Bishambar Nath Kohli And Others vs State Of Uttar Pradesh And Others on 11 October, 1965

Equivalent citations: 1966 AIR 573, 1966 SCR (2) 158, AIR 1966 SUPREME COURT 573

Author: J.C. Shah

Bench: J.C. Shah, P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, S.M. Sikri

PETITIONER:
BISHAMBAR NATH KOHLI AND OTHERS

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH AND OTHERS

DATE OF JUDGMENT:
11/10/1965

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
SIKRI, S.M.

CITATION:
1966 AIR 573 1966 SCR (2) 158

ACT:
Administration of Evacuee Property Act (31 of 1950) ss. 27 and 58(3)-Order passed by Deputy Custodian under repealed Ordinance Jurisdiction of Custodian-General to revise-Procedure to be followed in disposal of revision.

HEADNOTE:
Under s. 6 of Ordinance 12 of 1949, the Deputy Custodian of Evacuee notified certain property to be evacuee property in October 1949. No claim was preferred by any one in pursuance of the notification and the Central Government acquired the property under the Displaced Persons (Compensation and

Rehabilitation) Act, 1954 and put it up for sale by Public auction in 1957. The predecessor in title of the appellants purchased the property. In 1961, the State of Uttar Pradesh applied under s. 27of the Administration of Evacuee Property Act, 1950, invoking the revisional jurisdiction of the Custodian-General, claiming that the property belonged to the State and not to the evacuee and that therefore, the Deputy Custodian had no power to declare it as evacuee property. The Custodian General upheld the plea of the State.

In appeal to this Court, the jurisdiction of the Custodian-General to entertan the petition was questioned.

HELD : (1) The Custodian-General had the power to entertain the revision application filed. by the State.

By Ordinance 27 of 1949, which repealed Ordinance 12 of 1949, a Proceeding commenced or anything done or action taken under the earlier Ordinance was to be deemed a proceeding commenced, thing done and action taken under the later Ordinance, as if it were in force on the date on which the proceeding was commenced, thing was done or action was taken. Sec. 58(3) of the Administration of Evacuee Property Act, which repealed Ordinance 27 of 1949, contained a similar deeming provision that anything done or action taken in exercise of the power conferred under Ordinance 27 of 1949 is to be deemed to have been done or taken in exercise of the power conferred by or under the Act, as if the Act were in force on the day on which such thing was done or action was taken. By this chain of fictions, things done and actions taken under Ordinance 12 of 1949 are to be deemed to have been done or taken in exercise of the powers conferred under the Act, as if the Act were in force on the day on which such thing was done or action was taken. [164 B-E]

By the first part of s. 58(3) of the Act, the previous operation of repealed status services the repeal. Thereby matters and transactions past and closed remain operative. But the saving of the previous operation of the repealed law is not be read, as saving the future operation of the previous law. The previous law stands repealed and it has not for the future the practical operation as is prescribed by s. 6 of the General

Clauses Act, 1897. The rule contained in s. of the General Clauses Act applies only if a different intention does not appear and by enacting

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s. 58(3) of the Administration of Evacuee Property Act Parliament has expressed a different intention. Under s. 58(3), all things done and actions taken under the repealed statute are deemed to be done or taken in exercise of the powers conferred by or under the repealing Act, as if that Act were in force on the day on which the thing was done or action was taken. [168 C; 167 H; 168 B]

The order made by the Deputy Custodian was declared final by

s. 30(6) of Ordinance 12 of 1949. If fictionally the order is deemed to have been passed under the Administration of Evacuee Property Act, as if the Act were in operation in October, 1949, it is difficult to escape the conclusion that the order would be subject to the appellate and revisional jurisdiction of the authorities who have the appellate or revisional power by virtue of the provisions conferring those powers and which must also be deemed to have been in force on the date when the impugned order was passed. The use of the expression "subject thereto" in s. 58(3) cannot attribute to the previous operation of the repealed statute an overriding effect so as to deprive the authorities constituted under the repealing Act of their power to entertain appeals or revision applications, which they possess by the express enactment. [169 A-C; 168 F]
Indira Sohanlal v. Custodian of Evacuee Property, [1955] 2 S.C.R. 1117 and Dafidar Niranjan Singh v. Custodian Evacuee Property, [1962] 1 S.C.R. 214, explained.
(ii) The procedure followed by the Custodian-General was however open to grave objection, because, he relied upon copies of documents on which the title of the State was founded without giving an opportunity to the appellants to lead evidence in rejoinder, and therefore the order of the Custodian-General should be set aside and the matter remanded to him for fresh disposal according to law. [170 F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 659 of 1964. Appeal by special leave from the judgment and order, dated the September 11, 1962 of the Custodian General of Evacuee Property, Department of Rehabilitation, Ministry of Works Housing and Supply, New Delhi in Revision Petition No. 1209- R/ UP/1961.

