Supreme Court of India
Major Gopal Singh And Others vs Custodian, Evacuee Property, ... on 15 March, 1961
Equivalent citations: 1961 AIR 1320, 1962 SCR (1) 328
Author: M R.
Bench: Mudholkar, J.R.

PETITIONER:
MAJOR GOPAL SINGH AND OTHERS

Vs.

RESPONDENT:
CUSTODIAN, EVACUEE PROPERTY, PUNJAB

DATE OF JUDGMENT:
15/03/1961

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SUBBARAO, K.
DAYAL, RAGHUBAR

CITATION:
1961 AIR 1320 1962 SCR (1) 328
CITATOR INFO :
R 1962 SC 994 (4)

ACT:
Evacuee Property--Quasi-permanent allotment-Cancellation of-Custodian General,powers of-Enactment vesting evacuee Property in Central Government-If Custodian General still has power to cancel allotment-Administration of Evacuee Property Act, 1950 (31 of 1950), SS. 10, 27 -Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), SS. 12, 19.

HEADNOTE:
The appellants who are displaced persons from West Pakistan, were granted quasi-permanent allotment of some lands in village Raikot in 1949. On October 31, 1952, the Assistant Custodian cancelled the allotment of 14 allottees in village Karodian, and also cancelled the allotment of the Appellants in Raikot but allotted lands to them in village Karodian, and allotted the lands of Raikot to other persons. The 14 allottees of village Karodian as well as the appellants applied for review of the orders of cancellation of their allotment. The application of the 14 allottees was dismissed. They preferred a revision to the Custodian

General who cancelled the appellant's allotment
(1) (1907) I.L.R. 34 Cal. 926.
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in Karodian and restored the allotment of the 14 allottees on December 17, 1954 Thereupon,, on January 6, 1955, the appellants moved the Custodian General for calling up their review application and for revising the order of October 31, 1952, cancelling their allotment-in Raikot. The Custodian General refused to revise the order on the ground that his power to revise had been taken away by the Displaced Persons (Compensation and Rehabilitation) Aç‡ 1954. The appellants contended that the, Custodian General had the power to revise the order.
Held, that after the enactment of the, Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Custodian General ceased to have the power to cancel allotments. By, the issuing of a notification under, S. 12(1) of this Act, the Fight, title or interest of the evacuee in the property specified in the notification was extinguished and the property vested absolutely in the Central. Government. The right of the Custodian manage the property under the Administration of Evacuee Property Act, 1950, came to an end and the management vested in a new set of officers. Even though no- managing officer was appointed or a managing corporation, constituted under the new Act to manage the property no one--else could'exercise the power of cancellation of allotment.
Bal Mukund v. The State of Punjab, I.L.R. 1957 Punj. 712, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 101 of 1959. Appeal by special leave from the judgment and order dated November 8, 1957, of the Deputy Custodian General, Evacuee Property, Now Delhi Revision Petition No. 17-R/55 of 1955. Achhru Ram and K. L. Mehta for the appellants. B.K., Khanna and, T. M. Sen, for the respondent No. 1. N.S. Bindra and A. G. Ratnaparkhi, for the respondents Nos. 2-4.

1961. March 15. The Judgment of the Court was delivered by MUDHOLKAR J.-The appellants who are admittedly displaced persons from West Pakistan were granted quasi- permanent allotment of 24 standard acres and 15 3/4 units in the village of Raikot in Ludhiana District in 1949. Their father Sardar Nand Singh who was found entitled to quasi-permanent allotment of 40 standard acres and 5 1/4 units of land was given quasipermanent allotment in another village named Humbran in the same district. The two villages are, however, 25 miles or so distant from each other. Nand Singh, therefore, made an application for consolidation of his lands with those of the appellants in the village Raikot. During the pendency of this application he died and after his death, the, application was continued by the appellants. This application was rejected by the Assistant Custodian on July 23, 1951 on the ground that no land was available in the village Raikot. A revision petition preferred

