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name, has built a bungalow at Manali for her use and has removed several pieces of furniture from his village for the purpose of furnishing this house. These facts led the Deputy Commissioner to the belief that the petitioner has entered upon a course of wasteful extravagance likely to dissipate his property. This Court cannot constitute itself into a Court of appeal in cases of this kind and it is not within the province of this Court to express an opinion on the adequacy or otherwise of the material on which the conclusion of a Deputy Commissioner is based.

For these reasons, I would hold that the Court of Wards Act, 1903, is not *ultra vires* the Constitution and that the order passed by the State Government and the notification issued by the Financial Commissioner were in accordance with law. The petition must, therefore, be dismissed with costs.

Khosla, J.

KHOSLA, J.—I agree.

CIVIL WRIT.

*Before Khosla J.*

MANGAL SINGH,—*Petitioner.*

*versus*

THE DEPUTY CUSTODIAN-GENERAL OF EVACUEE PROPERTY, NEW DELHI, AND OTHERS,—*Respondents.*

**Civil Writ No. 313 of 1953**

*Administration of Evacuee Property Act (XXXI of 1950)—Section 56—Rule 14(6) framed under—Whether* ultra vires *the Act—Scope of the rule stated.*

1954

June, 2nd

*Held*, that there is nothing whatsoever in sub-rule 6 of Rule 14 or the provisos attached to it which is in any way repugnant to the provisions of the Administration of Evacuee Property Act and is, therefore, not *ultra vires* the Act. This rule only lays down certain conditions which must obtain before an allotment in favour of a refugee can be cancelled and since one of the objects of the Act is the rehabilitation of refugees, the imposition of reasonable restrictions upon the powers of the Custodian cannot be said to be inconsistent with the

Act. The rule does nothing more than lay down a procedure and prescribe conditions in which the revisional authority can interfere. Reasonable curtailment of such powers cannot be said to be *ultra vires* the Act. Sections 26 and 27 provide that certain officials of the Custodian Department have the power to revise orders passed by other officers of a lower standing. Under section 56 the Central Government has been authorised to frame rules in order to carry out the purposes of the Act. Subsection (2)(*i*) deals with the powers to make rules in respect of "the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied", and it is under this authority that rule 14(6) was framed.

*Held*, that the Custodian can vary or cancel leases under sub-rules (1) to (5) of Rule 14 but where the allotment was made before the 22nd of July, 1952, he can only do so if the conditions set out in clauses (*i*), (*ii*) and (*iii*) of sub-rule (6) obtain. But he can interfere and cancel an allotment under sub-rules (1) to (5) if a revision petition within the prescribed time has been presented against an order passed by the lower authority on or before the 22nd of July 1952. Therefore if the case of an allottee does not fall under clauses (*i*), (*ii*) and (*iii*) of sub-rule (6) the Custodian Department cannot cancel the lease unless two conditions are fulfilled, namely (1) the order under review or revision must have been made before the 22nd of July 1952, and (2) an application for the revision of this order under sections 26 and 27 must have been made within the prescribed time. There is no limitation on allotments, made after the 22nd of July 1952.

*Petition under Article 226 of the Constitution of India, praying that this Hon'ble Court be pleased to quash this illegal and* ultra vires *order of cancellation passed by the Deputy Custodian-General, New Delhi, dated 28th August, 1953, and to issue a writ in the nature of* Mandamus, Certiorari, *or any other writ, order or direction of the like nature to respondents Nos. 1 and 2 not to cancel the allotment and not to disturb the possession of the petitioner, and further praying that the possession of the petitioner be not disturbed till the final decision of this writ petition.*

S. L. PURI, for Petitioner.

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

ORDER

Khosla, J.

KHOSLA, J. This is a petition under Article 226 of the Constitution challenging an order made by the Custodian-General in respect of evacuee property.

The facts of the case are briefly as follows:—

The petitioner Mangal Singh was originally a resident of Naurangabad in the district of Amritsar. He held proprietary land in the *patti* in which Muslim evacuees were occupancy tenants. He was allotted an area of land in that *patti* in lieu of the land which had been abandoned in Pakistan. Preference was given to him over Lachhman Singh, respondent No. 3, another claimant for allotment, on the ground that although Lachhman Singh was also an old resident of this village, he did not own any land which was held by the Muslim evacuees. In preferring Mangal Singh the authorities apparently were influenced to some extent by paragraph 24 of Chapter VI, Land Resettlement Manual. This paragraph, however, deals with the question of allotting individual *khasra* numbers after a complete list of allottees has been prepared. Therefore, under this rule Mangal Singh could not be preferred to Lachhman Singh. Be that as it may, on the report of the Tahsildar, dated 15th November 1949, the matter came up before the Director-General, Relief and Rehabilitation, who passed an order on 31st December 1949, sanctioning the allotment in favour of Mangal Singh and disallowing the claim of Lachhman Singh. Lachhman Singh being aggrieved by this decision filed a revision petition before the Director-General, Jullundur. This petition was drawn up on 14th April 1952, and was dismissed by the Director-General on the 10th of September 1952, on the ground that the allotment in favour

of Mangal Singh had been implemented and this allotment could not be cancelled because rule 14(6) as subsequently amended barred the cancellation of allotments made before 22nd July 1952. The petitioner then moved the Custodian-General in revision, and the Custodian-General on 28th August 1953, passed an order cancelling the allotment in favour of Mangal Singh and directing that Lachhman Singh be given allotment to the extent of his claim which was 12 standard acres and $2\frac{3}{4}$ units It is against this order that the present petition for a writ is directed.