Gopal Singh, for the appellants.

S. T. Desai and O. P. Rana, for respondent No. 1. N. S. Dindra, K. S. Chawla and R. N. Sachthey, for respondents Nos. 2, 3 and 4.

The Judgment of the Court was delivered by Shah, J. House No. 11, Kaiserbagh at Lucknow, was since 1918 in the occupation of one Chowdhry Akbar Hussain. After the partition of India, Chowdhry Akbar Hussain migrated to Pakistan. By order dated October 12, 1949 the Deputy Custodian of Evacuee Property, Lucknow, in exercise of power "under s. 6 of the U. P. Administration of Evacuee Property Ordinance 1 of 1949 as continued in force by Central Ordinances 12 and 20 of 1949" declared No. 11, Kaiserbagh as "evacuee property". No claim was preferred by any person in pursuance of this notification, and management of the property continued with the Custodian of Evacuee Property. Acting under s. 12 of the Displaced Persons (Compensation and Rehabilitation) Act 44 of 1954, the Central Government by a notification dated May 27, 1955 acquired the property

for the Central pool constituted under that Act. On June 7, 1957 the property was put up for sale by public auction and was purchased by one Ram Chand Kohli.

On September 27, 1961 the State of Uttar Pradesh applied under s. 27 of the Administration of Evacuee Property Act 31 of 1950 invoking the revisional jurisdiction of the Custodian-General against the order of the Deputy Custodian notifying the property as evacuee property. The State of Uttar Pradesh claimed that the property belonged to the State and Chowdhry Akbar Hussain had no proprietary interest in the property and accordingly the Deputy Custodian had no power to declare it "evacuee property". It was submitted that the State of Uttar Pradesh was not aware of the notification declaring the property to be evacuee property, nor of the subsequent proceedings and of the sale to Ram Chand Kohli. The appellants who are the legal representatives of Ram Chand Kohli contended, inter alia, that the petition was belated, and that in any event the property being of the ownership of Chowdhry Akbar Hussain it was lawfully declared evacuee property. The Custodian-Genral upheld the plea of the State of Uttar Pradesh, and set aside the order of the Deputy Custodian. With special leave, the heirs and legal representatives of Ram Chand Kohli have appealed to this Court.

We propose in this appeal only to deal with the plea of the appellants that the Custodian-General had no jurisdiction to entertain the petition filed by the State of Uttar Pradesh. If the appellants fail to establish that plea, the case must be remanded to the Custodian-General for retrial, because we are of the view that the trial of the petit-ion is vitiated by gross irregularities and breach of the rules of natural justice.

Section 27 of the Administration of Evacuee Property Act 31 of 1950 authorises the Custodian-General at any time, either on his own motion or on application made to him in that behalf, to call for the record of any proceeding in which any 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. Section 27 does not prescribe any limit of time within which the power in revision may be exercised. The Custodian-General may call for the record of any proceedings of a subordinate officer at any time, and pass such order in relation thereto as may be called for to do justice to the parties affected by the proceeding. The powers of the Custodian-General are unquestionably judicial and normally he may not be justified in entertaining a petition in revision which has been instituted after great delay, especially when titles of persons other than those directly concerned in the order sought to be revised, have intervened. There was in this case great delay in lodging the petition by the State of Uttar Pradesh invoking the jurisdiction of the Custodian- General. Notice of the order made on October 12, 1949, was issued and thereafter also there were several proceedings before the Custodian and the Settlement Commissioner in regard to the property. The authorities of the State appear to have betrayed gross negligence in protecting the public interest, if their case about the title of the State be true. But the Custodian-General appears to have been of the view that in exercise of jurisdiction conferred by statute the petition should be entertained and power under the Act be exercised. Whether in a given case, the Custodian- General may entertain a petition against an order passed by a subordinate authority, notwithstanding gross delay in instituting the proceeding is a matter within his discretion. We do not think that in exercise of the appellate jurisdiction of this Court under Art. 136 of the

Constitution, we would be justified in interfering with the order of the Custodian-General in a matter which is essentially within his competence and relates to the exercise of his discretion, however much we may disagree with him.

