that the period of 60 days for filing applications by private parties, mentioned in the rule is not a period of limitation but is only a rule for the guidance of the petitioner as well as for the Custodian-General. It is within the discretion of the Custodian-General to entertain revision petitions after 60 days. The rule only indicates to him that the reasonable period for exercising the powers of revision is 60 days. The powers of revision of the Custodian-General are not intended to be exercised arbitrarily. Being judicial power it is to be exercised in a reasonable manner. It is always for the Custodian-General to consider whether in a particular case he should entertain a revision beyond the period of 60 days mentioned in rule 31(5). There can be special circumstances in which the revisional powers can be exercised even after expiry of a number of years. It is within the discretion of the revising authority to do so if the facts and circumstances of a case justify the exercise of his discretion in that manner. (Para 6)

Held, that in proceedings under the Evacuee Interest (Separation) Act, 1951, all that is being decided is the mode of partition of the property and the demarcation of the pieces of land which are to go to the evacuee and non-evacuee owners of the property. Finality to the order of the Competent Officer under section 18 of the Act can attach only to the questions that are decided in the proceedings under that Act and not to the questions which cannot be or are not agitated by the parties or decided by the Competent Officer. The Competent Officer cannot go behind the findings of Custodian holding certain share in the property to be evacuee property and other share as non-evacuee. Hence the decision of the Competent Officer under the Act does not bar the jurisdiction of the Custodian-General to revise the order of the Custodian on which that decision is based.

(Para 11)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of Certiorari, Mandamus, Prohibition or any other appropriate writ, order or direction be issued quashing the order of the respondent No. 1, dated 31st May, 1966, setting aside the order of Additional Custodian, Punjab, dated the 10th May, 1952, confirming sale by Mohammad Ashraf, Mohammad Rafi in favour of the petitioner and Gurbux Singh.

C. L. LAKHANPAL AND ISHAR SINGH VIMAL, ADVOCATES, for the petitioner.

CHETAN DASS DEWAN, ADVOCATE, for respondents Nos. 1 and 2.

RAM PIARA, respondent No. 4 (in person).

JUDGMENT

C. G. Suri, J.—This order shall dispose of Civil Writs No. 1708 and 2193 of 1966 which have been filed respectively by two real brothers Ranjit Singh and Gurbax Singh sons of Gajjan Singh for quashing of an order, dated May 31, 1966, of the Custodian General of Evacuee Property, India, Respondent No. 1. The questions of fact and law involved in the two cases are almost the same and the minor differences of detail have no bearing on the final result of these petitions. Shri Gajjan Singh, the deceased father of the petitioners had, in fact, been prosecuting the cases on behalf of his two sons as their general attorney before the Revenue Officers and the Rehabilitation authorities at certain early stages. In passing the impugned order, dated May 31, 1966, Respondent No. 1, had invoked his powers of revision under section 27 of the Administration of Evacuee Property Act, No. XXXI of 1950 (hereinafter briefly referred to as 'the Act') and had set aside an order, dated May 10, 1952, of the Additional Custodian and had remanded the proceedings to Respondent No. 2, Custodian of Evacuee Property, Punjab, for deciding afresh, in accordance with law, two applications filed separately by the petitioners in the year 1948 under section 5-A of the East Punjab Evacuees (Administration of Property) Act, 1947.

(2) In order to properly appreciate the points in controversy it would be pertinent at this stage to state briefly the facts of the case. The land in dispute which is situated in villages of Hemo Majra and Lal Pura in Karnal District belonged to Muslim owners before the country was partitioned into the dominions of India and Pakistan in 1947. The petitioner in each case claims to have purchased the land described in his respective petition from the Muslim owner(s); but there is a serious dispute as to the genuineness of the transactions set up by the petitioners or the dates on which these transactions had taken place. Ranjit Singh claims to have purchased a 3/8th share in 1939 bighas of land from some of the joint Muslim owners; the remaining 5/8th share continuing to be owned by the other Muslim owners. Gurbax Singh, petitioner, claims to have purchased

