LETTERS PATENT APPEAL

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

KAPUR SINGH,—*Appellant*

versus

THE DEPUTY CUSTODIAN-GENERAL, NEW DELHI AND OTHERS,—*Respondents*

Letters Patent Appeal No. 59 of 1955.

1956

Oct., 30th

Administration of Evacuee Property Act (XXXI of 1950)—Sections 24, 26 and 27—Administration of Evacuee Property (Central) Rules 1950, Rules 14(6), 31(5) and 31(7)—Custodian-General if has power to cancel allotments after the 22nd July, 1952—Custodian-General—Power of Revision—Extent of—Revision petition filed long after limitation—Power to condone delay, Extent of—Word "ordinarily" in Rule 31(5)—Effect of—Constitution of India, Article 226—High Court's powers under—High Court, when can decide questions relating to filing of appeal or revision under sections 24, 26 and 27 of the Administration of Evacuee Property Act—High Court, whether can interfere in the decision extending time for filing revision—Interpretation of statutes—Words in a statute, whether superfluous.

Practice—Letters Patent appeal—New point—Whether can be allowed to be raised.

Held :—

(i) Rule 14(6) of the Administration of Evacuee Property (Central) Rules limits the powers of the Custodian to cancel allotments but does not limit the powers of the Custodian-General. The powers given to the Custodian-General in section 27 are absolute in terms and these powers cannot be limited by construing the rule in such a way as to make a revision against an order of allotment made after the 22nd of July, 1952, to be incompetent.

(ii) that on reading of the two Rules 31 (5) and 31 (7) of the Administration of Evacuee Property (Central) Rules together, the intention was that time may be extended for sufficient cause and in a proper case the Custodian or the Custodian-General may entertain a revision petition even if sufficient cause is not shown provided on other grounds they are of the opinion that the revision petition should be entertained. The word ordinarily used in rule 31 (5) is not a surplusage, but leaves the question of limitation within the absolute discretion of the Custodian or the Custodian-General as the case may be.

(iii) It is for the authorities constituted under the Evacuee Act to decide whether a party has *locus standi* to file an appeal or a revision as the case may be or whether it has been filed in proper form or whether it is filed within the prescribed period. That being so, it appears that even if it be held that the Deputy Custodian-General was in error in extending the time it is not for this Court to interfere under Article 226 of the Constitution.

(iv) It is well established that a word used by the legislature should not be treated as surplusage as long as it is possible to give some meaning to it and also that an enactment must be so construed that no word, clause or sentence is held to be superfluous.

(v) It is well settled that in a Letters Patent Appeal a new point cannot be raised which had not been agitated before the Single Judge.

Appeal under Clause 10 of the Letters Patent against the Judgment of Hon'ble Mr. Justice Kapur, dated the 13th day of May, 1955, passed in Civil Writ No. 2 of 1955, under section 226, Constitution of India.

H. S. DOABIA, for Appellant.

A. M. SURI, and H. S. GUJRAL, for Respondents.

JUDGMENT

BISHAN NARAIN, J.—This is an appeal under clause 10 of the Letters Patent from the judgment of a Single Judge of this Court. Bishan Narain, J.

The facts leading to this appeal briefly are these. One Kishan Kaur was allotted land in village Sodhiwala, district Ferozepore. Complaints were received by the Additional Custodian against the allotment in her favour from various persons including the present appellant and respondents Jagir Singh and Kapur Singh. By order dated the 30th of March, 1953, the Additional Custodian cancelled the allotment which had been made in favour of Kishan Kaur and by his order dated the 5th of October, 1953, he re-allotted about 43 standard acres to the appellant, about 17 standard acres to Jagir Singh and Kapur Singh respondents and about 7 standard acres to one Saudagar Singh. Kapur Singh and Jagir Singh filed a petition under Article 226 of the Constitution in this Court but later on withdrew it and filed a revision petition against the order dated the 5th of October, 1953, before the Deputy Custodian-General on the 10th of February, 1954, under section 27 of the Administration of Evacuee Property Act. They claimed land allotted to the present appellant. At the time of the filing of the revision petition, the present appellant was not impleaded but subsequently the Deputy Custodian-General allowed his name to be introduced as a respondent in the memorandum of parties by his order dated the 28th of May, 1954. The appellant contested the revision petition on the ground of limitation and also on merits, but by his order dated the 3rd of December, 1954, the Deputy Custodian-General condoned the delay in making the present appellant a party in the proceedings before him and then on the merits set aside the order

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dated the 5th of October, 1953, passed by the Additional Custodian and cancelled the allotment which had been made in favour of the appellant and allotted that land to Kapur Singh and Jagir Singh respondents. Dissatisfied with this decision, Kapur Singh, son of Kishan Singh filed a petition in this Court under Article 226 of the Constitution. That petition was dismissed by a Single Judge of this Court and the present appeal is directed against that decision.

