

Behari Kunj Sahkari Awas Samiti

Vs

State of U.P.

(S.B. Majmudar, S. Saghir Ahmad JJ)

14.08.1997

JUDGMENT

S.B. MAJMUDAR. J.

1. Leave granted.

2. By consent of learned advocates, all these appeals are heard finally. Short question involved in these appeals is indicated by order dated 4th October, 1996 while issuing notice in the main S.L.P. The order reads as under:

"Application for substitution allowed. Issue notice limited to the question of the interpretation of Section 27 read with 55 of the Administration of Evacuee Property Act, 1950, returnable on December 6, 1996 indicating that the matters may be finally disposed of on the miscellaneous stage itself. No stay."

3. Consequently, we will be concerned only with this short question. Few relevant facts leading to these appeals deserve to be noted to appreciate the nature of the controversy posed for our consideration.

4. By an order dated 11th November, 1982, the Custodian of Evacuee Property, U.P. functioning under the provisions of Administration of Evacuee Property Act, 1950 (hereinafter referred to as 'the Act') ordered that Kothi No. 183, Civil Lines, Agra as transferred in favour of Shri Harnath Chaturvedi, son of Shri Kanhaiya Lal at auction price of Rs.61,000/-. That order was submitted to the Assistant Custodian General of Evacuee Property for his approval on the same day. The said order got approved by the Assistant Custodian General, U.P. Against this order the State of U.P. filed a Revision Application under Section 27 of the said Act before the Custodian General of Evacuee Property. The Custodian General after hearing the parties concerned took the view that as his delegate has already approved the order sought to be revised, he could not exercise his revisional jurisdiction against the same order. In the result, the Revision Application was dismissed as not maintainable. It was thereafter that the State of U.P. filed a writ petition before the High Court of Allahabad being Civil Misalliances Writ Petition No. 16775 of 1985. Two other writ petitions filed by the other contesting parties were clubbed with the said writ petition of the State of U.P. and all the three were heard together by the Division Bench of the High Court and by the impugned judgment, the Division Bench took the view that the revisional jurisdiction under Section 27 of the Act could be exercised by the Custodian General against the order of the first authority, namely, the Custodian and consequently, the proceedings in revision were remanded for fresh decision on merits. Certain other observations were made and directions were given in the said common order. It

is thereafter that the aggrieved parties have challenged the said common order in these appeals by special leave.

5. Now it is to be appreciated that when the Custodian passed the original order, he was exercising his jurisdiction under Section 10 of the Act, sub-Sections (1) and (2) (0) of which read as under:

"10. Powers and duties of the Custodian generally.-

(1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Custodian may, for any of the purposes aforesaid- (a) to (n) (o) transfer in any manner whatsoever any evacuee property notwithstanding anything to the contrary contained in any law or agreement relating thereto: Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee, except with the previous approval of the Custodian -General;"

6. It must, therefore, be held that the original order dated 11.11.1982 passed by the Custodian which got approval of the Assistant Custodian General could operate only because of such approval. It is also not in dispute that the Custodian General had already delegated his powers under the Act to the Assistant Custodian General as per Section 55 of the Act. Sub-section (3) of Section 55 provides that "subject to the provisions of this Act and of the rules and orders made thereunder, the Custodian-General may delegate all or any of his powers under this Act to any Deputy or Assistant Custodian-General'. Consequently, the original order of the Custodian which was approved by the Assistant Custodian General as delegate of the Custodian General must be treated to be an order which had got imprimatur of the Custodian General himself acting through his delegate. Once that happened the moot question arises whether such an order can be revised by the Custodian General in exercise of his revisional powers under section 27 of the Act which reads as under:

"27. Powers of revision of Custodian-General.- (1) The Custodian-General 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 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 may pass such order in relation thereto as he thinks fit: Provided that the Custodian -General shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard."

7. A mere look at this Section shows that Custodian General call call for any record of proceeding in which any Custodian has passed an order and that exercise has to be undertaken for the purpose of satisfying the Custodian General about the legality or propriety of such an order sought to be revised. It is axiomatic that when the impugned order of the Custodian was already approved by the Custodian -General's delegate, the very same delegating authority, namely, the Custodian -General could not undertake the exercise of being satisfied whether such an approved order of his delegate was legal or proper as that would amount to an exercise of review power which does not flow from

the four corners of Section 27 of the Act.

8. Under these circumstances, the revision application moved before the Custodian General was clearly incompetent. It was rightly held not maintainable by the Custodian General and consequently, it is not possible to agree with the view which appealed to the High Court in the impugned judgment that the Custodian General could still revise such an order. On the scheme of the Act, such a conclusion is clearly unsustainable.

9. In this connection, we may refer to a decision of this Court to which our attention was invited by Shri K. Parasaran, learned senior counsel for the appellant. In the case of *Roop Chand Vs. State of Punjab* [1963 Supp. 1 SCR 539], a Constitution Bench of this Court speaking through Sarkar, J., for the majority had to consider whether the appellate jurisdiction conferred on the State Government under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, could be invoked for challenging the order passed by a delegate of the powers of the State who as a delegate had exercised the very same jurisdiction under Section 41(1) on behalf of the State. Answering this question in the negative, it was held by majority of the Constitution Bench that Section 42 did not empower the State Government to interfere with an order passed by an officer to whom the power to hear appeals filed under Section 21(4) had been delegated by it under Section 41(1). That the words 'any order passed ... by an officer under this Act', in Section 42 did not include an order passed by an officer in exercise of powers delegated to him by the Government under Section 41 (1).

10. An almost parallel situation obtains in the present case. Consequently, it must be held that the proceeding in revision as filed before the Custodian General under Section 27 of the Act by the State of U.P. were clearly incompetent. Once this conclusion is reached, the result becomes obvious. The original order dated 11.11.1982 could not be revised by the Custodian General.

11. However, in the writ petition filed by the State of U.P. before the High Court not only the order of the Custodian General taking the view that revision application was not maintainable was challenged, but the original order of 11.11.1982 was also challenged along with the consequential order. That challenge was obviously in the alternative. Our attention was invited to the prayer clause in the writ petition which clearly reflected this position. Once we take the view that the Division Bench of High Court was not justified in treating the revision before Custodian General to be maintainable and consequently remanding the same to the Custodian General for a fresh decision, the grievance of the State of U.P. in the writ petition flowing from the alternative prayer would immediately become life. As no decision was rendered by the High Court on this alternative prayer, the only proper order which can be passed in the interest of justice is to remand these writ petitions for a fresh decision of the High Court on the alternative prayer, namely, whether the original order dated 11.11.1982 and the consequential order of 18.11.1982 passed by the Custodian were justified on merits or not.

12. In the result, these appeals are allowed to the aforesaid extent only and the common order passed by the High Court is set aside and all the three writ petitions are restored to the file of the High Court with a request to consider the legality and propriety of the impugned orders dated 11.11.1982 passed by the Custodian of Evacuee Property and as approved by the Assistant Custodian General of Evacuee Property. It is made clear that we express no opinion on the merits of these orders. They will have to be examined by the High Court on their own merits. As the remanded proceedings would obviously be old proceedings of 1985 and 1987, the High Court is requested to dispose them off in accordance with law as expeditiously as possible preferably within a period of 4 months from

the receipt of a copy of this order at the end of the High Court.