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

sole ownership rights in 620 bighas of land with rights in Shamlat in village Lalpura and in his case there was no complication about the land having become 'composite property' at any stage within the meaning of Evacuee Interest (Separation) Act, 1951, No. LXIV of 1951 (hereinafter briefly referred to as 'the Separation Act'). In Gurbax Singh's case there were no proceedings under the Separation Act as in Ranjit Singh's case and the former has thereby been deprived of the plea that section 18 of this Act had lent finality to the proceedings culminating in the order, dated 10th May, 1952 of the Additional Custodian which has been set aside by the impugned order. Agreements of sale were said to have been entered into with the Muslim owners by Shri Gajjan Singh, the deceased father of the petitioners on 28th August, 1945 in the case of Ranjit Singh and on 15th April, 1947 in the case of Gurbax Singh. Earnest money of Rs. 1,000 was said to have been paid to the vendor(s) on the said dates and the petitioners have produced unstamped and un-registered writings purporting to be the agreement of sale. The balance of the sale consideration running into five figures in each case was said to have been paid in June, 1947, though there are no writings to evidence these payments. The sale in either case is said to have been finalized and completed in June, 1947, though orders of mutations in respect of these sales were attested by a Revenue Officer in the last week of September, 1947. The genuineness of these writings purporting to be agreements of sale which are innocently free of the legal formalities like Stamps, registration, drafting by a licensed scribe etc., has been seriously disputed by the respondents as also the averment of the petitioners that the Muslim owners were present at the time of the attestation of the mutations of sales or that they had at all received payments of the balance of the sale considerations on the dates alleged or at any other time.

(3) Section 5-A which was first inserted in the East Punjab Evacuees (Administration of Property) Act, No. XIV of 1947, by East Punjab Ordinance No. II of 1948, apparently before March, 1948, made it necessary for transferees of evacuee property to seek confirmation of the transfers effected in their favour after 15th August, 1947. Applications for confirmation were to be made on or before 31st March, 1948, or within two months of the date of the transfer, whichever was later. The petitioners filed separate applications under the said section on the last date of limitation, i.e., 31st March, 1948 for confirmation of the disputed sales. Different officers in the Custodian Department in Punjab dealt with this case

at different stages. The Assistant Custodian, Karnal, who made the inquiry in the first instance had his doubts about the sale price having been paid in June, 1947. The Assistant Custodian, Judicial, was of the opinion that the sales were for consideration but his finding on the point was not accepted as correct in the order, dated November 13, 1948, of the Additional Custodian who asked the Deputy Commissioner, Karnal to hold an enquiry as to the circumstances under which the mutation orders had been passed by a Revenue Officer. The Deputy Commissioner, Karnal, ordered a review of proceedings and further directed that an enquiry should be made into the conduct of the Revenue Officer concerned. The Additional Custodian had also called upon the petitioners by his order, dated 9th August, 1949 to produce evidence in the shape of statements or affidavits of the vendors to satisfy him regarding the passing of the consideration or the completion of the transfers. The petitioners sought adjournment after adjournment on one excuse or the other but failed to produce any satisfactory evidence. The Additional Custodian proceeded on leave in the meanwhile and Shri (later Justice) P. D. Sharma Authorised Deputy Custodian, Punjab (as he then was) took over during the Additional Custodian's absence on leave. Without waiting for the evidence which the petitioners had been called upon to produce, he made a detailed report on May 1, 1952, holding *inter-alia* that the vendors had received full consideration for the sales and had delivered possession of the land to the vendees before August 14, 1947, and that the sales having been completed before the date specified in section 5-A(1) of the East Punjab Evacuees (Administration of Property) Act, No. XIV of 1947, there was no necessity for the petitioners to get the sales confirmed and that their applications under the said section were misconceived and merited rejection. He directed the attorney of the petitioners to appear before the Additional Custodian on 12th May, 1952 but the latter officer was also in a hurry and passed orders on 10th May, 1952, agreeing with the Authorised Deputy Custodian of Evacuee Property and directing action accordingly. It is this order, dated 10th May, 1952, of the Additional Custodian which has been set aside by the order challenged in these writ petitions filed under Articles 226 and 227 of the Constitution of India.

