The same rules apply to the item of Rs. 79-6-6 and to the deposit of Rs. 1,000 as security.

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The appeal succeeds. The decrees of the lower Courts are set aside. A decree will now be passed dismissing the plaintiffs' claim, but in the special circumstances of this case the parties will bear their own costs throughout.

FULL BENCH

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

PREM SINGH AND OTHERS,—*Petitioners*

v.

DEPUTY CUSTODIAN-GENERAL, EVACUEE PROPERTY AND OTHERS,—*Respondents*

Civil Writ No. 269 of 1953

1955

April, 26th

Administration of Evacuee Property Act (XXXI of 1950) —Section 56—Rules framed by the Central Government under—Rule 14(6)—Whether ultra vires—*Amendments made to the rule on 13th February, 1953 and 25th August, 1953—Effect of, on orders passed by Custodian and Custodian-General before the respective dates—Sections 26 and 27—Whether powers of revision of the Custodian and Custodian-General affected by the amendments.*

Held, (1) that Rule 14 (6) of the Administration of Evacuee Property (Central) Rules made under section 56 of the Administration of Evacuee Property Act is not *ultra vires* as it neither goes beyond the rule-making power nor is inconsistent with any of the provisions of the Act;

(2), that orders passed by either the Custodian or the Custodian-General in exercise of their powers under Section 26 or 27 cancelling allotments in pending cases regarding orders passed before the 22nd of July, 1952, were valid even if passed by the Custodian before the 13th of February, 1953 and by the Custodian-General before the 25th of August, 1953;

(3) that there was nothing in the sub-rule as it originally stood which took away the power of the Custodian to revise any order passed before the 22nd of July, 1952, in

accordance with the law as it stood on the date of the order, and that the proviso added on the 13th of February, 1953, merely confirmed this power regarding pending petitions filed within time, and set at rest any doubts which might have arisen on the point owing to the fact that the Custodian could pass orders cancelling allotments either as a direct authority under section 12 or in review or revision under section 26;

(4) that the powers of the Custodian-General to pass orders cancelling allotments in exercise of his powers under Section 27 of the Act in revision petitions against orders passed before the 22nd of July, 1952, were not in any way curtailed even before the amendment of the proviso to rule 14(6) was amended on the 25th August, 1953. The powers of the Custodian-General under Section 27 of the Act were not touched at all by the original sub-rule, which merely restricted the powers of the Custodians of the Punjab and PEPSU to cancel allotments except in certain circumstances.

Petition under Article 226 of the Constitution of India praying (a) that a writ in the nature of certiorari be issued for calling the records of the case in order to quash the order of the Deputy Custodian-General, dated 18th August, 1953; (b) that a writ in the nature of prohibition be issued to the respondents restraining them from interfering in any way with the possession of the petitioners over the lands which were allotted to them in village Rätauli, Tehsil Jagadhri, District Ambala, (c) that such other writs and directions may be issued as this Hon'ble Court may deem just and expedient in the circumstances of the case, and (d) that the petitioners be awarded costs of the petition.

A. N. GROVER and DALIP KAPUR, for Petitioners.

S. M. SIKRI, Advocate-General, A. M. SURI, A. N. ARORA, H. L. SARIN and H. R. SODHI, for Respondents.

ORDER

Falshaw, J. FALSHAW, J.—Briefly the facts giving rise to this reference to the Full Bench are that there was a three-cornered contest regarding the

allotment of evacuee lands in a village called Ratauli in the Ambala District between N. R. Batra, a group consisting of Prem Singh and Narain Singh, sons of Sunder Dass and Raj Kaur, wife of Narain Singh, and Hargobind and Jai Kishan, sons of Dewan Chand Suri. By an order, dated the 17th July, 1952, the Custodian of Evacuee Property, Punjab, ordered that N. R. Batra was not entitled to be accommodated in village Ratauli at the expense of either of the other parties.

Against this order N. R. Batra filed a revision petition under section 27 of the Act before the Custodian-General on the 9th of September 1952, i.e. within the ordinary period of limitation for filing such petitions. This revision petition was decided by Mr. Chhakan Lal, Deputy Custodian-General, by his order, dated the 18th of August 1953, which had the effect of cancelling the allotment of Prem Singh, etc., in Ratauli to the extent of 112 standard acres 7 units, i.e. the extent necessary to accommodate N. R. Batra in that village. The other respondents in the revision petition, Hargobind and Jai Kishan, were held to be entitled to remain in enjoyment of the land allotted to them.

