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After the matter had been thrashed out before us in this Full Bench, I am of the view that that decision of mine was not correct.

With these observations, I agree with my learned brother, Shamsher Bahadur J. that the appeal should be dismissed with no order as to costs.

SHARMA, J.—I agree that the appeal should be dismissed with no order as to costs, I have nothing to add.

B.R.T.

FULL BENCH

*Before Shamsher Bahadur, P. C. Pandit and P. D. Sharma, JJ.*

UNION OF INDIA AND OTHERS,—*Petitioners*

*versus*

HARI RAM,—*Respondent*

Civil Revision No. 240 of 1959.

September 29, 1967

*Code of Civil Procedure (Act V of 1908)—Administration of Evacuee Property Act (XXXI of 1950)—Ss. 4, 28, 46 and 48—Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 21, 27, and 36—Suit by a lessee of evacuee property for a declaration that the lease was illegal, ineffective and not binding on him, that it stood cancelled by orders of the State of Patiala and as such no liability under the same was enforceable against him and for an injunction restraining the defendants from recovering any sum on account of the lease and from taking any steps in that behalf—Whether maintainable.*

*Held*, that in view of the provisions of sections 4, 28, 46 and 48 of the Administration of Evacuee Property Act, 1950 and sections 21, 27 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, a civil court has no jurisdiction to determine whether the lease of evacuee property granted to the plaintiff was illegal, ineffective and not binding on him and that it stood cancelled by the order of the State of Patiala and no liability under the same was enforceable against him. Similarly a civil court has no jurisdiction to issue an injunction against the defendants restraining them from recovering any sum on

account of that lease and from taking any steps in that behalf in future and a suit for such reliefs is not maintainable.

*Held*, that after the amendment of the Administration of Evacuee Property Act by Act 91 of 1956, the Custodian alone was competent to determine the liability of a lessee of evacuee property under the provisions of the said Act and the civil courts could not have taken cognisance of the matter. After the coming into force of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Settlement Commissioner enjoys the same powers as the Custodian, under section 21 of the Act, in the matter of determining the liability of a lessee on the basis of the lease of evacuee land even if it had been taken by him before the coming into force of the said Acts and the civil courts have no jurisdiction in the matter.

*Case referred by the Hon'ble Mr. Justice K. L. Gosain, by order, dated the 7th January, 1960 to a Division Bench for decision of the important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice Tek Chand and the Hon'ble Mr. Justice Inder Dev Dua referred the case by order, dated the 4th May, 1962 to a Full Bench, for decision of the important question of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur, the Hon'ble Mr. Justice P. C. Pandit and the Hon'ble Mr. Justice P. D. Sharma, on 29th September, 1967.*

*Petition under section 115 of the Code of Civil Procedure for revision of the order of Shri V. D. Aggarwal, Sub-Judge, 1st Class, Narnaul, dated the 26th February, 1959, ordering that the defendant had failed to prove the issue and it was held against the defendant.*

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Petitioners.

H. S. GUJRAL AND D. R. MANCHANDA, ADVOCATES, for the Respondents.

### JUDGMENT

SHARMA, J.—This is a revision petition against an order of the learned Subordinate Judge, 1st Class, Narnaul, dated the 26th February, 1959, by which he held that the Civil Courts had jurisdiction to entertain the suit filed by Hari Ram against the Union of India, State of Punjab and the Managing Officer, Evacuee Property, Narnaul, in his Court. A few facts in order to understand the nature of dispute between the parties may be noticed here. Muslim owners of land situate within the revenue estates of Narnaul town and Buchallpur village forming part of the erstwhile Patiala State on account of communal disturbances and pending partition of the country migrated to