(4) The learned counsel for the petitioners Shri Lakhnupal has enumerated more than half a dozen grounds on which he attacks the order of Respondent No. 1 but these grounds can be discussed under two broad heads as regards the legality or propriety of the

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

impugned order. Under the first head, we may examine the objections that Respondent No. 1 was not empowered by law to interfere after so many years and that the proceedings under or the provisions of certain Acts like the Administration of Evacuee Property Act, 1950, the Evacuee Property (Separation) Act, 1951, or the Utilization of Lands Act, bar the jurisdiction of Respondent No. 1 to interfere. Under the second head we could examine the objections or arguments that even if the law empowered Respondent No. 1 to interfere, it was not expedient or proper on his part to do so after more than a decade. The period of limitation, available to Respondent No. 1 for interference in revision with the orders of the subordinate officers or Courts becomes a mixed question of law and fact and may seem to lie on the line of division of these two broad heads. The objection that respondent No. 1 was barred by time from interfering in revision at this stage could, if upheld, make it unnecessary for us to examine the other grounds and this ground is, therefore, being dealt with first.

(5) Question of limitation apart, the Custodian General is given the powers under section 27 of the Act, either on his own motion or on application made to him in this behalf to call for the records of any proceedings in which any Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and he can pass such orders in relation thereto as he thinks fit. This section gives wide and general powers of revision to respondent No. 1 and the words 'at any time' in the section, literally construed, place no limitation as regards the time within which the powers could be exercised. These words would be found to exist in corresponding sections of a number of other Acts which give powers of revision to a higher authority and in some cases where the section is silent with regard to the period of time within which the powers can be exercised, these words have been read between the lines even though they do not actually appear in black and white. A brief reference is being made to some important rulings interpreting these words whether actually existing or deemed to be existing by a fiction of law in corresponding sections of some other Acts giving the revisional powers to a higher officer/authority. These rulings illustrate that in spite of the literal connotation the words 'at any time' can have under certain circumstances, a restricted meaning. The first important ruling cited before us in which these words were given a restricted meaning was a Full Bench decision of this Court in *Bhikhan and*

others v. The State of Punjab, (1). The words 'at any time' occurring in section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, No. 50 of 1948, came in for intepretation. The majority view of Tek Chand and Dua, JJ., with Khanna, J. dissenting, was that the expression 'at any time' as used in section 36 of the Act called for some limitation to be placed on them in point of time. The words were considered not to give to the Settlement Officer powers to revoke or vary a scheme after the purpose of the consolidation of the holdings had been finally accomplished in accordance with the objects and reasons of the Act. Some doubts with regard to the correctness of this ruling were taken to have been created by a Supreme Court ruling in *Laxman Purshottam Pimputkar v. The State of Bombay and others* (2), which was a case under the Bombay Hereditary Offices Act, No. III of 1874. The State Government was given the powers of revision by section 79 of the Bombay Act which specified no period of limitation for preferring an application for revision. It was observed that normally the Government should not interfere unless moved within a reasonable time but what should be considered as a reasonable time in a particular case would be a matter entirely for the Government to consider. When an authority exercises its revisional powers under section 79, it necessarily acts in a judicial or quasi-judicial capacity. Such an order cannot be set aside or revised or modified just as an administrative order. Finality was said to attach under section 79 of the Bombay Act to the Government's order. In that case powers of revision had been invoked to upset an order passed more than 20 years earlier and still the revisional order was upheld. In *Chaha Khan and others v. The State of Punjab and others* (3), a Single Bench of this Court was called upon to interpret again the words 'at any time' in section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, No. 50 of 1948, and it was argued before him that the Supreme Court ruling in *Laxman Purshotam Pimputkar's*, (2), case had affected the validity of the Full Bench decision in *Bhikhan's case*, (1). The Judge, therefore, had the question referred for decision of a bigger Full Bench. A Full Bench of five Judges was constituted and its decision is reported as 1966 PLR 239—AIR 1966 Punj. 111 (F.B.). Chief Justice Mehar Singh (Justice as he then was) recorded the main judgment and in view

(1) I.L.R. 1963 (1) Punjab 660—A.I.R. 1963 Punjab 225 (F.B.)—1963 P.L.R. 368.