The question which then must be considered is whether the Custodian-General had the power to entertain the petition under s. 27 of the Administration of Evacuee Property Act 31 of 1950, challenging the order passed by the Deputy Custodian on October 12, 1949. It may at once be observed that the reference in the notification issued by the Deputy Custodian to U.P. Ordinance 1 of 1949 has been made on account of some inadvertence. The notification was issued after the U.P. Ordinance expired and when Central Ordinance 12 of 1949 was applied to the United Provinces by Ordinance 20 of 1949. The U.P. Ordinance 1 of 1949 was promulgated by the Governor of the United Provinces on June 22,1949. Shortly before the promulgation of that Ordinance, the 'Governor-General had in exercise of the powers conferred by S. 42 of the Government of India Act 1935 issued Central Ordinance 12 of 1949 called "The Administration of Evacuee Property (Chief Commissioners' Provinces) Ordinance, 1949". This Ordinance was applicable in the first instance to the Chief Commissioner Provinces of Ajmer-Merwara and Delhi and it would be -extended to any other Province by notification issued by the Central Government. The Governor-General issued on August 23, 1949 Ordinance 20 of 1949, by S. 4 whereof Ordinance 12 of 1949 was applied to the Provinces of Madras and the United Provinces. By S. 6 of Ordinance 12 of 1949 the Deputy Custodian -was authorised to notify evacuee properties which had vested in him under s. 5 of the Ordinance. A person claiming any right to or interest in any property notified under s. 6 could prefer a claim within 30 days, or such extended time as the Deputy Custodian allowed, that the property is not evacuee property or that his interest in the property is not affected by the provisions of the Ordinance. The Deputy Custodian was thereupon required to hold an inquiry in the prescribed manner, and after taking such -evidence as may be produced, to pass an appropriate order. An order passed by a Deputy Custodian on inquiry in the prescribed manner was appealable to the Custodian at the instance of a party aggrieved thereby: S. 30 (1). The Custodian had also the power to call for the record of any proceeding which was pending or had been disposed of, by an officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of the order passed therein, and to pass such order in relation thereto as he deemed fit. By sub-s. (6) of S. 30, subject to the provisions of sub-ss. (1) to (5) of s. 30, any order passed by the Custodian, Deputy Custodian, Additional Custodian, Assistant Custodian or Authorised Deputy Custodian was declared final and not liable to be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding.

On October 18, 1949 the Governor-General issued Ordinance 27 of 1949 called "The Administration of Evacuee Property Ordi- nance, 1949". Under that Ordinance the Custodian could under S. 7, after notice to the persons interested and after holding such 'inquiry into the matter as the circumstances of the case permitted, pass an order declaring any property to be evacuee property, and on such declaration the property vested in the Custodian. By S. 24, any person aggrieved by an order made, amongst other sections, under s. 7, could prefer an appeal to the authority specified in the section. Section 27 invested the Custodian-General with power at any time to call for the record of any proceeding in which any custodian had passed an order in appeal under the provisions of Ch. V 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 thought fit, and every order made by the Custodian-General, Custodian, Additional Custodian or Assistant Custodian was by S. 28 declared final and not liable to be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding. By sub- S. (1) of S. 55 Ordinance 12 of 1949 was repealed, and by sub-s. (3) it was provided that notwithstanding the repeal of Ordinance 12 of 1949 or of any corresponding law, anything done or any action taken in the exercise of any power conferred by that Ordinance or law shall be deemed to have been done or taken in the exercise of the powers conferred by Ordinance 27 of 1949, and any penalty incurred or proceeding commenced under that Ordinance or law shall be deemed to be a penalty incurred or proceeding commenced under Ordinance 27 of 1949 as if Ordinance 27 of 1949 were in force on the day on which such thing was done, action taken, penalty incurred or proceeding commenced. This Ordi- nance 27 of 1949 was repealed by the Administration of Evacuee Property Act 31 of 1950. The scheme of this Act was identical with the scheme of the Administration of Evacuee Property Ordinance 27 of 1949. Section 7 conferred power upon the Custodian to notify any property, after holding an inquiry, to be evacuee property. Any person aggrieved by an order under S. 7, could under S. 24 prefer an appeal to the specified authority. By S. 27 revisional jurisdiction was conferred upon the Custodian-General in terms similar to S. 27 of Ordinance 27 of 1949, and by S. 28 every order made by the Custodian-General, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian was, save as otherwise expressly provided in Ch. V, declared final and not liable to be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding. By sub-s. (1) of S. 58, the Administration of Evacuee Property Ordinance 27 of 1949 was repealed. Sub-section (3) of S. 58 read as follows:

> Evacuee Property Ordinance, 1949 or the Hyderabad Administration of Evacuee Property Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."
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> By Ordinance 27 of 1949 a proceeding commenced under Ordi- nance 12 of 1949 or anything done or action taken in the exercise of the powers conferred under that Ordinance was to be deemed a proceeding commenced, thing done and action taken under the former Ordinance as if that Ordinance were in force on the date on which the proceeding was commenced, thing was done or action was taken. Section 58(3) of Act 31 of 1950 contained a similar deeming provision that an thing done or action taken in exercise of the power conferred under Ordinance 27 of 1949 is to be deemed to have been done or taken in exercise of the power conferred by or under Act 31 of 1950, as if the Act were in force on the day on which such thing was done or action was taken.

By this chain of fictions, things done and actions taken under Ordinance 12 of 1949 are to be deemed to have been done or taken in exercise of-the powers conferred under Act 31 of 1950, as if that Act

were in force on the day on which such thing was done or action taken. The order passed by the Deputy Custodian under S. 6 of Ordinance 12 of 1949 was, therefore, for the purpose of this proceeding, to be deemed an order made in exercise of the power conferred by Act 31 of 1950 as if that Act were in force on the day on which the order was passed.

But it was urged by counsel for the appellants that this chain of fictions did not assist the State of Uttar Pradesh, because by each of the successive statutes the operation of the. fiction was subject to the finality of the orders made under the earlier Ordinance. It was claimed that the repeal of Ordinance 12 of 1949 by Ordinance 27 of 1949 did not affect the previous operation of the repealed Ordinance, including the finality of orders made under that Ordinance and by s. 55(3) of Ordinance 27 of 1949 the finality of the order of the Deputy Custodian under sub-s. (6) of s. 30 of Ordinance 12 of 1949 was preserved. Similarly under Act 31 of 1950 things done or actions taken under Ordinance 27 of 1949 were to be deemed to have done or taken under the Act, but thereby finality of orders declared by s. 28 of the Ordinance was not trenched upon. It was submitted, that by s. 58 (3) in a technical sense things done and actions taken or deemed to be done or taken under Ordinance 27 of 1949 were to be deemed to have been done or taken under Act 31 of 1950, but finality of the orders declared by s. 30(6) of Ordinance 12 of 1949 was not affected, and the orders of the Deputy Custodian could not be set aside by the Custodian-General in exercise of the power under s. 27 of Act 31 of 1950. In support of this contention reliance was placed upon certain dicta in two decisions of this Court : Indira Sohanlal v. Custodian of Evacuee Property, Delhi & Others(1) and Dafadar Niranjan Singh and Another v. Custodian, Evacuee Property (Pb.) and Another(2). In our view no support is to be derived from those cases for the claim made by counsel for the appellants. In Indira Sohanlars case(3) an application to sanction an exchange made under s. 5-A of the East Punjab Evacuees' (Administration of, Property) Act, 1947, as amended in 1948, was decided on March 30, 1952 by the Additional Custodian after Act 31 of 1950 was brought into force. Exercising power under s. 27 of Act 31 of 1950 the Custodian-General set aside the order of confirmation and remanded the case to be reconsidered by the Custodian. In appeal to this Court against that order, it was submitted that the order of the Additional Custodian was not open to revision by the Custodian-General, because the appellant had a vested right to have the application for confirmation determined under s. 5-A of the East Punjab Evacuees' (Administration of Property) Act, and finality under s. 5-B attached to such determination, repeal and reenactment of those provisions notwithstanding. This Court held that the application for confirmation of exchange was pending on the date on which Act 31 of 1950 came into force and had to be dealt with and disposed of under that Act; the order of confirmation passed in 1952 was therefore subject to the revisional jurisdiction of the Custodian-General under s. 27 of the Act. That decision can have no application to this case. But counsel relied upon certain observations made by Jagannadhadas, J., at p. 1136 "Without attempting to be meticulously accurate, it may be stated in general terms, that the scheme underlying section 58(3) appears to be that every matter to which the new Act applies has to be treated as arising, and to be dealt with, under the new law except insofar as certain consequences have already ensued or acts have been completed prior thereto, to which it is the old law that will apply."