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Pakistan somewhere in the middle of the year 1947. The Naib-Tehsildar in pursuance of an order passed by the Nazim, Narnaul, auctioned lease of the land so left by Muslim owners in these two revenue estates for Kharif 2004 Bk., and Rabi 2005 Bk., on 17-4-2004 Bk., corresponding to 1st August, 1947. Hari Ram plaintiff was the highest bidder. He offered Rs. 61,000 for both the harvests out of which Rs. 5,000 was for Kharif and Rs. 56,000 for Rabi harvest. Rs. 1,250 were paid by him in cash. The lease was sanctioned on 8th October, 1947, (23-6-2004 Bk.). The Patiala Evacuees (Administration of Property) Ordinance 2004 (No. IX of 2004) had come into force from 5th September, 1947. Hari Ram did not pay anything beyond what he had tendered in advance. After expiry of two harvests the Collector, district Mohindergarh issued him a notice to show-cause as to why the balance of the amount and the land revenue should not be realised from him. He filed certain objections which were overruled. The Collector finally passed an order dated the 27th September, 1950, copy Exhibit D.B. directing him to pay the balance of the lease money within 10 days failing which the same was to be realised by all means available under the law. Hari Ram felt aggrieved from this order and filed an appeal which was dismissed on 30th April, 1951, by the Additional Custodian, Evacuee Property, Pepsu. His revision against the above, however, was allowed by the Deputy Custodian-General, India, on 16th June, 1955, and the case remanded to the Additional Custodian for fresh decision. It was laid before Shri Mohan Lal Dewan, Additional Settlement Commissioner and Director, Rehabilitation, Pepsu, Patiala; because the Displaced Persons (Compensation and Rehabilitation) Act, (hereinafter referred to as the Compensation Act) had come into force on 9th October, 1954. Section 21 of this Act empowered the Settlement Commissioner to determine the sums payable to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise, howsoever, for any period prior to the date of acquisition of such property which had not been recovered under section 48 of the Administration of Evacuee Property Act, 1950, (hereinafter referred to as the Evacuee Act). The evacuee land situate in the above two revenue estates appeared to have been acquired by the Central Government by a general notification under section 12 of the Compensation Act. Shri Mohan Lal Dewan again heard Hari Ram and passed an order on 17th April, 1956, in the following terms:—

“In view of what has been said above, I hold that petitioner is liable to pay Rs. 3,750 as balance of Rs. 5,000 for Kharif 2004 Bk., plus the land revenue for the evacuee lands leased out to him minus the amount which he may be able to

prove as recovered direct by the State Officers. I give Mr. Hari Ram two months' time to pay the money in default of which it would be recovered as arrears of land revenue in accordance with law. As regards the case for Rabi 2005 Bk., I remand the case for further enquiry to the E. A. C. Rehabilitation who is exercising the powers of Assistant Settlement Commissioner. He will send for Mr. Gurbachan Singh, Naib-Tahsildar and other relevant records and give a finding about the liability or otherwise of Mr. Hari Ram for the lease money of Rabi 2005 Bk. As a result, the revision is partially accepted and the case is forwarded to the E. A. C. Rehabilitation for further action on the two points referred to above. The petitioner should be informed of this order. All these records including the file of the D. R. R.'s office should be forwarded to the E. A. C. Rehabilitation for further action."

Hari Ram again was not satisfied with the aforesaid order and filed a revision petition which was heard by the Deputy Custodian-General of Evacuee Property, New Delhi. It was agreed before him that the leased land had been acquired by the Central Government under section 12 of the Compensation Act. He, therefore, following a Bench decision of this Court in *Balmukand and others v. Punjab State* (Civil Writ No. 387 of 1955), held that he had no jurisdiction to hear the revision petition. Thereupon Hari Ram instituted the present suit on 1st November, 1957, for a declaration that the lease in question was illegal, ineffective and not binding on him, that it stood cancelled by orders of the State of Patiala, and as such no liability under the same was enforceable against him. He also prayed for an injunction restraining the three defendants from recovering any sum on account of the lease and from taking any steps in that behalf. Defendants Nos. 1 and 2 did not contest the suit. The Managing Officer, defendant No. 3, resisted the plaintiff's claim amongst others also on the ground that the suit was not cognizable by a Civil Court. The trial Judge framed necessary issues including the one, 'whether the Civil Court had no jurisdiction to hear the suit' which was treated as preliminary and decided against the defendants. The revision petition filed by the latter came up for hearing before Gosain, J., who referred it to a larger Bench as in his opinion the question of jurisdiction involved in the case was of great importance and was likely to affect a large number of similar cases and also as the amount involved in the suit was Rs. 61,000 and the proceedings here being in the revisional jurisdiction of this Court, none of the parties would have a chance to file a Letters Patent Appeal. The

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case came up before Tek Chand and Inder Dev Dua, JJ., who also for like reasons referred it to a still larger Bench. This is how it came up before us.

The learned counsel for the defendants-petitioners in support of his argument that the dispute between the parties was not cognizable by a Civil Court relied on sections 4(1), 28, 46 and 48 of the Evacuee Act which run as—

“4(1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

28. Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding.

46. Save as otherwise expressly provided in this Act, no civil or revenue court shall have jurisdiction—

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(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.

48(1) Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.

- (2) If any question arises whether a sum is payable to the Government or to the Custodian within the meaning of sub-section (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Custodian shall, subject to any appeal or revision under this Act, be final and shall not be called in question by any court or other authority.
- (3) For the purposes of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by the Indian Limitation Act, 1908, or any other law for the time being in force relating to limitation of actions."