(2) A.I.R. 1964 S.C. 436

(3) C.W. No. 579 of 1962

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

of the scheme of the Act and the context in which section 36 had been set in the Act, the Full Bench decision in **Bhikhan's case**, (1), was found to continue to be good law. It was, however, recognized that this restricted interpretation of the words 'at any time' accruing in section 36 of that Act was not meant to be of universal application and that these words can be given a wider meaning if the circumstances of the case so required. The same words occurring in section 42 of the same Act have been held to have a much wider meaning in another Full Bench decision of this Court in *Nar Singh Mansoor Singh ad others v. State and another* (4). The majority view was that the words 'at any time' used in section 42 of the Consolidation Act rendered the power conferred on the State Government everlasting, interminable or indefinite in duration and that these powers were exercisable without any limitation as to point of time. The Hon'ble Judges who had recorded the judgment in **Bhikhan's case** (1), and **Chahat Khan's case**, (3), had said in clear enough words that they were considering section 36 only and not section 42 of the Consolidation Act. The nature of the powers conferred on the Consolidation Officer, the scheme of the whole Act and the context in which the section had been placed were all factors which had led to a restricted meaning being given to the words 'at any time' in that section. These considerations were not attracted in the interpretation of the same words occurring in section 42 of the same Act. In **Chahat Khan's case** (3), Chief Justice Mehar Singh (Justice as he then was) had observed that section 42 was not under Consideration and that it appeared in a different setting and its language was quite different and much wider than that of section 36. In the ultimate analysis it was held that anything said in that judgment to interpret the words 'at any time' in section 36 of the Consolidation Act would not have automatically applied to the expression occurring in section 42 of that Act.

(6) This brief dissertation of the case law under the corresponding revisional provisions of some other Acts is only of academic interest here as the pertinent section and the rules framed under the Act, have come in for direct interpretation in a Supreme Court ruling **Purshotam Lal Dhawan v. Diwan Chaman Lal and another**, (5). Respondent No. 1 had relied only on this ruling and was not

(4) A.I.R. 1967 Punjab. 111

(5) A.I.R. 1961 S.C. 1371.

very much wrong if he did not care to refer to the other case law on the subject. Section 27 of the Act was found to confer a plenary power of revision on the Custodian-General and it authorised him to exercise his revisional powers either *suo moto* or on application made to him in that behalf at any time. The phrase 'at any time' indicated that the power of the Custodian-General was not controlled by any time factor but only by the scope of the Act within which the Custodian-General functioned. Rule 31(5) of the rules framed under the Act, was also considered and the use of the word 'ordinarily' was found to indicate that the period of 60 days for filing applications by private parties, mentioned in the rule was not a period of limitation but was only a rule for the guidance of the petitioner as well as for the Custodian-General. It was within the discretion of the Custodian-General to entertain revision petitions after 60 days. The rule only indicated to him that the reasonable period for exercising the powers of revision was 60 days. The powers of revision of the Custodian-General were not intended to be exercised arbitrarily. Being a judicial power it was to be exercised in the Custodian-General's discretion in a reasonable manner and it was for the Custodian-General to consider whether in a particular case he should entertain a revision beyond the period of 60 days mentioned in rule 31(5). The principle of section 5 of the Limitation Act which applied only to appeals could not be extended to revision petitions under section 27 of the Act as no period of limitation was prescribed for such revision petitions. From the above it may appear that there could be special circumstances in which the revisional powers could be exercised even after the expiry of a number of years. The question whether the revisional powers of the Custodian-General under section 27 of the Act could be exercised after a lapse of a number of years then came up in *Jagatjit Distilling and Allied Industries Ltd. v. The Deputy Custodian-General, India and others*, (6), and it was observed that it was within the discretion of the revising authority to do so if the facts and circumstances of the case seemed to him to justify the exercise of his discretion in that manner. There are unmistakable averments and suggestions by the respondents that a fraud has been committed by the petitioners and that this fraud became known to them only recently. Fraud is a vicious thing which may invalidate most transactions and proceedings and the first knowledge thereof could give a fresh start to the limitation period.