The learned counsel for the appellant has urged before us that the Deputy Custodian-General has no jurisdiction to cancel this allotment as by passing such an order he contravenes rule 14(6) made under the Administration of Evacuee Property Act as under this rule an allotment cannot be cancelled after the 22nd of July, 1952, excepting on certain grounds which, admittedly, do not exist in the present case. The allotment in the present case was made for the first time in favour of the appellant as well as the respondents before us on the 5th of October, 1953. It has been repeatedly laid down in this Court that rule 14(6) limits the powers of a Custodian but does not limit the powers of the Custodian-General and this is clear from the opening words of this rule which reads—

> "14(6). Notwithstanding anything contained in this rule, the Custodian * * * * * shall not exercise the power of cancelling any allotment * * * * * * * * ."

This is made further clear by the second proviso to this rule in which it is laid down that this rule is not applicable to the Custodian-General when he is dealing with a revision petition under section 27 of the Act against an order made on or before the 22nd of July, 1952. It appears to be that the powers of the Custodian-General under section 27 are in no way

affected by this rule or by second proviso to this rule. Moreover, if the contention of the learned counsel is held to be correct then the Custodian-General would not be able to revise any order of allotment made subsequent to the 22nd of July, 1952. The powers given to the Custodian-General in section 27 are absolute in terms and these powers cannot be limited by construing the rule in such a way as to make a revision against an order of allotment made after the 22nd of July, 1952, to be incompetent. Such a construction would prevent the Custodian-General from interfering with an order of allotment made after the 22nd of July, 1952, and a displaced person, who may be aggrieved by such an order, from filing a revision petition. Obviously neither the rule nor the proviso to this rule is intended to have this effect and there is nothing in the language of this rule to limit the operation of section 27 of the Act in the way contended by the learned counsel. This conclusion is in accord with the unreported decision in *Sadhu Singh* v. *The Deputy Custodian-General, Evacuee Property, New Delhi, etc.*, (1), by a Division Bench of this Court with which I am in respectful agreement.

It is then argued that the revision petition against the appellant was filed long after the expiry of limitation and therefore the Deputy Custodian-General acted beyond his jurisdiction in entertaining the revision petition. In the present case the revision petition was filed on the 10th of February, 1954, against the order of the Additional Custodian dated the 5th of October, 1953, and the present appellant was impleaded for the first time on the 28th of May, 1954, in those proceedings. Therefore the present appellant was impleaded after the expiry of sixty days' limitation prescribed by rule 31(5) made under the Evacuee Act. The Deputy Custodian-General in his order

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disposing of the petition condoned the delay on the ground that the petitioners before him were unlettered Jats and did not know that Kapur Singh (the appellant before us) had to be impleaded as a party in the revision petition. The question arises whether the Deputy Custodian-General was within his powers to extend limitation on the ground stated by him.

Now rule 31(5) reads—

> "31(5). Any petition for revision when made to the Custodian shall ordinarily be filed within thirty days of the order sought to be revised, while a petition for revision when made to the Custodian-General shall ordinarily be made within sixty days of such date. The petition shall be presented in the same manner as a petition of appeal when it is made to the Custodian but it may be sent by registered post when made to the Custodian-General. The petition shall be accompanied by a copy of the order sought to be revised and when made to the Custodian-General by also copy of the original order unless the Revising authority dispenses with the production of any such copy."

And rule 31(7) reads—

> "31(7). The provisions of sections 4, 5 and 12 of the Indian Limitation Act of 1908, shall, so far as they are applicable, apply in computing the period of limitation provided in this rule.

