

S. No.  

**HIGH COURT OF JAMMU AND KASHMIR & LADAKH  
AT JAMMU**

WP(C) No. 1043/2023 (O&M)

Reserved on: 08.05.2023  
Pronounced on: 11.05.2023

Bachan Lal ...Petitioner(s)

Through :- Mr. Dheeraj Singh Katoch, Adv.  
v/s

J&K Special Tribunal and ors. .....Respondent (s)

Through :- Mr. F. A. Natnoo, Advocate

**Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**JUDGMENT**

1. Petitioner has invoked writ jurisdiction of this Court under Article 226 of Constitution of India for quashment of impugned order dated 27.03.2023 passed by J&K Special Tribunal, Jammu (Tribunal, for short), vide which, order dated 10.04.2017 passed by respondent No. 2-Custodian Evacuee Property, Jammu (Custodian, for short), has been set aside and matter has been remanded for fresh consideration.

2. Before a closer look at the grounds urged in the present petition, it shall be apt to have an overview of the background facts.

3. Private parties to the petition viz. petitioner and respondents No. 3 and 4 are siblings. Petitioner filed a petition before the Custodian stating therein that one Kuda Ram S/o Telu was allottee of evacuee land measuring 02 kanals & 18 marlas falling under Khasra No. 251min and 01 kanal & 13 marlas falling under

Khasra No. 387 situate at village Plouta, Ramgarh, District Samba and he purchased the said land from said Kuda Ram by virtue of an agreement to sell. According to the petitioner, he is in cultivating possession of the aforesaid land, which stands reflected in the revenue records since 1992. *Per contra*, it is stand of respondents No. 3 and 4 that aforesaid two parcels of land measuring 02 kanals & 18 marlas falling under Khasra No. 251min and 01 kanal & 13 marlas falling under Khasra No. 387 situate at village Plouta, Ramgarh, District Samba, being Shamlat in nature, the persons having proprietary land in the village, as per last settlement, have share in the Shamlat land proportionate to their respective holdings. Countervailing the stand of the petitioner, respondents are affront with the contention that Sh. Kuda Ram, alleged allottee, executed an agreement in favour of father of the private parties i.e. petitioner and respondents No. 3 and 4, namely, Sh. Channa Ram on 14.07.1992, possession was delivered to him and said Channa Ram remained in cultivating possession of the same. During his life time, their father executed a family settlement in the year 2000, by virtue of which, land comprising Khasra No. 387 was given to the petitioner and land bearing Khasra No. 251min was given to respondents No.3 and 4 in equal shares. However, they are in cultivating possession of both the parcels of land including land comprising Khasra No. 251 min despite revenue entries wrongly recorded partly in the name of petitioner.

4. It is evident from the rival stands taken by the contesting parties, before the Custodian, that land comprising Khasra No. 251min situated at village Plouta, Tehsil Ramgarh, District Samba, is the bone of contention between them.

5. In the petition before the Custodian, the petitioner sought injunction restraining respondents No. 3 and 4 from interfering with his peaceful possession and allotment of the subject land i.e. 02 kanals 18 marlas bearing Khasra No.

251min situate at Village Plouta Tehsil Ramgarh District Samba in his favour and Custodian vide order dated 10.04.2017 allowed the petition filed by the petitioner and ordered regularization of his possession and allotment of subject land in question in his favour subject to payment of premium as per the provisions of J&K State Evacuees (Administration of Property) Act Svt. 2006 (for short, Evacuees Property Act) and the rules framed thereunder.

**6.** This order of the Custodian came to be questioned by respondents No. 3 and 4, before the Tribunal, by way of revision petition, and learned Tribunal vide impugned order dated 27.03.2023 while setting aside the aforesaid order dated 10.04.2017 passed by the Custodian, has remanded the matter back by providing that Custodian while considering the matter afresh would keep in mind the legal and factual aspects indicated in the order.