This order of the Deputy Custodian-General was challenged by Prem Singh, etc., in a petition filed in this Court under Article 226 of the Constitution (Civil Writ No. 269 of 1953) in which, *inter alia*, the point was raised that the order of the Deputy Custodian-General was illegal in view of the amendment introduced in July 1952 in rule 14 of the rules framed by the Central Government under section 56 of the Administration of Evacuee Property Act.

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The historical background leading up to this was as follows. By sub-section (1) of section 12 of the Act the Custodian was given apparently unlimited powers to cancel allotments. Sub-section (1) as it read before it was amended by Act XI of 1953 was—

> "Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person, where such allotment, lease or agreement has been granted or entered into after the 14th day of August 1947."

It has, however, been held in a number of cases in which the point has arisen that these powers are circumscribed by rules made by the Central Government in exercise of its rule-making power as conferred by section 56 of the Act, the relevant portions of which read—

> "(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
>
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—
>
> * * * * *
>
> (i) the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied ;
>
> * * * * *

A set of rules has in fact been formulated by the Central Government in exercise of its powers under this section, and amended from time to time and a perusal of these rules shows that they refer to various sections of the Act and are evidently framed under the various headings contained in sub-section (2) of section 56. Rule 14 deals particularly with cancellation or variation of leases and allotments.

It must be mentioned here that in the Punjab the enormous problem of accommodating millions of refugees from the West Punjab on lands evacuated by Muslims had to be faced and the lines on which this problem was tackled were gradually worked out and finally formulated in a volume called the Land Resettlement Manual, in which principles were laid down regarding such matters as in which district refugees from the various districts of the West Punjab were to be accommodated, and generally how the rival claims regarding different qualities of lands to be allotted were to be determined. In carrying out all these directions an enormous amount of work fell on the officers of the department up to and including the Custodian-General and his Deputies and Assistants in exercise of their powers of revision under section 27 of the Act. Nearly all the *quasi*-permanent allotments had been made in 1949 and 1950 and it would seem that in 1952 it was felt by the Government that the time had come to introduce some sort of finality as far as was reasonably possible regarding the allotments of land already made.

Evidently with this object in view a sub-rule 14 (6) was brought into force on the 22nd of July 1952, which read :

> "Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in each of the States of

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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 allottees owned no agricultural land in Pakistan ;

* * * * *

(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 3 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."

The effect of the introduction of this rule broadly speaking was to put an end to the cancellation of allotments simply on grounds arising out of the consideration of the merits of the claims of rival claimants to any particular land, and to permit the cancellation of allotments only on grounds arising between the State and the person concerned.

It was apparently realised after this sub-rule had been in force for some time that in most cases allotments had been made by officers subordinate to the Custodian and that many of the orders of the Custodian of the State which had the effect of cancelling allotments were made, not in direct exercise of his powers under section 12 of the Act, but in exercise of the powers of review and revision conferred on him by section 26 and apparently it was thought to be only fair that he should still be able to decide pending cases in exercise of these powers according to the old principles. It was evidently on this account that on the 13th of February 1953 the following proviso was added to the new sub-rule :—

"Provided further that nothing in this sub-rule shall apply to any application for revision, made under section 26 of the

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Act within the prescribed time, against an order passed by a lower authority on or before 22nd July 1952."

Some further doubts seem to have been felt regarding the position of the Custodian-General in exercise of his powers of revision under section 27 of the Act, and accordingly on the 25th of August 1953 a further amendment was made, with the result that the proviso now reads—

"Provided further that nothing in this sub-rule shall apply to 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 22nd July 1952."