(6) 1963 P.L.R. 328 (D.B.).

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

(7) In the impugned order Respondent No. 1 has given facts and circumstances which led him to suspect the genuineness of the sales set up by the petitioners and, therefore, to set aside the order dated 10th May, 1952 of the Additional Custodian. To the numerous reasons given by Respondent No. 1, I could add quite a few more but I would not like to prejudice the fresh enquiry that has been ordered by Respondent No. 1 to be held by Respondent No. 2 under section 5-A of the East Punjab Act XIV of 1947 or to be more accurate under the corresponding provision of the Act of 1950. I cannot, however, help commenting on the surmise that the writings set up by the petitioners came into existence in September, 1947. When these sales were first reported to the Patwari and entered by him in the Register of mutations and then attested by a Revenue Officer during the last week of September, 1947, it was not known to any of the parties that they had already crossed the crucial date as this date was specified much later in section 5-A (1), which was first inserted in the Evacuees Act of 1947, No. XIV of 1947 by Ordinance No. II of 1947. That is why at that time the transactions came to be described as 'Oral sales, dated 26th September, 1947' in column No. 13 of the mutation orders. It was on this date that the sales were first reported to the Patwari and he made entries in his Daily Diary or Roznamcha and also in the Register of mutations. If Gurbax Singh has been able to get a Patwari's note showing that the classification of his mutation order was done somewhere in June, 1947, it may only suggest that the petitioners have not let grass grow under their feet. The necessity for showing these transactions, contrary to the description in column 13 of the mutation orders, as sales that had been completed before June, 1947 or that they had been reduced into writings must have been felt after section 5-A was first inserted in the East Punjab Act, No. XIV of 1947 by the East Punjab Ordinance, No. II of 1947. If documents were fabricated, this must have been done after section 5-A had been first placed on the statute book. Anyhow, there are strong circumstances to indicate that Respondent No. 1 had exercised his discretion in a reasonable manner in directing a fresh enquiry notwithstanding the lapse of so many years.

(8) I may now take up the ground that proceedings under or provisions of this Act or the Separation Act or the Utilization of Lands Act, deprive the respondents of his powers of interference in the matter or that the proceedings under the said Acts have received such impress of finality that the impugned order could not be legally

passed by Respondent No. 1. It has been argued that sections 7 and 7-A of the Act lay down a dead-line up to which any property could be tangible steps like issue of notices, taking over of physical possession, publication of notifications in the official gazette, etc., etc. were necessary before any property could vest in, or be declared as, evacuee property by the authorities of the Rehabilitation Department. A Single Bench decision in *Darshan Lal v. R. L. Aggarwal and others*, (7), has been cited in this connection. A Letters Patent appeal had been filed against this ruling and the decision of the Division Bench that heard the appeal is reported as *R. L. Aggarwal and others v. Darshan Lal and another*, (8). Certain observations of the Single Judge were dissented from, but the order was upheld on grounds different from those that had prevailed with the learned Single Judge. Moreover, it is mentioned in an unreported judgment in *Waryam Singh v. Union of India*, (9), that the Single Bench decision in *Darshan Lal v. R. L. Aggarwal and another*, (7), had been specifically over-ruled in *The Custodian-General Evacuee Property and others v. Shanti Sarupa*, (10). The rulings cited by the learned counsel for the petitioners including *Inayat Ullah v. Custodian, Evacuee Property*, (11), and *Assistant Custodian and others v. Qazi Abdul Ghafoor and another*, (12), ceased to be good law after the insertion of sub-section (2-A) in section 8 of the Act by the amending Act No. I of 1960. This sub-section removes all defects in automatic vesting of the evacuee property in the Custodian and nullifies all decisions to the contrary. This sub-section was to be deemed to have always been inserted in the Act. The effect of this sub-section has been considered in a number of rulings of this Court and the Supreme Court. In *Azizunnissa and others v. The Deputy Custodian, Evacuee Properties, District Deoria and others*, (13), their Lordships were pleased to observe as follows :—