These observations, in our judgment, lend no support to the contention that the finality declared under s. 30 of the Ordinance 1 of 1949 in respect of 'the orders passed or proceedings taken (1)

[1955] 2 S.C.R. 11 17.

(2) [1962] 1 S.C.R. 214.

remains attached to the order of the Deputy Custodian so as to prevent the Custodian-General from exercising his power under s. 27 of Act 31 of 1950.

In Dafadar Niranjan Singh's case(1), the Custodian of Evacuee Property, Patiala, had taken possession of two houses acting under the Patiala Evacuee (Administration of Property) Ordinance of Samvat 2004. On a claim made by the appellant that the houses belonged to him, the Custodian by his order dated June 6, 1949 released the houses. Thereafter several Ordinances relating to evacuee property were passed one after another, the succeeding Ordinance repealing the previous one and creating, except in the case of repeal of Ordinance 9 of Samvat 2004, a chain of fictions by which certain provisions of the repealed Ordinance were deemed to continue under the repealing Ordinance. The last Ordinance was replaced by the Administration of Evacuee Property Act 31 of 1950. The Custodian-General exercising powers under S. 27 of that Act set aside the order of the Custodian which released the property in favour of the appellant. In appeal against the order of the Custodian- General, it was held that the order dated June 6, 1949 passed by the Custodian under Ordinance 9 of Samvat 2004 could not be deemed to be an order passed under Act 31 of 1950 as the chain of fictions was broken, when Ordinance 13 of Samvat 2006 repealing the previous Ordinance 9 of Samvat 2004 was issued, and there was no scope for the exercise of his power by the Custodian-General under S. 27 of Act 31 of 1950. The Court then proceeded to interpret S. 58(3) of Act 31 of 1951 on the assumption that the order of the Custodian dated June 6, 1949, by a chain of fictions was to be deemed an order made by the Custodian in exercise of the powers conferred on 'him by Act 31 of 1950, and observed:

> "Sub-section (3) of S. 58 is in two parts. The first part says that the repeal by the Act of the said Ordinance shall not affect the previous operation of the said Ordinance ; and the second part says that anything done or any action taken in the exercise of any power con- ferred by or under that Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action taken. The second part is expressly made subject to the first part. If a case falls under the first part, the second part does not apply to it. In the present case under the (1) [1962] 1 S.C.R. 214.

previous operation of the Ordinance the order of the Custodian had become final. If so, the fiction introduced in the second part could only operate on that order subject to the finality it had acquired under that Ordinance."

In our view, the decision of the Court on the principal ground that the chain of fictions was broken, and the impugned order was not one which was to be deemed to have been made under Act 31 of 1950, rendered consideration of all other questions unnecessary. If by the observations set out, it was intended to, lay down that the legal fiction introduced by s. 58(3) of Act 31 of 1950 by which anything done or action taken in exercise of the powers conferred by the earlier Ordinance was to be