The appellant's case is that these rules prescribing limitation are mandatory in nature and that time can be extended only under sections 4, 5 and 12 of the Limitation Act as laid down in rule 31(7). There is no doubt that the ground which has found favour with

the Deputy Custodian-General in this case cannot be considered to be sufficient cause within section 5 of the Indian Limitation Act. The Deputy Custodian-General has, however, relied on the word "ordinarily" used in rule 31(5) for extending time. The argument raised by the learned counsel is that the word "ordinarily" does not give a discretion to the Custodian-General to travel beyond the powers of section 5 of the Indian Limitation Act. In my opinion, there is no force in this contention. If the rule is construed in the way suggested by the learned counsel then it must necessarily be held that the word "ordinarily" is surplusage and should be ignored, because that word indicates an absolute discretion for the Custodian or the Custodian-General to extend time on any ground that these authorities may consider fit and proper. It is well established that a word used by the legislature should not be treated as surplusage as long as it is possible to give some meaning to it and also that an enactment must be so construed that no word, clause or sentence is held to be superfluous. It must be remembered that the agricultural lands left by evacuees on account of partition of the country were allotted to the displaced persons who were agriculturists and who had been uprooted from Pakistan and had been compelled to leave their lands and migrate to India. The object of these allotments was and is that the displaced persons so uprooted should be rehabilitated. These agriculturists are mostly uneducated persons and in my opinion the rules should be so construed as to advance the object of allotting lands to the rightful claimants under the Act or the rules framed thereunder. The Act appoints a number of authorities to carry out this purpose and the Custodian-General has been empowered under section 27 of this Act to interfere with an order of allotment *suo motu* or on application. Taking the object of allotment into consideration it appears to me that the intention of the rule-making authorities was to leave the question of limitation within the

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absolute discretion of the Custodian or the Custodian-General as the case may be. It is obvious on reading the two rules together that the intention was that time may be extended for sufficient cause and in a proper case the Custodian or the Custodian-General may entertain a revision petition even if sufficient cause is not shown provided on other grounds they are of the opinion that the revision petition should be entertained. This conclusion of mine is in accord with the unreported decision in *Santa Singh, etc.*, v. *The Financial Commissioner, Relief and Rehabilitation, etc.* (1). In that case the Honourable the Chief Justice and Mr. Justice Kholsa held that the use of expression "ordinarily" appears to indicate that in special circumstances a revision petition may be filed after the expiry of the period of limitation prescribed in rule 31(5). I have, therefore, no hesitation in rejecting this argument of the learned counsel for the appellant.

Moreover, it has been held by their Lordships of the Supreme Court in *Ebrahim Aboobakar* v. *Custodian-General of Evacuee Property*, (2) that it is for the authorities constituted under the Evacuee Act to decide whether a party has *locus standi* to file an appeal or a revision as the case may be or whether it has been filed in proper form or whether it is filed within the prescribed period. That being so, it appears to me that even if it be held that the Deputy Custodian-General was in error in extending the time it is not for this Court to interfere under Article 226 of the Constitution.

Finally, it has been argued by the learned counsel that on the merits the order of the Deputy Custodian-General was erroneous and was due to misconstruing the rules or instructions issued under the Act. This matter, however, was not argued before the learned

(1) C.W. 331 of 1952.
(2) A.I.R. 1952 S.C. 319.

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Single Judge and it is well settled that in a Letters Patent Appeal a new point cannot be raised which had not been agitated before the Single Judge, and for this reason we did not permit the learned counsel to argue this point.

For all these reasons, I see no force in this appeal and I would dismiss it with costs.

BHANDARI, C. J.—I agree.

LETTERS PATENT APPEAL

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

THE STATE OF PUNJAB, ETC.,—*Appellants*

versus

S. HARBHAJAN SINGH,—*Respondent*

Letters Patent Appeal No. 95 of 1953.

1956

Oct., 30th

Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Sections 3 and 25(2)—Proviso (b)—Proviso—Scope of—Requisition orders under Acts of 1948 and 1951—Whether kept alive under the 1953 Act—Enquiry under section 3—Whether to be made by competent authority or by Court.

Held, that ordinarily a proviso refers only to the section or provision to which it is appended although in certain cases it may even relate to the Act as a whole if it is clear from the terms of the Act that such was the legislative intent.

Held, that proviso (b) to subsection (2) of section 25 of the Punjab Requisitioning and Acquisition of Immovable Property Act keeps alive orders of requisitioning property passed under the Acts of 1948 and 1951 which are consistent with the provisions of the Act of 1953.

Held further that the enquiry whether the house in question is in the bona fide use of the owner thereof as the