“The effect of Section 8(2-A) is that what purported to have vested under section 8(2) of the Administration of Evacuee Property Ordinance XXVII of 1949 and which is to be deemed to be vested under section 8 of the Act which repealed that Ordinance notwithstanding any invalidity

-
- (7) 1958 P.L.R. 669=A.I.R. 1959 Punjab. 96
 - (8) 1960 P.L.R. 509
 - (9) L.P.A. 39 of 1959 decided on 29th November, 1962
 - (10) I.L.R. 1962 Punjab. 149 (D.B.)
 - (11) A.J.R. 1958 S.C. 160
 - (12) 1965 A.L.J. 1166
 - (13) A.I.R. 1961 S.C. 365

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

in the original vesting or any decree or order of the Court, shall be deemed to be evacuee property validly vested in the Custodian and any order made by the Custodian in relation to the property shall be deemed to be valid. Thus retrospective effect is given to the Act to validate (1) what purports to be vested; (2) removes all defects or invalidity in the vesting or fictional vesting under section 8(2) of the Ordinance XVII of 1949 or section 8(2) of the Act which repealed the Ordinance; (3) makes the decrees and judgments to the contrary of any court in regard to the vesting ineffective; (4) makes the property evacuee property by its deeming effect; and (5) validates all orders passed by the Custodian in regard to the property.

The word "purport" has many shades of meaning. It means fictitious, what appears on the face of the instrument; the apparent and not the legal import and, therefore, any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable. Purporting is, therefore, indicative of what appears on the face of it or is apparent even though in law it may not be so. This means that at the time when the Act purported to vest the property in dispute in the Custodian even though the power was not exercisable, section 8(2-A) by giving a retrospective effect to section 8(2) of the Act makes the vesting as if it was vesting under section 8(2) of the Act and, therefore, the attack on the ground of invalidity cannot be sustained."

(9) This ruling of the Supreme Court was followed in *Jagatjit Distilling & Allied Industries Ltd. v. The Deputy Custodian-General, India and others*, (6), and the observation of the Hon'ble Judges in paragraphs 6 and 7 on pages 334 to 337 may seem very pertinent to the facts of our case. Sections 7 & 7-A of the Act were held not to stand in the way of the exercise of the revisional power of the Custodian-General on facts similar to the facts of this case. A similar view was taken in *M/s Haji Esmail Noor Mohammad and Co. and others v. Competent Officer, Lucknow and others* (14). The argument that sections 7 and 7-A would become redundant if all evacuee property was to be deemed to have vested in the Custodian

(14) A.I.R. 1967 S.C. 1244

under the general notification without the necessity of his having to take any further concrete or overt steps, has been fully met with in an un-reported decision of a Division Bench of this Court in *Waryam Singh v. The Union of India etc.* (9). It was also argued that the prohibition with regard to the declaration of any property as evacuee property on or after 7th May, 1954 would become meaningless. Harbans Singh, J. who wrote the main judgment observed as follow:—

“The argument of the learned counsel for the appellant, however, is that by a mere general notification without the custodian ever taking possession of the property claimed to be evacuee property, there could be no vesting of such property in the Custodian, and that after 1954 no property can be declared as evacuee property. Provisions of automatic vesting were contained in section 5 of the **East Punjab Evacuee (Administration of Property) Ordinance, 1947**, which was replaced by the **East Punjab Evacuee (Administration of Property) Act, 1947**. In 1949 **Central Ordinance (No. 27 of 1949)** was promulgated which, in turn, was replaced by **Administration of Evacuee Property Act, 1950 (No. 31 of 1950)**.

Whereas prior to 1949-50 evacuee legislation existed mainly in the State of Punjab and Delhi wherefrom bulk of the evacuees had migrated to Pakistan the **Central Ordinance and the Act** became applicable to the whole of the Union. According to section 7 of the aforesaid Act, if the Custodian was of the opinion that any property was evacuee property, he was to give notice to the party interested and then to hold such inquiry into matter as the circumstances of the case permitted and after going into the respective claims put before him in respect of the property, he could issue a declaration notifying such property to be evacuee property. It was only after such a notification that the property would vest in the Custodian under sub-section (1) of section 8. However, under sub-section (2) of section 8 it was specifically provided that any property which, prior to the enforcement of the Ordinance, had vested in the Custodian would continue to be so vested in the Custodian under the Act.

