

if any substantial injustice has been done to the respondents. The re-allotment was made in 1952 and the parties are said to be in possession of the lands allotted to them since then. The respondents should have approached the rehabilitation authorities or they may do it even now, if so advised, for any relief that may be available to them in the matter. The point does not appear to have been specifically urged before the learned Single Judge. I do not think it is possible for us to grant any relief to the respondents in these proceedings.

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In the result, the appeal is allowed and the order set aside. In view of the peculiar circumstances of the case, the parties are left to bear their own costs.

BHANDARI, C.J.—I agree.

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LETTERS PATENT APPEAL

*Before Bhandari, C.J. and Tek Chand, J.*

ARJAN SINGH,—Appellant.

*versus*

THE CUSTODIAN-GENERAL OF EVACUEE PROPERTY

AND OTHERS,—Respondents

Letters Patent Appeal No. 115 of 1956.

*Constitution of India—Article 226—Power of High Court—Decision of a judicial or quasi-judicial tribunal within the scope of its powers—Whether can be interfered with—Administration of Evacuee Property Act (XXXI of 1950)—Section 27—Executive instructions—Whether abridge the powers of the Custodian-General.*

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*Held*, that although the High Court has power to compel a judicial or a quasi-judicial tribunal to perform a function imposed upon it by law, it has no power to correct the decision of a tribunal which is erroneous in point of law or to control the discretion and judgment of

such tribunal acting within the scope of its judicial or quasi-judicial power. It can require the tribunal to act but not how to act. It has no power to alter, reverse, or modify a decision already reached, either interlocutory or final, for even though the tribunal has come to an erroneous decision on questions of fact or law, this decision has been arrived at in the exercise of its legitimate functions.

*Held also*, that the Executive Instructions issued by the Government purely for the guidance of its executive officers cannot override the provisions of section 27 of the Administration of Evacuee Property Act or limit or abridge the wide powers conferred on the Custodian-General to call for the record of any proceeding in which any District Judge or Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and to pass such order in relation thereto as he thinks fit.

*Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Kapur dated the 21st September, 1956, in Civil Writ No. 32 of 1954.*

H. S. DOABIA, for Appellant.

H. L. SIBBAL, for Respondents.

#### JUDGMENT.

**Bhandari, C. J.** BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether the learned Single Judge was justified in setting aside an order passed by the Deputy Custodian-General.

Arjan Singh appellant was allotted 34 standard acres 8½ units of land in Village Kirtowal and Kehr Singh respondent was allotted 33 standard acres 12½ units in the same village. On the 6th November, 1951, the Authorised Deputy Custodian directed that the appellant who was a bigger of the two allottees should be ousted from the village and the order of the Authorised Deputy Custodian was upheld by the Additional Custodian notwithstanding the fact that during the pendency of the appeal the respondent was allotted an additional 1 standard acre 1½ units and had thus become the bigger of the two allottees. The

appellant sought the intervention of the Deputy Custodian-General under section 27 of the Administration of Evacuee Property Act. The latter allowed the petition, set aside the order of the Additional Custodian and directed that the respondent who was the bigger of the two allottees should be ousted from the village. The respondent presented a petition under Article 226 and secured a reversal of the order of the Deputy Custodian-General. The concluding portion of the order of the learned Single Judge was in the following terms:—

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“In the matter of ousting it must be that the biggest allottee is ousted and it cannot be said that merely because one man has allotments in several villages he should be taken to be the biggest allottee because if that was so he would be ousted from every village. It would be an absurd interpretation to be put on the rules of allotment. Merely because after Arjan Singh was ousted, some more land was allotted to Kehr Singh is no ground for holding that he becomes the biggest allottee. In my opinion the Deputy Custodian-General has misdirected himself and I would, therefore, allow this petition and quash the order of the Deputy Custodian-General.”

The instruction which requires the biggest allottee to be ousted appears in paragraph 9 at page 84 of the Resettlement Manual and runs as follows:—

“If in a village the area available was not sufficient to meet the claims of all the temporary allottees, then in the descending order of the size of holdings those with the largest holdings would be moved from that village until the point was reached at which the area available balanced the demand.”

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Although this Court has power to compel a judicial or a *quasi-judicial* tribunal to perform a function imposed upon it by law, it has no power to correct the decision of a tribunal which is erroneous in point of law or to control the discretion and judgment of such tribunal acting within the scope of its judicial or *quasi-judicial* power. It can require the tribunal to act but not how to act. It has no power to alter, reverse, or modify a decision already reached, either interlocutory or final, for even though the tribunal has come to an erroneous decision on questions of fact or law, this decision has been arrived at in the exercise of its legitimate functions.

It is contended on behalf of the respondent that there was an error apparent on the face of the record, for the Deputy Custodian-General had ordered the eviction of the respondent in defiance of the general instructions issued by Government and in spite of the fact that the appellant was the bigger of the two allottees. This contention appears to me to be wholly devoid of force. In the first place there is no error on the face of the record, for neither a statute nor a statutory rule imposes an obligation on the Custodian or any other officer to oust the biggest allottee. The obligation, if any, has been imposed only by an executive instruction which has been issued by Government purely for the guidance of executive officers. This executive instruction cannot override the provisions of section 27 of the Administration of Evacuee Property Act, *Duni Chand Hakim and others v. State of Punjab, etc.*, (1), or limit or abridge the wide powers conferred on the Custodian-General to call for the record of any proceeding in which any District Judge or Custodian has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and to pass such order in relation thereto as he thinks fit.

(1) A.I.R. 1954 S.C. 150.

Secondly, it seems to me that in any case the Deputy Custodian-General complied with the executive instructions issued by Government, for when the case came up before the Deputy Custodian-General on the 4th February, 1954, the respondent was the bigger of the two allottees. I am of the opinion that it was within the competence of the Deputy Custodian-General to set aside the order evicting the appellant from the village and to direct that the respondent should be evicted instead. The Deputy Custodian-General did not decline to assume jurisdiction in the case or to pronounce upon the matters in controversy between the parties. He did not exceed the jurisdiction vested in him by law. He did not act in violation of the principles of natural justice. He merely embodied the reasons for his decision in the order passed by him and those reasons cannot be regarded as bad in law. The order was passed in exercise of the discretion vested in him, and having regard to all the circumstances of the case the discretion cannot be said to have been exercised in contravention of recognised judicial principles.

For these reasons I would accept the appeal and set aside the order of the learned Single Judge. There will be no order as to costs.

TEK CHAND, J.—I agree.

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Tek Chand, J.

FULL BENCH

Before Bhandari, C.J. and Chopra and Gurnam Singh, JJ.

COLONEL HIS HIGHNESS RAJA SIR HARINDAR  
SINGH BRAR BANS BAHADUR, RULER, FARIDKOT  
STATE,—Appellant

versus

THE PUNJAB STATE,—Respondent

First Appeal from the Order No. 158 of 1954.

*The Punjab Requisitioning and Acquisition of Im-  
movable Property Act (XI of 1953)—Sections 8, 22, 23 and  
25—Land acquired under the East Punjab Requisitioning*

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