

Pran Nath
and others
v.
Bal Kishan
and others
Gosain, J.

- (4) that if a *quondam* minor brings a suit for possession of the property alienated by his guardian or for redemption of a mortgage of a property effected by his guardian, the suit will also be governed by Article 44 of the First Schedule of the Indian Limitation Act and not by Article 148 of the Indian Limitation Act ;
- (5) that the proposition of law that a plaintiff need not sue to set aside a transfer to which he was not a party may well apply to a case of a reversioner impugning an alienation by a Hindu widow, but cannot possibly apply to the case of a minor on whose behalf an alienation has been made by his guardian and who is for all intents and purposes regarded as a party to the transfer ; and
- (6) that the present case clearly falls within the ambit of Article 44 of the First Schedule of the Indian Limitation Act, and having been brought after the period of limitation prescribed by the said Article must be held to be barred by time.

In the result, this appeal fails and is dismissed with costs.

B.R.T.

LETTERS PATENT APPEAL

Before G. D. Khosla, Acting C.J. and S. S. Dulat, J.

SHANKAR SINGH AND OTHERS,—Appellants.

versus

IQBAL SINGH AND OTHERS,—Respondents

Letters Patent Appeal No. 69 of 1955.

1959
Jan., 8th

Administration of Evacuee Property Act (XXX of 1950)—Section 27—Rule 14(6)—Whether restricts the

revisional powers of the Custodian-General—Departmental Rules not followed—Power of Custodian-General to interfere after July, 22, 1952—Question of hardship—Whether relevant.

Held, that the Custodian-General has ample powers under section 27 of the Administration of Evacuee Property Act and these powers are, in no way, restricted by Rule 14(6) of the Administration of Evacuee Property Rules. A reference to the provisos to Rule 14(6) makes it quite clear that the provisos did not bring into existence any fresh powers which were being conferred upon the Custodian-General but merely explained the previous rule and removed any doubts which might have existed.

Held, that on the 10th of June, 1952, when the Additional Custodian made the order he had certain powers. He, in exercising these powers, did not follow the departmental rules laid down for allotment of evacuee property according to the alphabetical order. The Deputy Custodian-General was, therefore, competent on that very day to revise this order and rule 14(6) did not limit these powers subsequently. Therefore, the Deputy Custodian-General was perfectly entitled on the 29th of January, 1954 to make the order which he did.

Held, that the question of whether the minor petitioners will suffer any hardship in being ousted from the land of which they have been in possession for a number of years is wholly irrelevant once it is held that the order which was made by the Deputy Custodian-General was made lawfully and with jurisdiction.

Letters Patent Appeal under Clause 10 of the Letters Patent, against the judgment of Hon'ble Mr. Justice J. L. Kapur, dated 12th May, 1955, passed in Civil Writ No. 84 of 1954.

H. L. SARIN and ANAND MOHAN SURI, for Appellants.

H. S. GUJRAL, for Respondents.

JUDGMENT

G. D. KHOSLA, ACTING C.J.—This is an appeal under clause 10 of the Letters Patent against a

G. D. Khosla,
A. C. J.

Shankar Singh and others
v.
Iqbal Singh and others

decision of Kapur, J., granting an application for a writ of certiorari under Article 226 of the Constitution.

G. D. Khosla,
A. C. J.

The bare facts of this case are that on the 10th of June, 1952, the Additional Custodian made a certain order regarding the allotment of evacuee property. This order was set aside on revision by the Deputy Custodian-General on the 29th of January, 1954. The effect of this order was that certain minors who had been in possession of evacuee property for a number of years were ousted to make room for claimants who had a better claim under the rules governing the allotment of evacuee property. The relevant rule related to priority to be given to claimants according to the alphabetical order. The Deputy Custodian-General held that the minor allottees were from Sind and should have been considered after the petitioners before him who came from Punjab as 'S' comes after 'P'.