deemed to have been done or taken in exercise of the powers by or under the Act applies only if under the earlier Ordinance anything. done or action taken had not become final by virtue of the provisions of that Ordinance, we are unable, with respect, to accept that interpretation. By the first part of S. 58(3) repeal of the statutes mentioned therein did not operate to vacate things done or actions taken under those statutes. This provision appears to, have been enacted with a view to avoid the possible application of the rule of interpretation that where a statute expires or is. repealed, in the absence of a provision to the contrary, it is regarded as having never existed except as to matters and transactions past and closed: see Surtees v. Ellison(1). This rule was altered by an omnibus provision in the General Clauses Act, 1897, relating to the effect of repeal of statutes by any Central Act or Regulation. By s. 6 of the General Clauses Act, it is provided, insofar as it is material, that any Central Act or Regulation made after the commencement of the General Clauses Act repeals any enactment, the repeal shall not affect the previous operation of' any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed, as if the Repealing Act or Regulation had not been passed. But the rule contained in S. 6 applies only if a different intention does not appear, and by enacting S. 58(3) the Parliament has expressed a different intention, for whereas the General Clauses Act keeps alive the previous operation of the enactment repealed, 'and things.

(1) (1829) 9 B. & C. 752.

done and duly suffered, the rights, privileges, obligations or liabilities acquired or incurred, and authorises the investigation, legal proceeding and remedies in respect of rights, privileges, obligations, liabilities, penalties, forfeiture and punishment, as if the repealing Act or Regulation had not been passed, S. 58(3) of Act 31 of 1950 directs that things done or actions taken in exercise of the power conferred by the repealed statutes shall be deemed to be done or taken under the repealing Act as if that latter Act were in force on the day on which such thing was done, or action was taken. The rule so enunciated makes a clear departure from the rule enunciated in s. 6 of the General Clauses Act, 1897. By the first part of s. 58(3) which is in terms negative, the previous operation of the repealed statutes survives the repeal. Thereby matters and transactions past and closed remain operative : so does the previous operation of the repealed statute. But as pointed out by this Court in Indira Sohanlal's case(1) at p. 1133, the saying of the previous operation of the repealed law is not to be read, as saving the future operation of the previous law. The previous law stands repealed, and it has not for the future the partial operation as is prescribed by S. 6 of the General Clauses Act. All things done and actions taken under the repealed statute are deemed to be done or taken in exercise of the powers conferred by or under the repealing Act, as if that Act were in force on the day on which that thing was done or action was taken. It was clearly the intention of the Parliament that matters and transactions past and closed were not to be deemed vacated by the repeal of the statute under which they were done. The previous operation of the statute repealed was also affirmed expressly but things done or actions taken under the repealed statute are to be deemed by fiction to have been done or taken under the repealing Act. The use of the expression subject

thereto" in the commencement of the positive part of s. 58(3) cannot attribute to the previous operation of the repealed statute an overriding effect so as to deprive the authorities constituted under the repealing Act of their power to entertain appeals or revision applications, which they possess by the express enactment that the acts done or actions taken are deemed to have been done under the statute. To attribute to the positive part of s. 58 (3) the meaning contended for by the appellants would result in denying to the repealing statute the full effect of the fiction introduced by the Parliament that is, acts done or actions taken since the repealing Act would be subject to the appellate jurisdiction of the authority having power under the Act, but not the acts deemed to be done or actions deemed to be taken. There is no warrant (1) [1955] 2 S.C.R. 1117.

for attributing to the fiction this qualified operation. The Legislature has not expressed such a reservation in the application of the fiction, and none can be implied. The order made by the Deputy Custodian was declared final by sub-s. (6) of s. 30 of Ordinance 12 of 1949, but the finality was subject to the provisions of sub-ss. (1) to (5) of S. 30. If, fictionally, the order is to be deemed. to have been passed under Act 31 of 1950 as if the Act were in operation -on October 12, 1949, it is difficult to escape the conclusion that the order would be subject to the appellate and revisional jurisdiction of the authorities who have the appellate or revisional power by virtue of the provisions conferring those powers and which must also be deemed to have been in force at the date when the impugned order was passed.