by the appellants against the order of the Assistant Custodian was dismissed by the Additional Custodian on August 20, 1952. On October 7, 1952 the appellants preferred a revision application before the Custodian General. During the pendency of the revision application the Additional Custodian for the State of Punjab cancelled the allotment of fourteen quasi-permanent allottees of the village Karodian in the same district on the ground that these persons were entitled to allotment of suburban land a had been wrongly fitted in the village Karodian. Acting suo motu the Additional Custodian made an order on October 31, 1952 cancelling the order of allotment of land in the village Raikot made in favour of the appellants in the year 1949 and instead allotted to them land in Karodian in substitution of :,the lands at Raikot and of the lands allotted to their father. The land allotted was out of the land released upon the cancellation of allotment of lands in favour of the aforementioned 14 allottees. These fourteen allottees preferred an application for review of the order cancelling their allotment on the ground that this cancellation was a result of misapprehension of the actual facts and that they were not entitled to allotment of suburban lands at all. The appellants also preferred an application for review of the order cancelling their quasi- permanent allotment in the village Raikot. The Additional Custodian for the State of Punjab recommended to the Custodian General the restoration of the land to the 14 allottees which had been taken away from them by reason of cancellation of the allotment in their favour by the order dated October 31, 1952. The Additional Custodian admitted that these persons were not entitled to allotment of suburban land and that consequently their allotment had been wrongly made but referred the matter back to the Additional Custodian for decision. The application made by the appellants was kept pending till the decision of the application of the 14 allottees of Karodian. The Additional Custodian, however, dismissed the application on the ground that r. 14(6) of the Evacuee Property Rules which came into force on July 22, 1952, stood in the way of cancellation of the allotment in favour of the appellant. On December 17, 1954, the Deputy Custodian General, before whom these allottees had preferred an application for revision, revised the order of the Additional Custodian and restored to the 14 allottees of Karodian the land which had been originally allotted to them. and allotment of which had been cancelled earlier. As a result of this order the allotment of Karodian land made in favour of the appellants automatically stood cancelled.

On January 6, 1955, the appellants moved the Deputy Custodian General for calling up their review application and for revising the order of October 31, 1952 passed by the Additional Custodian cancelling the allotment of Raikot lands which had originally been made in their favour in the year 1949.

Consequent upon the cancellation of the appellants' allotment of the Raikot land they were allotted to respondents 2 to 4. These persons were, therefore, impleaded as parties to the proceedings before the Deputy Custodian General. By the order dated November 8, 1957 the Deputy Custodian General dismissed the appellants' application. The appellants have, therefore, come up to this Court by way of appeal with special leave.

The ground on which the appellants' application was rejected by the Deputy Custodian General was that his jurisdiction to revise the order has been taken away by virtue of the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954, (44 of 1954) and the notification issued thereunder on March 24, 1955. In taking this view he has relied upon the decision in Bal Mukund v.

The State of Punjab (1). In that case the Court has held that the powers of the Custodian General to deal with matters of this kind have been taken away by the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and that these powers now vest in another authority and that there is no provision for continuing the pro- ceedings which had been commenced under the Administration of Evacuee Property Act., 1950, but had not been concluded. Mr. Achhruram for the appellants challenged the correctness of this decision.

There is no specific provision in this Act to the effect that after its commencement the jurisdiction of the various authorities created by the Administration of Evacuee Property Act, 1950, to deal with the allotment or cancellation of allotment of evacuee property shall cease. What is urged by Mr. Khanna on behalf of the Custodian General is that this is the effect of the provisions of ss. 12(2) and 19 of the Act.

Section 12 of the 1954 Act empowers the Central Government to acquire evacuee property for rehabilitation of displaced persons by publishing in the official gazette a notification to the effect that it has decided to acquire such evacuee property in pursuance of this provision. It is common ground that by notification S. R. 0. 697 dated March 24, 1955 the Central Government decided to acquire all evacuee property allotted to displaced persons by the Custodian under the "Conditions" contained in the notification of the Government of Punjab in the Department of Rehabilitation, No. 4892-6 dated July 8, 1949, except certain categories of property specified in the schedule. The Raikot lands were allotted to the appellants under the aforesaid notification of the Government of Punjab. It is not disputed on their behalf that they do not fall within any of the excepted categories of property, set out in the schedule. Sub- section 2 of s. 12 of the Act (1) I.L.R. 1957 Punj. 712.

provides that on the publication of the notification under sub-s. 1 the right, title or interest of any evacuee in the property specified in the notification shall immediately stand extinguished and that property shall vest absolutely in the Central Government free from all encumbrances. The power of the Custodian under the Administration of Evacuee Property Act, 1950, to allot any property to a person or to cancel an allotment existing in favour of a person rests on the fact that the property vests in him. But the consequence of the publication of the notification by the Central Government under s. 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act with respect to any property or a class of property would be to divest the Custodian completely of his right in the property flowing from s. 8 of the Administration of Evacuee Property Act, 1950, and vest that property in the Central Government. He would, therefore, not be competent to deal with the property in any manner in the absence of any provision in either of these two enactments permitting him to do so. No provision was, however, pointed out to us in either of these Acts whereunder despite the Vesting of the property in the Central Government the Custodian was empowered to deal with it. Sub-s. 4 of s. 12 of the 1954 Act provides that all evacuee property acquired under that section shall form part of the compensation pool. Under s. 16(1) of this Act the Central Government is empowered to take such measures as it considers necessary or expedient for the custody, management and disposal of the compensation pool. Sub-s. 2 of s. 16 empowers the Central Government to appoint such officers as it deems fit or to constitute such authority or corporation as it deems fit for the purpose of managing and disposing of the properties forming part of the compensation pool. Section 19 of the Act provides that notwithstanding anything contained in any