Kapur, J., took the view that the Deputy Custodian-General had no jurisdiction to pass any order on the 29th of January, 1954, because of rule 14(6) of the Administration of Evacuee Property Rules which were promulgated on the 22nd of July, 1952. He also took the view that the order of the Deputy Custodian-General acted very harshly upon the minors who had been in possession for about four years and would, therefore, be disturbed from their possession by the order of the Deputy Custodian-General. He, therefore, quashed the order of the Deputy Custodian-General and allowed the petition.

In appeal it has been urged before us that the Deputy Custodian-General had every power to

interfere with the orders of the Additional Custodian despite rule 14(6) framed under the Administration of Evacuee Property Act and the subsequent provisos issued thereto. This matter has come to this Court several times and the decisions have always been one way. On two occasions the matter has gone to the Supreme Court and there, too, the view taken was that the Custodian-General has ample powers under section 27 of the Administration of Evacuee Property Act and that these powers are, in no way, restricted by rule 14(6). The matter was considered by the Supreme Court in *Indira Sohanlal v. Custodian and Evacuee Property, Delhi and others* (1). In this case the Additional Custodian had confirmed an exchange of evacuee property effected by a refugee on the 20th of March, 1952. The Custodian-General set aside the confirmation of the exchange on the 20th of May, 1953. When the matter went to the Supreme Court, it was argued that the Custodian-General had no power to pass any orders in the matter after the 22nd of July, 1952. Jagannadhas, J., observed—

Shankar Singh
and others
v.
Iqbal Singh
and others
G. D. Khosla,
A. C. J.

“Section 27 however is very wide in its terms and it cannot be construed as being subject to any such limitations. Nor can the scope of revisional powers be confined only to matters of jurisdiction or illegality as is contended, because under Section 27 the Custodian-General can exercise revisional powers for the purpose of satisfying himself as to the legality or propriety of any order of the Custodian.

We are thus clearly of the opinion that the contention of the learned counsel for

(1) A.I.R. 1956 S.C. 77

Shankar Singh
and others

v.

Iqbal Singh
and others

G. D. Khosla,
A. C. J.

the appellant that the exercise of revisional powers in this case by the Custodian-General is without jurisdiction or is illegal, must fail.”

The important point to consider is that the order which was revised by the Deputy Custodian-General was made before the 22nd of July, 1952, although the order of the Deputy Custodian-General was made subsequently to that date. A somewhat similar case was considered by this Court in *Kapur Singh v. The Deputy Custodian-General, New Delhi, and others* (1). In this case an order was made by the Additional Custodian on the 30th of March, 1953, and there was a re-allotment on the 5th of October, 1953. A petition was brought to this Court but was withdrawn because the matter had not been taken in revision to the Custodian-General. On the 10th of February, 1954, a revision petition was filed before the Deputy Custodian-General and on the 3rd of December, 1954, the Deputy Custodian-General interfered and set aside the order of the Additional Custodian. He also considered the question of limitation because the revision petition had been filed before him beyond the period of limitation. He condoned the delay while allowing the revision petition. A petition under Article 226 of the Constitution challenging the order of the Deputy Custodian-General was brought to this Court and it was held that the Custodian-General had ample powers under section 27 of the Administration of Evacuee Property Act. The decision in this case is important because the order which was under revision was made after the 22nd of July, 1952. The Division Bench of this Court observed:—

“It has been repeatedly laid down in this Court that rule 14(6) limits the powers

(1) 1957 P.L.R. 52

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
* * * *'

Shankar Singh
and others
v.

Iqbal Singh
and others

G. D. Khosla,
A. C. J.

The learned Judges observed again:—

“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.”