**7.** Petitioner has questioned the impugned order on the predominant premise that learned Tribunal has exceeded its jurisdiction conferred by law by going into factual aspects of the case, which was never agitated by the parties.

**8.** Having heard rival contentions and perused the material on record, I do not find any illegality muchless impropriety in the impugned order, which is, otherwise, being well reasoned, is liable to be upheld for following reason.

**9.** Section 30-A of the Evacuee Property Act confers power of revision on the Tribunal by providing that Tribunal shall call for the record of any proceedings in which any Custodian/Custodian General has passed any order under the provision of the Act, at any time, either on its own or an application made in this behalf, or for the purpose of satisfying itself as to the legality or propriety of such order and pass any order in relation to it as it thinks fit.

**10.** There is no doubt that exercise of revisional jurisdiction is confined to questions of jurisdiction. While in a first appeal, the court is free to decide all questions of law and fact arising in the case, the revisional court is not entitled to re-examine or re-assess the evidence on record and substitute its own findings on facts. The scope of enquiry in exercise of revisional jurisdiction, of course, is limited and restricted. The petitioner invoking revisional jurisdiction is obliged to show that the subordinate Court or authority has exceeded jurisdiction or has failed to exercise jurisdiction vested in it over the subject matter or that the said court or authority has committed material irregularity or illegality or impropriety having nexus with question of jurisdiction of the Court. In view of this, the interference of the revisional court cannot be restricted, in cases where the law is misunderstood and the finding is an error apparent on the face of the record, as happened in the present case. Therefore, tribunal in exercising jurisdiction under Section 30-A of the Evacuee Property Act is vested with the power to go into legal aspect of the matter having regard to the factual background set out in the pleadings of the parties as also on the basis of material placed on the record. For this reason, the revisional court is vested with the power to lift the veil for limited purpose to have an overview of the factual background in order to determine legality or impropriety of the order questioned before it.

**11.** In the backdrop of aforesaid principle, a careful perusal of the impugned order would show that learned Tribunal has not returned any finding on factual aspect of the matter and it is for the said reason that matter has been remanded to the Custodian to consider the matter afresh in the light of legal observations made by learned Tribunal in the impugned order.

**12.** Learned counsel for the petitioner has fairly admitted and it is also an admitted position of fact on the record that no material whatsoever was placed

before the Custodian or learned tribunal to establish that subject land i.e. land falling under Khasra No. 251min was an evacuee property. The admitted position of fact discernible from the record is that land in question is Shamlat in nature. Therefore, learned Tribunal has rightly observed that there was nothing on record to indicate that whether Sh. Kuda Ram, being a local allottee, was given the subject land as an evacuee land or just Shamlat land for agricultural purposes and that Custodian had assumed it to be an evacuee property without referring to any documentary evidence placed on record in this respect.

**13.** Since, the entire controversy revolves around the “allotment” of land in question, it shall be apt to reproduce the definition of allotment under Section 2(a) of the Evacuees Property Act. It reads thus:

**“(a) ‘allotment’ means the grant by the Government or the Custodian or any other person duly authorized by the Custodian in this behalf of a temporary right of use and occupation of any immovable property of an evacuee to any person otherwise than by way of lease;”**

**14.** It is evident from the definition of allotment quoted-above that the allotment to an allottee under the Evacuees’ Property Act is a temporary right of use and occupation of any immovable property of Evacuee. It neither confers any right nor title or interest over the allottee.

**15.** A Full Bench of this Court in **Shamsher Singh v. Dy. Custodian General**, reported as **1973 JKLR 144**, in a similar fact situation, has made the following observation:

**“..... So this is only a licence with all its incidents and effects. A Full Bench of this Court in A.I.R 1956 J&K 33 has also enunciated the view that allotment is only a license, it can be revoked by the appropriate authority under certain conditions. Thus we find that the incidents of an allotment is not to confer ownership of the land allotted on the allottee as has been held by the Supreme Court in A.I.R 1957 S.C. 599. It cannot be held that the interest of an allottee is property within the concept of that word so as to attract the protection of Fundamental Rights, as property to fall within the same of Article 19(1)(F) of the Constitution of India must be capable of being the subject, matter of acquisition and disposal. In view of the**