In the present case, it is said on behalf of the State of Uttar Pradesh, that they were not aware of any proceeding taken with regard to No. 11, Kaiserbagh, by the Deputy Custodian of Evacuee Property and therefore they could raise no objection. The order notifying the property was made under the Central Ordinance 12 of 1949. If the notification be deemed an order within the meaning of s. 30(6), the order having been declared fictionally made under Act 31 of 1950, remained subject to the revisional jurisdiction of the Custodian. If any other view is taken, some startling results may follow : for instance, if under an order passed by the Custodian or action taken by him, the rights of a person are infringed, and before he files an appeal or the revising authority is moved, the Ordinance or the Act is repealed and is substituted by a new Act or Ordinance, the person aggrieved would, if the view contended for by the appellants were to prevail, have no remedy at all, because the finality of orders declared by the repealed statute would operate. It may be noted that under s. 27 of Act 31 of 1950 which invests the Custodian-General with powers of revision, an Explanation is incorporated by Act 1 of 1960 that the power conferred on the Custodian-General under s. 27 may be exercised by him in relation to any property, notwithstanding that such property has been acquired under s. 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. This also indicates that even if the evacuee property has been acquired under s. 12 of Act 44 of 1954, it is still open to the Custodian-General in appropriate Cases to exercise his power in revision. We are therefore of the view that the Custodian-General had the power to entertain the revision application filed by the State of Uttar Pradesh.

On the merits of the order, not much need be said. The pro- cedure followed by the Custodian-General is in gross violation of the rules of natural justice. As we have already observed, acting under the powers conferred upon him by S. 6 of Ordinance 12 of 1949, the Deputy Custodian had notified No. 11, Kaiserbagh, as evacuee property. What the evidence before the Deputy

Custodian in that behalf was, has not been disclosed. Nearly twelve years after that order was passed, the State of Uttar Pradesh moved the Custodian-General in revision. The petition invoking the revisional jurisdiction was competent, but the Custodian-General was not justified in acting upon evidence which was sought to be brought on the record for the first time before him without affording to the persons affected thereby an opportunity of meeting that evidence. It appears that in the petition filed by the State of Uttar Pradesh many new facts which were not on the record were set out. The Custodian-General has in appropriate cases the power to admit additional evidence and to consider the same: Rule 31(9) of the Administration of Evacuee Property Central Rules, 1950. But no party has a right to tender additional evidence in appeal or before a revising authority: it is for the revising authority to decide whether having regard to all the circumstances and in the interest of justice, additional evidence tendered by a party should be admitted. It is unfortunate that the Custodian-General did not record a formal order admitting additional evidence tendered by the State of Uttar Pradesh with its petition. But we would not be justified in the circumstances of this case in assuming that the Custodian- General was oblivious of the nature and extent of his powers and restrictions thereon.

The procedure followed by the Custodian-General is however open to grave objection, because he did not even give an opportunity to the legal representatives of Ram Chand Kohli to lead evidence in rejoinder to the evidence relied upon by the State. It appears that only copies of documents on which the title of the State of Uttar Pradesh was founded were filled in the proceeding before the Custodian-General. The revision petition was heard by the Custodian-General on August 4, 1962, and thereafter the proceeding stood adjourned till August 14, 1962 for further hearing. On August 6, 1962, counsel for the appellants served a notice upon counsel for the State of Uttar Pradesh calling upon him to give inspection of the documents referred to in the notice. No inspection was given, and the hearing took place on August 14, 1962. It is true that counsel for the appellants did attempt to meet the case sought to be raised by the State of Uttar Pradesh on the merits, and submitted that the property in dispute was owned by Chowdhry Akbar Hussain. That, however, would not justify the procedure followed by the Custodian-General, nor would it lead to the inference that the appellants had, in the circumstances of this case, waived the irregularity in the trial. It is common round before us that at no stage, originals of a large number of documents, on which reliance was placed by the State of Uttar Pradesh, and on which the Custodian- General founded his conclusion, were produced before the Custodian-General. The Custodian-General does not appear to have even told the appellants that he had admitted copies of those documents on the record. Nor did he give to the appellants an opportunity to meet the case which the State of Uttar Pradesh sought to make out. In our view the pro- ceedings of the Custodian-General were so wholly inconsistent with the procedure which may be followed in a judicial trial, that his order must be set aside and the proceedings remanded to the Custodian-General with a direction that he do call upon the State of Uttar Pradesh to formally tender in evidence such of the documents on which they rely, and that he do give an opportunity to the appellants in this appeal to tender such evidence as they desire to tender in support of their case. Thereafter the Custodian-General -shall hear both the parties on the evidence properly brought on the record.

The appeal is allowed and the case is remanded to the Custodian-General for disposal according to law. The appellants will be entitled to their costs in this Court.

Appeal allowed.

LISup.C.I./66-12