

**CIVIL WRIT SIDE**

*Before Falshaw and Kapur, JJ.*

**BUTA MALL,—Petitioner,**

*versus*

**THE FINANCIAL COMMISSIONER, RELIEF AND  
REHABILITATION AND OTHERS,—Respondents.**

**Civil Writ No. 250 of 1951**

*Constitution of India, Articles 225 and 226—Property situate outside the territorial jurisdiction of the High Court—Order affecting such property passed within the jurisdiction of the High Court by an officer residing therein—Jurisdiction of High Court to issue an appropriate Writ—Writ of Certiorari—Whether can issue, in a claim that the widow is only entitled to maintenance and not to the possession of the property.*

*Held, that the land allotted being not within the jurisdiction of this Court, this Court had no jurisdiction to issue the writ prayed for merely on the ground that the order was passed within the jurisdiction of this Court. Moreover in view of Article 225 of the Constitution this Court cannot adjudicate upon rights in regard to immovable property situate outside its jurisdiction and so also the petition for the grant of the writ must fail.*

*Held further, that the claim of the petitioner is that the widow is only entitled to maintenance and not to possession of land. It may or may not be so but there are matters which should properly be decided by a Court of law in a regular suit and writ of Certiorari is not the proper remedy.*

*Ryots of Garabandho v. Zamindar of Parlakimedi (1), Rashid Ahmed v. Income-tax Investigation Commission (2), relied upon. Ebrahim Aboobaker v. Achhru Ram (3), view of Harnam Singh, J., not followed and view of Soni, J., followed.*

(1) I. L. R. 1944 Mad. 457

(2) 53 P. L. R. 57

(3) A. I. R. 1952 Punjab I.

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Petition under Article 226 of the Constitution of India,  
praying—

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- (a) that a writ in the nature of *Certiorari* may be issued against the respondents to submit the records of the case and orders passed by the Financial Commissioner, Relief and Rehabilitation, dated 30th August 1951, and Thakar Vikram Singh, Additional Custodian, dated the 26th September 1951, and Director-General Rehabilitation (R), dated the 2nd June 1951, virtually cancelling the petitioner's allotment of land be quashed ;
- (b) that a writ of prohibition be issued against the respondents restraining them from evicting the petitioner from the land allotted to him in execution of the above stated orders ; and
- (c) that an interim order may be issued restraining the respondents from evicting the petitioner from the land allotted to him pending the hearing of the petition.

A. N. GROVER, A. M. SURI and H. L. SARIN, for Petitioner.

N. L. SALOOJA and Y. P. GANDHI, for Respondents.

#### ORDER

KAPUR, J. This is a rule obtained against the Financial Commissioner, Relief and Rehabilitation, Simla, the Director, Relief and Rehabilitation, Punjab, the Additional Custodian, Punjab, the Director, Relief and Rehabilitation, Pepsu, the Assistant Commissioner, Bhatinda, the Assistant Commissioner, Sangrur, and the Deputy Commissioner, Ludhiana, to show cause why writs of *certiorari* and of prohibition should not issue.

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The petitioner alleges that he was owner and in exclusive possession of 1,082 acres in Tehsil Pindi Bhattian of the District of Gujranwala and Talabwala in the District of Sargodha now in Pakistan. This land he had inherited from his grandfather Bishan Das and when after the partition he came to what was East Punjab he put in a claim for a thousand acres and

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was allotted 50 standard acres on the basis of the Jamabandis which showed that he owned and possessed 467 acres. He also alleges that by an agreement dated the 21st June 1900, Har Kaur, who is the widow of his grandfather's brother Devi Dayal, was entitled to receive a maintenance allowance of Rs 240 a year, that this Har Kaur sold 1,670 Kanals 12 Marlas of land to Mohammad Niwaz Khan and Ganga Ram, that a suit was brought to set aside that alienation in 1942, which was decreed and the appeal against this decree was dismissed by the Lahore High Court on the 20th of January 1948, and it was held that Har Kaur had no right to alienate the property as it was in possession of Buta Mal. It is also alleged that Har Kaur filed a claim in respect of 155 acres 6 kanals and was allotted 90 acres because the Jamabandis showed that she was owner and in possession of 472 acres. The allotment was of 5 acres in Ludhiana, 53 acres in Bhatinda District of Pepsu and 31 acres in Sangrur District of Pepsu.

On the 25th of July 1950, Buta Mal made a petition to the Director-General that Har Kaur was only entitled to maintenance and he based this claim on the judgment of the Lahore High Court referred to above. In January 1951, the Director-General Mr Randhawa passed an order cancelling the allotment of land to Har Kaur and ordered that she be entered merely as a holder of a right of maintenance. In June 1951, Har Kaur applied to the Financial Commissioner for revision of that order, and the order was that if possible Har Kaur should be given cultivated land near Shahbad and if that was not possible near Sangrur, and he also ordered that an enquiry be made if Buta Mal was prepared to give 34 acres from his present allotment. This Buta Mal was not prepared to do. Thereupon the Director-General made an order that Har Kaur be allotted land in Sangrur District.