**Supreme Court the interest of the allottee arises by statutory grant to a specified class of persons and is not capable of acquisition by the citizens in any of normal modes, nor is it capable of disposal by the allottee himself in the normal modes by way of sale, mortgage or will. That being the position, it cannot be said that the heirs of an allottee including the adopted son can claim the allotted land by operation of law of succession, although the Government or the appropriate authority may allow the survivors of the family to retain the allotted property not by operation of law of succession but only on the ground of public policy, expediency, exigencies of situation or convenience so as to allow the family to continue to retain the property as licensee.....”**

(Underlined for emphasis)

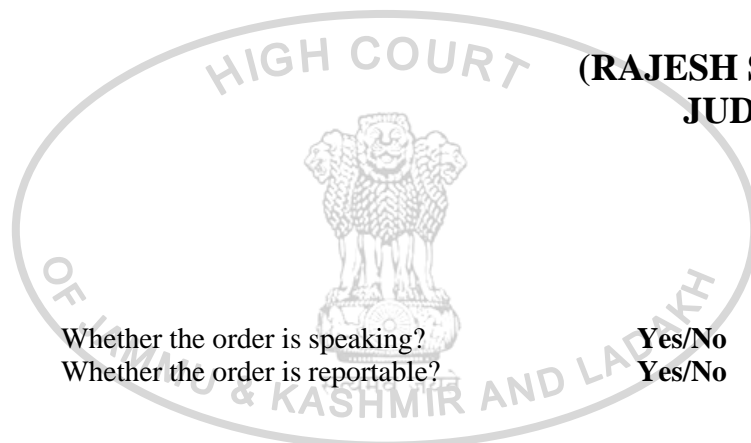
**16.** It is manifest from the afore-quoted observation of this Court that allotment is a mere license, which is revocable by the concerned authorities under certain conditions. It neither confers ownership nor interest in the land. The interest of an allottee arises only by statutory grant to displaced persons, which is not amenable to acquisition or alienation in any normal modes by way of sale, gift, mortgage or will. It needs a specific mention that even legal heirs of an allottee cannot claim the allotted land by operation of law of succession. It is within the absolute domain of the department of Custodian to allow the heirs of allottee to retain the allotted property or not.

**17.** In view of what has been held by a full Bench of this Court in Shamsheer Singh (Supra), I concur with the observation of learned Tribunal that land in question had illegally passed hands from Sh. Kuda Ram, because in the capacity of being an allottee Sh. Kuda Ram was not authorized to part with the land allotted to him for monetary consideration which would entail cancellation of allotment of evacuee property. The possession so transferred by original allottee, was, therefore, unauthorized and illegal and Custodian was obliged to take note of this legal position. Learned Tribunal has rightly observed that allotment of evacuee property cannot be ordered on the basis of revenue entries or on the basis of some report submitted by the revenue officials. It is pertinent to mention

that Custodian despite having noticed that land in question i.e. evacuee Shamlat land was illegally and unauthorizedly alienated by Sh. Kuda Ram, a local allottee in favour of father of the petitioner and respondents No. 2 and 3, has acceded the request made by the petitioner and directed allotment of land in his favour, which is not permissible under law. Therefore, learned tribunal by making reference to the pleadings of the parties and observation made by the Custodian has formulated questions to be considered by the Custodian afresh, having due regard to the legal position.

**18.** For what has been observed and discussed herein above, I do not find any illegality or impropriety in the impugned order and the same, being well reasoned, is upheld. Consequently, no case is made out and the present petition, being bereft of merit, is dismissed in *limine*.

Jammu  
11.05.2023  
(Paramjeet)



**(RAJESH SEKHRI)**  
**JUDGE**

Whether the order is speaking?  
Whether the order is reportable?

Yes/No  
Yes/No