contract or any other law for the time being in force but subject to the rules that may be made under the Act the managing officer or managing corporation may cancel any allotment etc., under which any evacuee property acquired under the Act is held or occupied by a person whether such allotment or lease was granted before or after the commencement of the Act. This provision thus confers the power to deal with evacuee property acquired under the Act only on a managing officer appointed or managing corporation constituted under the Act and makes no mention whatsoever of the Custodian appointed under the Administration of Evacuee Property Act. No doubt, under s. 10 of the Administration of Evacuee Property Act the Custodian is empowered to manage evacuee property and in exercise of his power he will be competent to allot such property to any person or to cancel an allotment or lease made in favour of a person. Apart from the fact that subsequent to the issue of the notification under s. 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act, the property would cease to be evacuee property, the aforesaid powers of the Custodian would be in conflict with those conferred by s. 19 of the 1954 Act on a managing officer or a managing corporation constituted under that Act. In other words, to that extent the provisions of s. 10 of the 1950 Act and s. 19 of the 1954 Act cannot stand together. As already stated the powers conferred by sub-s. (1) of s. 19 of the 1954 Act are to prevail notwithstanding anything contained in any other law for the time being in force. Therefore, they must prevail over the provisions of B. 10 of the Administration of Evacuee Property Act. It is true that there, is nothing on record to show that a managing officer was appointed with respect to the Raikot properties acquired under the notification dated March 24, 1955. But it is not necessary to ascertain that fact. The point is, who, after the coming into force of the 1954 Act could cancel an allotment. Section 10 says that only a managing officer or a managing corporation can do so. This means that no one else can do so even though some other law may have authorised another person or authority to cancel an allotment.

Mr. Achhruram, however, contended that the appellants' rights were protected by s. 10 of the Displaced Persons (Compensation and Rehabilitation) Act. Section 10 runs as follows:

> "Special procedure for payment of compensation in certain cases.-Where any immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published-
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> (a)by the notification of the Government of Pun. jab in the Department of Rehabilitation No. 4892-S or 4892-S dated the 8th July, 1949, or
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> (b)by the notification of the Government of Patiala and East Punjab States Union in the Department of Rehabilitation No. 8R or 9R, dated the 23rd July, 1949, and published in the official Gazette of that State dated the 7th August, 1949, and such property is acquired under the provisions of this Act and forms part of the compensation pool, the displaced person shall, so long as the property remains vested in the Central Government, continue in possession of such property on the same conditions on which he held the property immediately before the date of the acquisition, and the Central Government may, for the purpose of payment of compensation to such displaced person, transfer to him such property on such terms and conditions as may be prescribed."

It is followed by an explanation; but that explanation has no bearing upon the point urged by Mr. Achhruram. It is no doubt true that the Raikot lands were allotted to the appellants under the notification referred to in el. (a) of this section and, therefore, they would be entitled to the benefits conferred by this section provided they satisfied all the other requirements of this section, express or implied. It is implicit in this section that the displaced person to whom land was allotted "held" the land and was in possession of such property at the date of the notification. It is not disputed that the appellants ceased to hold and had lost possession of the Raikot lands before the publication of this notification. Even assuming that the order of the Custodian cancelling the allotment in their favour was erroneous there will be no difference in the result because what is essential is the facts of holding and possession of the land on the date of the notification.

Mr. Achhruram then referred to the "Conditions" on which allotments of land may be made under the notification referred to in sub-s. 10(a) and pointed out that under condition no. 6 the Custodian or rehabilitation authority would be competent to resume or cancel an allotment only on one of the grounds set out in that condition. He said that the cancellation of the allotment in favour of the appellants was impermissible inasmuch as it was not based upon any of the grounds set out in the 6th condition. That may or may not be so. We would repeat that the appellants had lost their possession before the publication of the notification and are thus not entitled to the protection of the section. Moreover, the Custodian, by reason of the divesting of the property, as from March 24, 1955, had become functus officio with respect to it and could not rectify any error made by him in the past in the matter of cancellation of allotment. It is true that had the appellants been in possession at the critical time they would have had the right to obtain a permanent transfer in their favour of the Raikot lands and by virtue of what happened and without any fault on their part they have been deprived 'of that right. That is indeed unfortunate but none of the authorities created by the Administration of Evacuee Property Act could rectify the wrong that has been done by them to the appellant. The question whether it could be rectified by any of the authorities constituted by the Displaced Persons (Compensation and Rehabilitation) Act or not was not canvassed before us and, therefore, there is no occasion for us to say anything about it.