The complaint of Buta Mal is that the order passed by the Additional Custodian is in excess of the jurisdiction vested in him. Therefore counsel prays that

the record be called to this Court and the order of the Director-General be quashed.

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The allegations of the petitioner were denied by the Registrar Land Claims Officer who has filed an affidavit on behalf of the respondents. It was also stated that the petitioner had failed to produce evidence to show regular payment of maintenance allowance to Har Kaur and therefore she was entitled to allotment of land in lieu of maintenance.

By an application dated the 8th December 1951, Har Kaur was made a respondent in this case.

By way of preliminary objection the learned Advocate-General submitted that this Court has no jurisdiction to interfere in this matter and in support he has relied on a judgment of their Lordships of the Privy Council in *Ryots of Garabandho v. Zamindar of Parlakimedi* (1), and a judgment of this Court in *Rashid Ahmad v. Income-tax Investigation Commission* (2). In *Rashid Ahmed's* case I had occasion to discuss at great length the power of this Court to issue writs of *certiorari* against officers who are within the jurisdiction of this Court but are acting in regard to a matter which is outside the jurisdiction of this Court. I there held that this High Court had no jurisdiction to interfere with an action taken by the Income-tax Investigation Commission in regard to an assessee who was residing in Meerut and whose assessment would have been in Meerut. Some doubt, it is submitted, had been cast on the correctness of the judgment in *Rashid Ahmad's* case by observations of Harnam Singh, J., in *Ebrahim Aboobaker v. Achhru Ram* (3). The question there was whether certain property situate in Bombay was evacuee property. The case was heard by the Custodian in Bombay who held that the owner of that property was an intending evacuee. An appeal was taken to the Custodian-General in Delhi who ordered that the case be reheard

(1) I. L. R. (1944) 67 Mad. 457

(2) 53 P. L. R. 57

(3) A. I. R. 1952 Punjab I

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as there were certain lacunae in the enquiry conducted by the Custodian in Bombay and this order was challenged by the alleged intending evacuee. Harnam Singh, J., thought that the matter fell within the jurisdiction of this Court because the Custodian-General was residing at Delhi as the Court acts *in personam* "and looks to the fulfilment of its order to the person of the respondent". The learned Judge also gave a reason for holding that this Court had jurisdiction that the respondent was within the territories "in relation to which this Court exercises jurisdiction". No reference is there made to Rashid Ahmad's case. Soni, J., on the other hand was of the opinion that the Court had no jurisdiction to go into the matter. He relied on two judgments of their Lordships of the Privy Council in *Hamid Hassan Nomani v. Banwarilal Ray* (1), and *Shree Meenakshi Mills, Ltd., v. Provincial Textile Commissioner, Madras*, (2). I have read the judgment of Harnam Singh, J., very carefully and with respect which it deserves but as I am unfortunate enough not to agree with that view I think it only right that I should give my reasons for it. In the Privy Council case of the Zamindar of Parlakimedi the Collective Board of Revenue set aside the order of a single member and decreased the rent which had been ordered to be enhanced by a Special Revenue Officer of Ganjam District and the Ryots petitioned the Madras High Court for a writ of *certiorari* to quash the order of the Collective Board of Revenue, and it was held that a writ could issue to the Board of Revenue, but it was dismissed on merits. An appeal was then taken to the Privy Council who discussed the jurisdiction of the High Court and the question which they set out to decide was whether jurisdiction could be exercised against the Board of Revenue—

- (1) upon the basis of the location of the Board of Revenue, as a body which is ordinarily resident or located within the town of Madras, or

(1) I. L. R. (1948) 1 Cal. 230

(2) 76 I. A. 191.

(2) on the basis that the order complained of was made within the town of Madras.

Their Lordships observed—

“If so it would seem to follow that the jurisdiction of the High Court would be avoided by the removal of the Board of Revenue beyond the outskirts of the town, and that it would never attach but for the circumstance that an appeal is brought to, or proceedings in revision taken by, the Board of Revenue.”

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With regard to the claim of jurisdiction over such a matter by issuing *certiorari* to the Board of Revenue on the strength of its location in the town Viscount Simon said—

“Such a view would give jurisdiction to the Supreme Court, in the matter of the settlement of rents for *ryoti* holdings in Ganjam between parties not otherwise subject to its jurisdiction.”