A careful reading of section 48(2) will show that the Custodian has the power to determine whether a sum is payable to the Government or to the Custodian from a person. This he has to determine after giving him due notice. His order subject to any appeal or revision under the Act is to be final and could not be called in question by any Court or other authority. Section 46 further excludes the jurisdiction of civil or revenue Court in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine. The legality of any action taken by the Custodian-General or the Custodian under this Act also could not be questioned in any civil or revenue Court. Section 20 gives finality to the orders passed by the Custodian as they could not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceedings. Section 4 further provides that provisions of this Act and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. The scope of these four sections of the Evacuee Act was recently considered by the Supreme Court in *Punjab State and others v. Jafran Begum* (Civil Appeal No. 772 of 1964) decided on 20th April, 1967. There Smt. Jafran Begum had instituted a suit for an injunction restraining the defendants from evicting her from the house in dispute, seven/eighth portion of which had been declared as evacuee property. She based her claim on a will alleged to have been executed by one Murad Bux in 1918 bequeathing the house to her. The trial Judge dismissed the suit on the short ground that Civil Courts had no jurisdiction in the matter. Her appeal in the

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Court of the District Judge also failed. The second appeal preferred by her finally came up for hearing before a Full Bench of this Court where it was held that since complicated questions of fact and law were involved in determining whether the house in dispute was evacuee property or not, the suit could be heard by a Civil Court. The Supreme Court after examining the scheme of the Evacuee Act observed that—

“A bare reading of section 46 shows how widely it is worded and how clearly it bars the jurisdiction of civil and revenue courts in matters specified therein. A perusal of these provisions in our opinion shows that the Act is a complete code in itself in the matter of dealing with evacuee property.

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The legislature was not, however, satisfied merely by giving finality to the orders of the authorities mentioned in section 28; it went on to bar specifically the jurisdiction of civil and revenue courts in three matters indicated in section 46. Under clause (a) of section 46, jurisdiction of civil and revenue courts is expressly barred and they are forbidden to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property.

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Further if the learned Judges in the order under appeal are correct in saying that if a question of title rests on a simple allegation of fact it can be finally determined by the Custodian, we cannot see on what reasoning it can be said that where a question of title depends on a question of law it cannot be finally decided under section 7 by the Custodian. His power under section 7 is to decide whether certain property is evacuee property or not and there is nothing in section 7 which restricts that power to deciding only questions of fact.

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In these circumstances section 46 is a complete bar to the jurisdiction of civil or revenue courts in any matter which

can be decided under section 7. This conclusion is reinforced by the provision contained in section 4(1) of the Act which provides that the Act overrides other laws and would thus override section 9 of the Code of Civil Procedure on a combined reading of sections 4, 28 and 46."

The Supreme Court finally held—

"On a careful consideration, therefore, of the authorities cited before us, we are of the opinion that generally speaking the jurisdiction of the civil or revenue court is barred under section 46 and no such court can entertain any suit or adjudicate upon any question whether a particular property or right to or interest therein is or is not evacuee property."

The language of sections 4, 28, 46 and 48 of the Evacuee Act, as pointed out by the Supreme Court is express, explicit and mandatory and it admits of no implications and exceptions. Sub-section (2) of section 48 gives powers to the Custodian to determine whether any sum was due from Hari Ram plaintiff-respondent under any agreement, express or implied, lease or other documents or otherwise, howsoever. The decision given by him after coming into force of this section in the amended form indeed cannot be challenged by Hari Ram in any civil Court. Section 48 as it now stands was amended on 22nd October, 1956. It is correct that the cause of action in the present case accrued before section 48 was amended but this did not alter merits of the case. In this connection reference may be made to *Hazara Singh v. The Custodian of Evacuee Property, Pepsu, Patiala and others*, where scope of section 48 of the Evacuee Act was examined at length. It was laid down—

"A statute or amendment which furnishes a new remedy without disturbing vested rights or which prescribes a new procedure, applies not only to actions which may be commenced after its enactment but also to actions which have already accrued or which are already pending. Its retrospective operation is not obnoxious to the spirit and policy of the law."

The same view was held in *The Custodian of Evacuee Property, Jullundur v. Sat Narain and another* (Letters Patent Appeal No. 109 of 1959 decided in this Court on 11th January, 1962) and was finally

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(1) I.L.R. (1960) 1 Punj. 209=1959 P.L.R. 917.



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approved by the Supreme Court in *Memon Abdul Karim Haji Tayab v. Deputy Custodian-General* (2), which laid down—

“The amended section 48 came into the Act by Act No. 91 of 1956 from October 22, 1956. Sub-sections (1) and (2) are clearly procedural and would apply to all cases which have to be investigated in accordance therewith after October 22, 1956, even though the claim may have arisen before the amended section was inserted in the Act. It is well-settled that procedural amendments to a law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date.”