Mr. Achhruram contended that r. 74 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 stood in the way of the Custodian allotting the Raikot property to the respondents during the pendency of the proceedings before the Custodian General. That rule reads as follows:

> "Allotments which are the subject matter of dispute.-No property in a rural area in respect of which any case is pending in a Civil Court or before a Deputy Custodian, Custodian or Custodian General, shall be transferred to the allottee".

The aforesaid rule is in Chapter X headed "Payment of compensation under section 10 of the Act" and deals with a transfer of property to an allottee by way of final settlement of his claim to compensation and does not deal with the question of allotment on a quasi-permanent basis. Moreover, this rule applies to a proceeding before an authority created by the Displaced Persons (Compensation and Rehabilitation) Act and not to an authority created by the Administration of Evacuee Property Act. There is, therefore, no substance in this argument.

Finally Mr. Achhruram referred to s. 17 of the 1954 Act and to r. 102 of the Rules framed thereunder and said that the powers of the managing officers appointed under the Act are confined only to properties which are entrusted to them for management and not with respect to any other property. Section 17 deals with the function; and duties of managing officers and managing corporation. Sub-s. (1) provides that managing officers and managing corporations will perform such functions as may be assigned to them under the Act. Sub-s. (2) provides that subject to the provisions of the Act and the rules made thereunder, a managing officer or a managing corporation may, among other things, take such measures as he or it considers it necessary or expedient for the purpose of securing, administering, preserving, managing or disposing of any property in the compensation pool entrusted to him or it... etc. The argument is that unless there is such "entrustment" the managing officer or managing corporation has no function to perform with respect to evacuee property. His contention appears to be that there is nothing to show that this property was "entrusted" to a managing officer. In the first place the section confers the particular powers On managing officers or managing corporations only and no one else. Therefore, even if no managing officer or managing corporation was appointed with respect to that property no one else could exercise the power of cancellation of allotment. Further, there is no ground in the special leave petition or in the statement of the case that there is no entrustment in fact of this property or this class of properties to a managing officer or managing corporation. He cannot, therefore, be permitted to make out a new case at this stage of argument. That apart, this argument assumes that the property, despite the publication of the notification under s. 12(1) of the Act continues to be evacuee property. Again, this provision is a general provision and the particular provision regarding cancellation of allotment is s. 19(1) of the Act which does not refer to entrustment at all and it is this provision which must prevail over the general provision. He then contends that the provisions of s. 19(1) of the Act being subject to rules made under the Act must be read along with r. 102 which deals with cancellation of allotments of leases. That rule reads thus:

> "Cancellation of allotments and leases---A managing officer or a managing corporation may sell any property in the compensation pool entrusted to him or to it, cancel an allotment or terminate a lease, or vary the terms of any such lease or allotment if the allottee or lessee, as the case may be-
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> (a)has sublet or parted with the possession of the whole or any part of the property allotted or leased to him without the permission of a competent authority, or
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> (b)has used or is using such property for a purpose other than that for which it was allotted or leased to him without the permission of a competent authority, or
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> (c) has committed any act which is destructive of or permanently injurious to the property, or
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> (d) for any other sufficient reason to be recorded in writing;
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> Provided that no action shall be taken under this rule unless the allottee or the lessee, as the case may be, has been given a reasonable opportunity of being heard."

He points out that in the first place, the rule speaks of land 'entrusted' to the manager and, therefore would operate only if entrustment is established. What we have said in regard to s. 17 would apply here also. He then says that this rule restricts the powers of a managing officer or a managing corporation in the matter of cancellation of allotment in the sense that it permits cancellation only on certain specified grounds and, therefore, it cannot be said that s. 19(1) of the Act is completely in conflict with s. 10 of the Administration of Evacuee Property Act in so far as the question of cancellation of allotment is concerned. We cannot accept the argument because, apart from the fact that the acquired properties have ceased to be evacuee properties, el. (d) of r. 102 permits the managing officer or managing corporation to cancel allotment "for any other sufficient reason to be recorded in writing". The only effect of r. 102 is to permit cancellation 'of an allotment for reasons stated. That is all. In our opinion, therefore, this rule does not help the appellants.

Mr. Khanna had raised three other points but upon the view which we have taken as to the effect of ss. 12 and 19 of the Act, it is not necessary to consider them.

The appeal is accordingly dismissed. We, however, make no order as to costs because had there been no delay on the part of the Custodian General in dealing with the revision application the present situation would not have arisen.

Appeal dismissed.