(10) Reliance on behalf of the petitioner was, however, placed on two Single Bench judgments of this Court—*Custodian Evacuee Property, Punjab v. Gujar Singh and others*, (15) by Weston, C.J.

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

and *Darshan Lal v. R. L. Aggarwal* (7), by Grover, J., in which it was held that a general notification was not enough to vest the property in the Custodian as evacuee property. The matter was discussed by a Division Bench of this Court in *The Custodian-General Evacuee Property and others v. Shanti Sarup* (10), and the judgment of Grover, J., in the above-noted case was specifically over-ruled, and following the observations of the Supreme Court in *Azizunnssa v. The Deputy Custodian Evacuee Properties, District Deoria*, (13), it was held that the properties which had vested in the Custodian "by virtue of the general notification under the East Punjab Act or Ordinance, which was replaced by the Central Act, continued to be vested in the Custodian and it is not necessary for the procedure detailed in section 7 of the Central Act to be followed. This decision, to which, one of us, Falshaw, C.J. (Falshaw, J., as he then was) was a party, is binding on us and otherwise appears to be sound. The learned counsel, however, urged that if all the evacuee property had vested in the Custodian by the general notification, there was hardly any necessity for passing the amending Act (No. 42 of 1954) prohibiting the declaration of any property to be evacuee property on or after 7th May, 1954. The learned counsel, however, overlooked the point that in the States other than Punjab and Delhi no property vested in the Custodian without a notice being given to the person concerned. Furthermore, the definition of "evacuee" is such that even if a person left for Pakistan at any time after 15th of August, 1947, he could be declared an evacuee and his property taken possession of by the Custodian. The idea of the amending Act was, as is also clear from the statement of objects and reasons, to abrogate the provisions of the Evacuee Act from the specified date. The emergency being over, if any person left for Pakistan thereafter, his property would be treated in the ordinary manner, as the property of an absentee proprietor and there was no necessity of the Custodian coming into the picture. The provisions of the amending Act, therefore, are certainly not redundant and these provisions, in no way, affected the vesting of the property which had taken place by virtue of the general notification under the State Evacuee Act or Ordinance. A very large number of Muslims having migrated from Punjab, a number of local inhabitants had surreptitiously taken possession of properties belonging

"to such evacuees and automatic vesting by a general notification, consequently, becomes absolutely essential to

prevent unscrupulous people taking undue advantage of the migration of a large part of the population.”

(11) It is then argued that section 18 of the Separation Act had lent finality to the proceedings before the Competent Officer and that the Assistant Custodian had admitted during those proceedings that Ranjit Singh non-evacuee claimant had 3/8 share in the land. Sub-section (2) of section 8 of the Separation Act lays down that where the Custodian has determined under the Act that any property in question or any interest therein is evacuee property, then the decision of the Custodian shall be binding on the Competent Officer. The determination of any property as evacuee property would involve an enquiry as to whether the property was or was not of that character and would necessitate his looking at the property from both aspects. The decision of the Additional Custodian holding a certain share in the property to be evacuee and the other share as non-evacuee was binding on the competent officer as also on the Assistant Custodian who had appeared in the proceedings before the Competent Officer. None of these officers could or had, therefore, agitated the question whether Ranjit Singh petitioner's interest in the land was or was not evacuee property. The Competent Officer had used the phrase 'Ranjit Singh..... alleging himself to be owner of 3/8 share in Khewat No. 1.....' in his order, dated 25th October, 1955, but he had not recorded any finding with regard to that allegation. It is obvious that he was helpless and had to accept the averment whatever may have been his own opinion because of the earlier decision of the Deputy Custodian. The Assistant Custodian who appeared before him was in no better a position to question an order of his superior. The evacuee or non-evacuee nature of Ranjit Singh's interest could not therefore, be determined in those proceedings before the Competent Officer and the land could not have been composite property unless the findings of the Additional Custodian had been accepted as correct by all the parties concerned. In those proceedings under the Separation Act, all that was being decided was the mode of partition of the property and the demarcation of the pieces of land which were to go to the evacuee and non-evacuee owners of the property. Finality under section 18 of the Separation Act could attach only to the questions that were decided in the proceedings under that Act and not to the questions which could not be or were not agitated by the parties or decided by the Competent Officer. The Competent Officer or the Assistant Custodian could not go behind the findings of the Additional Custodian as contained in his order, dated 10th

Ranjit Singh v. The Custodian-General of Evacuee Property, etc.
(Suri, J.)