Thus it cannot be seriously contested that before coming into force of the Compensation Act, the Custodian was competent to determine the liability of Hari Ram, plaintiff-respondent arising out of the lease in question and civil courts could not have taken cognizance of the matter. After coming into force of the Compensation Act the Settlement Commissioner enjoyed the same powers as the Custodian under section 21 in the matter of determining the liability of Hari Ram, plaintiff-respondent on the basis of the lease of evacuee land alleged to have been taken by him as far back as 1947. Section 27 gives finality to the orders passed by the Settlement Commissioner under section 21 of the Act which provides—

“Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act, including a managing corporation, shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceeding.”

Section 36 gives further finality to such orders passed by the Settlement Commissioner inasmuch as it lays down—

“Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any Officer or authority appointed under this Act

is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

The phraseology of sections 21, 27 and 36 of the Compensation Act is the same as the phraseology of sections 48(2), 28 and 46 of the Evacuee Act and, therefore, by following the rule laid down by the Supreme Court in *Memon Abdul Karim's case* it can be said that the Settlement Commissioner will be competent to determine the liability of Hari Ram, plaintiff-respondent arising out of the lease in question and that the civil Courts will have no jurisdiction to entertain any cause in that connection. The learned counsel for Hari Ram, respondent had not much to urge against this proposition and as a matter of fact conceded that the Settlement Commissioner under the Compensation Act only will be competent to ascertain whether any amount is due from Hari Ram, respondent or not under the lease. He however, maintained that Hari Ram, respondent, in the civil suit could attack the validity of the orders passed by (1) The Collector, district Mohindergarh on 27th September, 1950, Exhibit D.B. and (2) Mohan Lal Dewan, Additional Settlement Commissioner on 17th April, 1956, inasmuch as both these orders were passed before section 48 of the Evacuee Act and Section 21 of the Compensation Act were amended. It may be stated here that on 18th February, 1954, the recovery Tahsildar, Sangrur, issued a notice to Hari Ram, plaintiff-respondent to deposit Rs. 64,000 in the Government Treasury before 28th February, 1954, failing which he threatened to take coercive measures to realise the sum in question. Section 48 of the Evacuee Act and section 21 of the Compensation Act before these were amended were not comprehensive enough to exclude the jurisdiction of civil Courts in all matters as a Bench of this Court in *Custodian-General of Evacuee Property, New Delhi v. Harnam Singh* (3), laid down as follows:—

“It is a fundamental principle of law that every person who receives an injury is entitled to claim the protection of the Courts. Broadly speaking, the Courts alone have the power to decide justiciable controversies both on questions of fact as well as of law; they alone can protect the rights and interests of individual citizens and they alone have power to hear, determine and to enforce.

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(3) A.I.R. 1957 Punj. 58.

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The Administration of Evacuee Property Act does not appear to bar the jurisdiction of ordinary Courts or to transfer the determination of rights and liabilities from ordinary Courts to executive officers. It is not a fiscal measure like the Income-tax Act or the Land Revenue Act in which the Income-tax Officer or the Revenue Officer is charged with the duty of producing revenue for the State. It was designed primarily to provide for the preservation, management and control of evacuee property. The Legislature could never have intended under a general enactment like the present, to deprive the Courts of the jurisdiction which they possess in such cases and to empower the Custodian to adjudicate on the controversies which arise between him and the members of the public on disputed questions about the amount of compensation which should be recovered for use and occupation of property. The custodian has no power to determine disputed questions of title or to determine whether a debt is barred by time or not or to recover any debt under section 48 when the debtor declares that the debt is barred by time."

The learned counsel for the petitioner conceded that the validity of the above two orders and the action taken in execution thereof could be attacked in the present suit as these were passed before section 48 of the Evacuee Act and section 21 of the Compensation Act were amended. Thus the Civil Court's will have jurisdiction to determine in the present suit whether the order passed by the Additional Settlement Commissioner, Shri Mohan Lal Dewan, on 17th April, 1956, is valid in law. The order passed by the Collector, Mohindergarh, dated the 27th September, 1950, Exhibit D.B., was vacated by the Deputy Custodian-General when he remanded the case on revision filed by Hari Ram to the Additional Custodian for fresh decision. A notice appears to have been issued in pursuance of this order by the Tahsildar (Recovery), Sangrur on 18th February, 1954. The plaintiff will also be entitled to attack the vires of the above notice in the present suit. The trial Judge will not have the jurisdiction to determine whether the lease in question was illegal, ineffective and not binding on the plaintiff and that it stood cancelled by the order of the State of Patiala and no liability under the same was enforceable against him. Similarly he will have no jurisdiction to issue an injunction against the defendants restraining them from recovering any sum on account of that lease and from taking any steps in that behalf in future.

For the above reasons, the revision is allowed in part and the dispute between the parties to the extent indicated above will only be cognizable by the Civil Court. The costs will abide the event. The parties are directed to appear before the trial Court on 6th November, 1967.

SHAMSHER BAHADUR, J.—I agree.

PREM CHAND PANDIT, J.—I also agree.

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B.R.T.