In this reference we are concerned only with the validity of rule 14 (6) and the effect of the provisos. The case of Prem Singh, etc. in the first place is that in consequence of rule 14 (6) it was altogether illegal for the Deputy Custodian-General to cancel a large part of their allotment to make room for N. R. Batra. On behalf of the latter it is contended that the sub-rule is *ultra vires* of the rule-making power of the Central Government, but that even if the basic provisions of the sub-rule were *intra vires*, the action of the Deputy Custodian-General in cancelling the allotment was legal on account of the proviso added to the sub-rule. To this the reply of Prem Singh, etc., is that the proviso regarding the powers of the Custodian-General under section 27 was only introduced on the 25th of August 1953 and since the order was passed on the 18th of August 1953 it was illegal because neither the original proviso nor its amendment were made retrospective. As there was some difference of opinion among the Judges of this Court in this matter, Kapur, J., referred the point to a Division Bench, and when it came

before him and myself on the 28th of September 1954, we decided that it should go before an even larger Bench and framed the following questions :—

"(1) Whether rule 14 (6) of the Administration of Evacuee Property Rules made under section 56 of the Administration of Evacuee Property Act is *ultra vires* because it goes beyond the rule-making power or because it is inconsistent with the other provisions of the Evacuee Property Act?

(2) Whether rule 14 (6), even if *intra vires*, is applicable to the orders cancelling the allotments if such orders have been made before the date on which the amendments were made?"

In arguing on the first question that the sub-rule was *ultra vires* the learned counsel for the petitioners advanced an argument which in my opinion amounted to contending that the powers conferred on the Custodian of cancelling or varying the terms of any allotment or lease by section 12 of the Act were unfettered, and that therefore any rules whatever which circumscribed those powers and limited its exercise to certain circumstances were *ultra vires*, but in my opinion there is no force whatever in this argument. Obviously the provisions of the Act have to be read together and although the powers conferred on the Custodian under section 12 read by itself appear to be unfettered, section 56 which conferred the power of making rules on the Central Government and in particular section 56 (2) (i) was clearly intended to enable the Government to lay down the principles and specify the conditions under which the

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Custodian was to exercise his powers under section 12. Indeed, if section 12 had been intended to confer unfettered power on the Custodian to cancel or vary the terms of allotments and leases at will, and no rules had been framed under the rule-making power for his guidance in the exercise of those powers, I have no doubt that the Supreme Court would long ago have declared section 12 to be unconstitutional, as it has done in the case of other Acts under which apparently unfettered powers were conferred on officers without any principles being laid down or rules framed for circumscribing their exercise of those powers.

It seems to me that once it is held that the Central Government had the power to make rules circumscribing the exercise of Custodian's powers under section 12 of the Act, it also had the power to amend those rules from time to time either by way of adding to the conditions under which the power could be exercised, or by subtracting therefrom, and in the light of the background which I have set out above I am of the opinion that not only was it within the power of the Central Government to restrict the number of reasons for which allotments could be cancelled after a certain date, but also I would add that in my opinion the restriction so imposed was reasonable. It does not seem to me that the cases cited by the learned counsel for the petitioners helped their case at all since they were decided on their own facts, and there is no dispute regarding the principle that the power to make rules or bye-laws is circumscribed by the Act under which they are made, and that where rules or bye-laws go beyond or are inconsistent with the provisions of the Act they are invalid and *ultra vires*. I am not, however, of the opinion that in the present case sub-rule

14 (6) either goes beyond the rule-making power or is inconsistent with any of the provisions of the Act. I would accordingly answer the first of the questions referred to the Full Bench in the negative.

The point involved in the second question arises out of the fact that the order of the Deputy Custodian-General was passed on the 18th of August 1953 whereas the proviso to rule 14 (6) was only amended so as to cover pending revision petitions filed within time under section 27 of the Act against orders passed before the 22nd of July 1952 by a notification, dated the 25th of August 1953. A similar point would arise in the case of an order of a Custodian cancelling an allotment passed on a date between the 22nd of July 1952 and the 13th of February 1953 in exercise of his powers of review or revision conferred by section 26, the latter being the date on which the proviso was first added to rule 14 (6).

It has been urged before us that the proviso added on the 13th of February 1953 and the addition made to it on the 25th of August 1953 were not retrospective and that therefore, even assuming the rule as a whole to be *intra vires*, the Custodian could not even in exercise of his revisional powers under section 26 pass an order which had the effect of cancelling an allotment on any date between the 22nd of July 1952 and the 13th of February 1953, and the Custodian-General could not pass such an order in exercise of his powers under section 27 between the 22nd of July 1952 and the 25th of August 1953.

It seems to me, however, that the question is not so much whether the proviso added in February and the addition made to it in August 1953

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had, or were intended to have, retrospective effect as whether during the intervening periods either the Custodian or the Custodian-General had lost the powers conferred on them by sections 26 and 27 to review and deal according to law with petitions filed before them within time under those sections against orders passed by lower authorities before the 22nd of July 1952.