May, 1952. There was, therefore, no question of any finding or decision in those proceedings being binding on the respondents. *R. L. Aggarwal and another v. Darshan Lal* (8), has been cited by Shri Lakhanpal, the learned counsel for the petitioners but if the facts are read carefully this ruling appears to have no bearing on our case. This ruling disposed of the Letters Patent Appeal against the orders of Grover, J., in 1958 PLR 669 which was over-ruled in *The Custodian-General, Evacuee Property and others v. Shanti Sarupa*, (10).

(12) The petitioner's counsel did not urge the ground that the proceedings under the Utilization of Lands Act were in any way a bar to the passing of the impugned order by Respondent No. 1.

(13) The parties are at dispute with regard to a number of material facts and circumstances of the case. The genuineness of the documents set up by the petitioners, the factum or dates of the payments alleged to have been made, the appearance of the Muslim owners before the Revenue Officer at the time of attestation or entering of mutations and the sudden dropping of the proceedings by the Deputy Custodian General without waiting for the evidence for which the petitioners had been given a number of opportunities are matters which cannot be decided without the examination of lengthy and complicated evidence both oral and documentary. It is not within the compass of these proceedings that we may proceed to examine that evidence and to decide these questions of fact. Moreover, the impugned order does not appear to cause any manifest injustice to the petitioners. They still have the opportunity to satisfy the Rehabilitation authorities that the sales in their favour are genuine and honest transactions. We have no reason to believe that these authorities would not keep in mind the fact that some evidence may have been destroyed or become obscure during the course of years. The time factor is not the only handicap which the petitioners have to face because a number of opportunities given to them to produce their evidence soon after the dates of the alleged sales could not be availed of and utilised by them to any degree of success. Whatever evidence the petitioners had been able to examine during those proceedings taken soon after the dates of the alleged sales would still be available to them in the continuation of the same proceedings after remand.

(14) Allegations of *mala fides* have not been pressed by the petitioners against the officers of the Custodian's Department.

Shri Ram Piara, who had lodged a complaint with the Department was impleaded as a respondent with one other on the orders of the Court as the writ petitions made certain allegations that these persons had reported against the petitioners because of certain political rivalries or other old enmities. Shri Ram Piara has been attending most of the hearings in this case to avoid the risk of being censured or criticised as he apprehended that his absence could be made use of by the petitioners to mis-state or exaggregate facts. As long as the complainant-respondent has been able to convince the Custodian-General, of Evacuee Property, Respondent No. 1 that there were grounds for looking further into the sales set up by the petitioners, there was no further need of our looking into the mutual recriminations and grudges between Shri Ram Piara and members or relations of the Kairon family and if Shri Ram Piara succeeds in his mission he would have the satisfaction of retrieving for the common pool a good deal of evacuee property. The genuineness or otherwise of the sales is however a matter which is yet to be decided by the Rehabilitation authorities and the question of costs must abide the final decision on that point.

(15) There are no sufficient grounds for interference in the exercise of our writ jurisdiction.

(16) For reasons given above, I dismiss the writ petitions and leave the parties to bear their own costs.

P. C. PANDIT, J.—I agree.

R. N. M.

FULL BENCH

Before Harbans Singh, CJ., R. S. Narula and Prem Chand Jain, JJ.

AMAR SINGH,—Appellant.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Letters Patent Appeal No. 447 of 1970

December 24, 1970.

Punjab Passengers and Goods Taxation Act (XVI of 1952 as amended in its application to the State of Haryana)—Section 3(3), 4, Proviso, 8 and 9(7)—Constitution of India (1950)—Article 14, 245(1), 246(1), Entry 23,