The matter was considered by a Full Bench of this Court in *S. Prem Singh and others v. The Deputy Custodian-General, Evacuee Property, New Delhi and others* (1). In that case the Custodian made an order on the 17th of July, 1952, and the Deputy Custodian-General made his order revising this order on the 18th of August 1953. The revision petition before him was filed on the 9th of September, 1952. Therefore, the order under revision was made before the 22nd of July, 1952 as in the Supreme Court case referred to above, and the order of the Deputy Custodian-General was made after the 22nd of July, 1952. In this case, too, the

Shankar Singh
and others
v.
Iqbal Singh
and others
G. D. Khosla,
A. C. J.

question of limitation must have been considered by the Custodian-General. It was held by the Full Bench that the powers of the Custodian-General to pass orders cancelling allotments in exercise of his powers under section 27 of the Act were not touched at all by the original sub-rule (6) of rule 14 of the Administration of Evacuee Property (General) Rules. I may quote the following passage from the judgment of the Full Bench:—

“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 introduced 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 will be seen that this remark disposes of completely any doubts which might arise regarding the powers of the Custodian-General or regarding the restriction of these powers by rule 14(6). A reference to the provisos also makes it quite clear that the provisos did not bring into existence any fresh powers which were being conferred upon

the Custodian-General but merely explained the previous rule and removed any doubts which might have existed.

Shankar Singh
and others
v.
Iqbal Singh
and others

The Full Bench case was taken in appeal to the Supreme Court and the judgment of the Sum-reme Court is reported in *Prem Singh v. Deputy Custodian-General, Evacuee Property* (1). The Supreme Court upheld the decision of the Full Bench and dismissing the appeal observed:—

G. D. Khosla,
A. C. J.

“Accepting, without deciding, that the Deputy Custodian-General’s powers in revision under section 27 of the Act were strictly limited to the powers of the Custodian to cancel an allotment, what we have to do is to ascertain what powers of cancellation the Financial Commissioner, who was the Custodian, had on July, 17, 1952, when he rejected the application, for, according to learned counsel for the appellants, the Deputy Custodian-General could only exercise similar powers of cancellation while disposing of the application for revision of the order of the Financial Commissioner as the Custodian.”

As far as the present case is concerned, this observation of the learned Judges of the Supreme Court disposes of the dispute before us. On the 10th of June, 1952, when the Additional Custodian made the order he had certain powers. He, in exercising these powers, did not follow the departmental rules laid down for allotment of evacuee property according to the alphabetical order. The Deputy Custodian-General was, therefore, competent on that very day to revise this order and rule 14(6)

Shankar Singh
and others
v.
Iqbal Singh
and others

G. D. Khosla,
A. C. J.

did not limit these powers subsequently. Therefore, the Deputy Custodian-General was perfectly entitled on the 29th of January, 1954, to make the order which he did.

In this view of the matter the decision of the learned Single Judge must be held to be erroneous. The question of whether the minor petitioners will suffer any hardship in being ousted from the land of which they have been in possession for a number of years is wholly irrelevant once it is held that the order which was made by the Deputy Custodian-General was made lawfully and with jurisdiction. The rules laid down by the Department must be observed and the Deputy Custodian-General in setting aside the order of the Additional Custodian merely followed those rules. The writ issued by the learned Single Judge is liable to be withdrawn. I would, therefore, allow this appeal, set aside the order of Kapur, J., and dismiss the petition for writ, but, in the circumstances, I would make no order as to costs.

DULAT, J.—I agree.

R. S.

APPELLATE CIVIL

Before G. L. Chopra, J.

HARNAM SINGH,—*Plaintiff-Appellant.*

versus

MAN SINGH AND OTHERS,—*Defendants-Respondents*

Regular Second Appeal No. 182 of 1954.

1959
Jan., 13th

Co-operative Societies Act (XI of 1912)—Section 43(1)—Rule 18 framed thereunder—Whether bars a suit by a member of the Co-operative Society against the other member or members—Arbitration Act (X of 1940)—Sections 34 and 46—Applicability of—Inter-pretation of Statutes—Presumption in regard to.