Their Lordships held against the jurisdiction of the High Court on the ground that the *ryoti* holdings were in Ganjam District which was outside the jurisdiction of the High Court and the parties to the rent case were outside the jurisdiction of the High Court. This rule was followed by Khosla, J., and myself in Rashid Ahmad's case (1). The present case is not in any way different. The land allotted is in Sangrur. The revenue entries, if any, would be made by the revenue officials of that district in Pepsu who are not within the jurisdiction of this Court. No doubt the order was passed within the jurisdiction of this Court but merely on the ground of location of the officer passing the order the High Court would have no jurisdiction and that is exactly what their Lordships of the Privy Council held.

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(1) 53 P. L. R. 57

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In *Hamid Hassan Nomani v. Banwarilal Ray* (1), the office which was sought to be challenged on a writ of *quo warranto* was in connection with the Howrah Municipality, which was outside the local limits of the High Court's original jurisdiction and the Officer, Mr Nomani was not residing within those limits. It was argued therefore that the order of the High Court was without jurisdiction. Sir Walter Monckton, K. C., in support of this submitted that the appeal was governed by the decision in *Parlakimedi case* (2), which was on all fours because the personal residence of the defendant does not confer jurisdiction. "The substance of the thing was the Court as in this case (Nomani's) the substance was the office and the fortuitous circumstance that Nomani may have been a person in the specified type of employment made no difference \* \* \* \*". He also raised another argument which is not relevant to the issue here. Their Lordships did not decide this question and decided the case on the other point. Therefore all that can be said about Nomani's case is that the Privy Council did not reject this argument. Beyond this I am unable to draw much assistance from the case. The Privy Council did not decide this question on the location of residence of the person on whom the office had been conferred nor of the location of the office but decided the matter on the ground that the power of the High Court was confined in these cases to the ordinary original civil jurisdiction of the Court which was the town of Calcutta. The other case *Shree Meenakshi Mills, Ltd.* (3), was for an order under section 45 of the Specific Relief Act. That in my opinion is also not of much assistance. In *Parlakimedi's case*, (4), their Lordships referred to but did not approve of another Madras case called the *Mandasa case* (5), where a writ was issued by the Madras High Court against the Board of Revenue. Their Lordships also refused to apply the rule laid down by the Calcutta High Court in *Nando Lal Bose*

(1) I. L. R. (1948) 1 Cal 230

(2) 70 I. A. 129

(3) 76 I. A. 191

(4) I. L. R. 1944 Mad. 457.

(5) I. L. R. 56 Mad. 579

v. *Calcutta Corporation* (1). After a review of these judgments I am of the opinion that this Court has no jurisdiction to issue a writ of *certiorari* against the Director-General of Relief and Rehabilitation or against the Financial Commissioner merely because of the location of their office within the jurisdiction of this Court or merely because the order was passed within the jurisdiction of this Court.

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Under Article 225 of the Constitution this Court has jurisdiction over territories over which it had jurisdiction immediately before the coming into force of the Constitution. Before the Constitution this Court had no jurisdiction over immovable property situate in Sangrur and as a matter of fact under the Civil Procedure Code the Court which would have jurisdiction in regard to immovable property would be the Court within the local limits of whose jurisdiction the property is situate. In effect what Mr Grover is asking us is that we should order that the land which is situate outside the jurisdiction of this Court and which has been allotted to Har Kaur in lieu of her maintenance should be taken away from her and should be given to the petitioner. This Court cannot adjudicate upon rights in regard to immovable property situate outside and on this ground also this application for a writ of *certiorari* will have to be dismissed.

If jurisdiction can be exercised against the defendants merely on the ground of location of their offices or their residence, it will lead to some extraordinary results. This Court could in that case issue to any authority of the Himachal Pradesh Government or even to Pepsu authorities within the town of Simla, any writ which would have effect in their respective States. This, I do not think, could have been the object of the framers of the Constitution. For instance I doubt, if any, writ of *habeas corpus* could issue from this Court against the Government of

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(1) I. L. R. (1885) 11 Cal. 275



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Himachal Pradesh in regard to any order for detention passed by that Government and similarly other writs. To obviate any such results we must I think confine the exercise of our powers to persons or authorities within our territorial jurisdiction and the order and writs must be confined to something to be done within our jurisdiction.

There is a further point and that is that the land has been allotted to Har Kaur in lieu of maintenance because according to the order of the Director-General of Relief and Rehabilitation it has not been proved that the widow has been paid any maintenance. The claim of the petitioner is that the widow is only entitled to maintenance and not to possession of land. It may or may not be so but these are matters which should properly be decided by a Court of law in a regular suit and writ of *certiorari* is not the proper remedy.

I am therefore of the opinion that this petition fails and it must be dismissed. The petitioner will pay the costs of both the respondents which will be assessed separately. Counsel's fee Rs. 100.

FALSHAW, J. I agree.