The learned Advocate-General appearing on behalf of the State has argued, and in my opinion with some force, that the provisos enabling the Custodian and Custodian-General to deal according to law with petitions duly pending before them against orders passed before the 22nd of July 1952 were not intended to confer any new powers on them, or to restore to them any powers which had been taken away by the sub-rule introduced on the 22nd of July 1952, but were merely intended to set at rest any doubts which might have arisen regarding their powers to pass orders even after the 22nd of July 1952, which might have the effect of cancelling allotments, in exercise of their powers of review or revision in pending cases against orders passed before the date in question.

It would certainly appear to be highly unfair that in cases where justice demanded the cancelling of an allotment the Custodian or Custodian-General in exercise of their revisional powers should only be able to pass such just orders after the 13th of February 1953 and the 25th of August 1953, respectively, and most unfortunate for any persons whose cases were decided, and who were denied justice between those dates, and it would take very cogent arguments indeed to persuade me that the Central Government should have intended such an anomalous state of affairs to come into existence that whether a man could obtain justice or not would depend on the date on which

his revision petition happened to be decided. Apart from this it seems to me that proviso and its amendment could hardly have achieved their purpose unless they were intended either to have retrospective effect or else were merely introduced to set doubts at rest, since one would expect that both the Custodian and Custodian-General would have decided a large proportion of revision petitions filed within time against orders passed before the 22nd July 1952 by the time the proviso and its amendment were introduced.

In these circumstances I might even be prepared to hold that although there was nothing in the wording of the proviso and its subsequent amendment to show that they were intended to have retrospective effect, nevertheless they must be held to have it, but it seems to me that it is not necessary to come to this conclusion in order to arrive at such a result.

It may be well at this stage to set out again the opening words of the sub-rule—

> "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:"

It seems to me that this quite clearly had reference to the powers of the Custodian acting directly conferred on him under section 12, and it is possible to argue that this could not possibly be intended to interfere with the powers of review or

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revision conferred on the Custodian by section 26, sub-section (1) which reads—

> "The Custodian, Additional Custodian or Authorised Deputy Custodian may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding under this Act which is pending before, or has been disposed of by, an officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of any orders passed in the said proceeding, and may pass such order in relation thereto as he thinks fit."

In the circumstances it does not seem to me that there was anything in the sub-rule as it originally stood which took away the power of the Custodian to revise any order passed before the 22nd of July 1952 in accordance with the law as it stood on the date of the order, and it seems to me that the proviso added on the 13th of February, 1953 merely confirmed this power regarding pending petitions filed within time, and set at rest any doubts which might have arisen on the point owing to the fact that the Custodian could pass order cancelling allotments either as a direct authority under section 12 or in review or revision under section 26.

Whatever ambiguity might have existed on this point regarding the powers of the Custodian it does not seem to me that there can be any doubt at all regarding the Custodian-General, whose powers under section 27 do not appear to me to have been touched at all by the original sub-rule, which merely restricted the powers of the Custodians of the Punjab and Pepsu to cancel allotments except in certain circumstances. If in fact the rule had purported to take away the

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powers of the Custodian-General under section 27 to consider orders passed before the 22nd of July 1952 and revise them according to the law in force on the date on which they were passed, this might have been a good ground for declaring the sub-rule to be *ultra vires*, at least to that extent. In the circumstances I am of the opinion that the order of the Deputy Custodian-General in the present case is not bad because it was passed a week before the proviso was amended so as to include pending cases under section 27.

It was in fact suggested by the learned Advocate-General that question (2) was not very well framed and that it might better have been framed more or less on the following lines :—

> "(2) If the answer to question (1) is in the negative, were the powers of the Custodian-General to pass orders cancelling allotments in exercise of his powers under section 27 of the Act in revision petitions against orders passed before the 22nd of July 1952 in any way curtailed even before the amendment of the proviso to rule 14 (6) was amended on the 25th of August 1953?"

I would answer this question in the negative and to the second question referred to us I would answer that orders passed by either the Custodian or the Custodian-General in exercise of their powers under section 26 or 27 cancelling allotments in pending cases regarding orders passed before the 22nd of July 1952 were valid even if passed by the Custodian before the 13th of February and by the Custodian-General before the 25th of August 1953.

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BHANDARI, C.J.—I agree.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.