The contention of the petitioner briefly is that the Custodian-General had no jurisdiction to entertain the revision petition filed by Lachhman Singh and to cancel the allotment in favour of the petitioner. Mr. Puri argued that the revision petition was not filed within limitation and that sub-rule (6) to which a reference has already been made took away the jurisdiction of the Custodian Department to cancel the allotment in the petitioner's favour because it had been made before the 22nd of July 1952.

On the other hand it was contended that (1) rule 14, sub-rule (6), was *ultra vires* because it was inconsistent with the provisions of the Administration of Evacuee Property Act, (2) the revision petition was directed not against the original order of allotment, dated 31st December 1949, but against the order of the Director-General in revision, dated 10th September 1952, which was subsequent to 22nd July 1952, and could, therefore, be set aside, and (3) the Custodian acted wrongly in giving preference to Mangal Singh over Lachhman Singh because Mangal Singh's proprietary title in land held by Muslim occupancy tenants did not entitle him to preference over other claimants.

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The first point to consider is whether sub-rule (6) of rule 14 is *ultra vires* the Act. The object of the Administration of Evacuee Property Act is to make provision "for the administration of evacuee property and for certain matters connected therewith". One of these connected matters is the resettlement of refugees and the business of land resettlement is intimately connected with the administration of evacuee property because Indian citizens who were forced to leave their homes in territory which is now part of Pakistan had to be rehabilitated by making an allotment of evacuee property in their favour. In the beginning when there was a great rush of refugees temporary allotments were made in favour of persons who had squatted on the land. These temporary allotments were followed by *quasi* permanent allotments. A great deal of thought and labour was expended in making *quasi* permanent allotments and rules were laid down for the guidance of the Custodian Department. Even so it was realized that some errors may have been made or in some cases injustice might have resulted. The Act contained provisions for review and revision. It was felt at one stage that where a certain person had been in possession of a part of land for a considerable period he should not be ousted except on very cogent grounds. The refugee in possession had perhaps carried out improvements and it would be unwise and unjust to dispossess him on merely technical grounds. Section 12 of the Act authorized the Custodian to cancel or vary allotments. Rule 14 framed under the Act laid down the conditions in which the Custodian could alter or vary leases and allotments. This rule had in the original instance five sub-rules. Later it was realized that hardship might be caused even if the Custodian exercised his limited powers under rule 14 and so sub-rule

(6) was added. This was amended by a notification, dated the 22nd of July 1952, and was again amended by a notification, dated the 13th February 1953. The main change introduced on the last date was the addition of a proviso which is in the following terms:—

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

A further amendment added the words "or section 27" in the proviso. So now as the sub-rule stands applications for revision or review filed under section 26 or 27 of the Act will not be affected provided they were presented within time. The question of limitation is dealt with in rule 31 which provides a period of 30 days for revision petitions when made to the Custodian and 60 days when made to the Custodian-General.

Sub-rule (6), therefore, now finally stands as follows:—

> "(6) Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in each of the States of Punjab and Patiala and East Punjab States Union, shall not exercise the power of cancelling any allotment of rural evacuee property on a *quasi* permanent basis, or varying the terms of any such allotment, except in the following circumstances —
>
> (i) where the allotment was made although the allottee owned no agricultural land in Pakistan;

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(ii) where the allottee has obtained land in excess of the area to which he was entitled under the scheme of allotment of land prevailing at the time of the allotment;

(iii) where the allotment is to be cancelled or varied—

(a) in accordance with an order made by a competent authority under section 8 of the East Punjab Refugees (Registration of Land Claims) Act, 1948;

(b) on account of the failure of the allottee to take possession of the allotted evacuee property within six months of the date of allotment;

(c) in consequence of a voluntary surrender of the allotted evacuee property, or a voluntary exchange with other available rural evacuee property, or a mutual exchange with such other available property;

(d) in accordance with any general or special order of the Central Government:

Provided that where an allotment is cancelled or varied under clause (ii), the allottee shall be entitled to retain such portion of the land as is not in excess of the land to which he would have been entitled under the scheme of *quasi* permanent allotment of land:

Provided further that nothing in this sub-rule shall apply to any application for revision, made under section 26 or section 27 of the Act, within the prescribed time, against an order passed by a lower authority on or before 22nd July, 1952."

The final position, therefore, is this. The Custodian can vary or cancel leases under sub-rules (1) to (5) but where the allotment was made before the 22nd of July 1952, he can only do so if the conditions set out in clauses (i), (ii) and (iii) of sub-rule (6) obtain. But he can interfere and cancel an allotment under sub-rules (1) to (5) if a revision petition within the prescribed time has been presented against an order passed by the lower authority on or before the 22nd of July 1952. Therefore, if the case of an allottee does not fall under clauses (i), (ii) and (iii) of sub-rule (6) the Custodian Department cannot cancel the lease unless two conditions are fulfilled, namely (1) the order under review or revision must have been made before the 22nd of July 1952, and (2) an application for the revision of this order under sections 26 and 27 must have been made within the prescribed time. There is no limitation on allotments made after the 22nd of July 1952.

The argument of the learned Advocate-General is that this rule curtails the powers of the revisional authorities under the Administration of Evacuee Property Act and to that extent the rule is inconsistent with the statute. This rule, however, only lays down certain conditions which must obtain before an allotment in favour of a refugee can be cancelled and since one of the objects of the Act is the rehabilitation of refugees the imposition

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of reasonable restrictions upon the powers of the Custodian cannot be said to be inconsistent with the Act. The rule does nothing more than lay down a procedure and prescribe conditions in which the revisional authority can interfere. Reasonable curtailment of such powers cannot be said to be *ultra vires* the Act. Sections 26 and 27 provide that certain officials of the Custodian Department have the power to revise orders passed by other officers of a lower standing. Under section 56 the Central Government has been authorised to frame rules in order to carry out the purposes of the Act. Subsection (2)(i) deals with the power to make rules in respect of "the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied", and it is under this authority that rule 14(b) was framed. I can find nothing whatsoever in sub-rule (6) or the provisos attached to it which is in any way repugnant to the provisions of the Administration of Evacuee Property Act. A reference was made to sub-rule (6) by their Lordships of the Supreme Court in *Dunichand Hakim and others* v. *Deputy Commissioner, Karnal* (1). Their Lordships did not think that the sub-rule was *ultra vires* the Act.

Now if this rule is applied it is clear that the order of the Custodian-General was without jurisdiction. The case clearly does not fall under any of the sub-clauses (i), (ii) and (iii). The petitioner Mangal Singh owned agricultural land in Pakistan. He was not allotted land in excess of the area to which he was entitled and the allotment was not sought to be cancelled under any of the items (a) to (d) under clause (iii). The allotment was cancelled because it was felt that Mangal Singh should

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not have been preferred to Lachhman Singh, respondent. The original allotment in favour of Mangal Singh was according to rules because he was entitled to allotment in this village. Lachhman Singh was also entitled to allotment and he should have been preferred to Mangal Singh because Mangal Singh was a bigger allottee. Now the ground of being a bigger allottee is not covered by any part of sub-rule (6). In the present case the allotment made in December 1949 was upheld by the Director-General on 10th September 1952, on the ground that the allotment could not be cancelled by reason of the amended sub-rule (6). It must be observed that the revision petition was presented on the 14th of April 1952, i.e., nearly 16 months after the order of allotment and was barred by time. Therefore, the Director-General who was acting as Additional Custodian was perfectly right in not cancelling the original order of allotment even though he did not make any reference to the question of limitation. The Deputy Custodian-General had no jurisdiction to set aside the allotment and the revision petition filed in his Court, even though within 60 days of the order of the Additional Custodian, had no force in it because the allotment had already become good and finally effective. The revision petition before the Deputy Custodian-General was really directed against the order of original allotment and, therefore, the Deputy Custodian-General was not competent to cancel that allotment and his order was without jurisdiction.

The result is that this petition is allowed and the order of the Deputy Custodian-General is set aside. The original allotment in favour of the petitioner will stand. It appears from the order of the Deputy Custodian-General that there is another

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allotment in favour of Lachhman Singh, respondent. He will, therefore, not be adversely affected by being refused allotment in village Naurangabad.

The petitioner will recover costs of this petition.

Khosla, J.

REVISIONAL CRIMINAL.

*Before Bhandari, C. J. and Bishan Narain, J.*

THE STATE OF DELHI,—*Petitioner.*

*versus*

SHRI S. Y. KRISHNASWAMY, I.C.S. ETC.—*Respondents.*

**Criminal Revision No. 848 of 1954**

1954

June, 7th

*Code of Criminal Procedure (Act V of 1898)—Section 503—Powers under—Whether exerciseable by Special Judge—Criminal Law (Amendment) Act (XLVI of 1952)—Section 8(3)—Principles regarding examination of witnesses in the administration of justice stated.*

*Held,* that a Court of Special Judge appointed under the provisions of the Criminal Law Amendment Act, 1952, is deemed to be a Court of Sessions by virtue of section 8(3) of the said Act. A Special Judge stands on exactly the same footing as a Session Judge and can exercise the same powers under section 503 of the Code of Criminal Procedure as may be exercised by the latter.

*Held,* further that each application for the examination of a witness on commission must be decided in the light of following principles:—

(1) It is the duty of every person who is acquainted with the facts of a particular case to appear in Court, give evidence in regard to all relevant facts within his knowledge, and to answer the questions which are put to him for the purposes of the enquiry or trial.

(2) The accused has a right to require that, save in special circumstances, he should be confronted with the witnesses who are to give evidence