SUPREME COURT OF INDIA

GHULAM QADIR

Vs.

SPECIAL TRIBUNAL & ORS.

03/10/2001

(M.B. Shah & R.P. Sethi)

Appeal (civil) 6963-64 of 2001

JUDGMENT

SETHI,J.
Leave granted.

Partition of India in 1947 resulted in the outbreak of communal riots which engulfed some parts of the country, particularly the then united Province of Punjab in Northern India. Human blood flowed in the rivers of Punjab which were the nerve centre of Province's economy and known for being responsible for the progress, prosperity and welfare of the people. The fire which erupted in Punjab could not be contained by the chilling snowing waters of rivers Jhelam and Chenab and its flames lept over Jammu and Kashmir as well. In the name of religions, their followers and believers let loose the rein of terror, destruction and death. Thousands of Muslims and Hindus were massacred and millions forced to flee from their homes for safety of lives. The Hindus and Sikhs who were forced to leave their birth places on account of tribal riots followed by regular Pakistani aggression in the State were called refugees/ displaced persons in the main land of Jammu and Kashmir and the Muslims who were forced to beco`me the prey of the communal holocaust were termed as evacuees.

To protect and provide for the administration of the properties, left over by the evacuees in the State of Jammu and Kashmir, the then Maharaja of the State, in exercise of his powers under Section 5 of the Jammu and Kashmir Constitution Act, 1996, promulgated the Jammu Kashmir State Evacuees (Administration of Property) Act, 2006 (1949 A.D), (hereinafter referred to as the "Act").

It is alleged that with the passage of time, some unscrupulous litigants assisted by dishonest administrators resorted to the destruction and elimination of the properties statutorily entrusted to the Custodian for protection and safeguard. The size and the quantum of the properties is alleged to have been squeezed and reduced leaving to a bare negligible existence. The present appeal demonstrates the shocking and alarming situation prevalent in the State of Jammu & Kashmir so far as the properties of the evacuees are concerned.

The facts giving rise to the filing of the present appeal are:- one Sardar Begum claiming to be the daughter of an evacuee preferred her claim on 1.12.1958, in terms of Section 8 of the Act with respect to shops and buildings existing thereon situated in Rejinder Bazar, earlier known as Urdu Bazar in the city of Jammu. Finding that the applicant was not entitled to the prayer made for restoration of the property because in the intervening period department had spent a huge amount on

the reconstruction of the shops and buildings, the Custodian vide his order dated 26th March, 1959 declined her prayer. However, in the ends of Justice and dictates of humanity, the custodian thought it appropriate to grant a sum of Rs.60/- per month to the applicant as maintenance allowance. Not satisfied with the order of the Custodian, Sardar Begum preferred an appeal which was disposed of by the Custodian General on 29th July, 1959 remanding the case back to the Custodian for fresh orders after thorough enquiry on the following points:- "1. Whether Ghulam Mohd. evacuee continues to be an evacuee or has died as stated by the appellant and consequently she the appellant becomes the sole heir.

2. Considering the understanding by the Evacuee Deptt; with Sardar Begum as stated in the note of the Custodian dated 30.9.1958 whether the Evacuee Deptt; was justified in converting the property to its own use and affecting construction on the said land without a proper and prior agreement with the appellant.

3. Since part of the land under shop came under shop came under road widening scheme and compensation therefor was paid by the P.W.D., it must be ascertained as to whether the compensation was payable to the appellant as the rightful heir and claimant of the property.

4. In case her absolute rights are established, it would be for the Custodian to decide conclusively as to what amount she would be liable to pay to the department for the property, as it stands now, before it can be restored to her. While determining the above, it will naturally become incumbent upon the Custodian to give her credit for the incomes received by way of rental as well as compensation for the period for which the property has continued to be in the possession of management of the Custodian.

5. It would also be upto the Custodian to decide the mode of realization of departmental expenditure in case restoration becomes legally imperative in consistence with the provisions of the Evacuee Property Act."

After the remand when the matter was pending before the custodian, the said Sardar Begum executed a `Will' dated 4th January, 1964 registered on 9th January, 1964 in favour of the appellant describing him as her cousin. He was held entitled to inherit the property of the executor after her death which was detailed to be situated in Kucha General Samunder Khan, Mohalla Dalpatian, and the evacuee's property in Rajinder Bazar, Jammu. The application of Sardar Begum pending before the Custodian, after remand, was dismissed for default of her appearance on 23rd July, 1965. It is reported that she died on 13.9.1965. The appellant in continuation of the earlier application, filed by Sardan Begum, preferred another application claiming his right over the disputed property. The then custodian (Bakshi Om Prakash) while disposing of the application on 4.12.1970 noticed that the property in dispute belonged to one Sultan Khan who had no male issue and had only one daughter namely, Hussain Bibi. Hussain Bibi was stated to be having three issues namely, Sardar Begum, Shah Begum and Ghulam Mohammed. Shah Begum and Ghulam Mohammed were stated to have migrated to Pakistan with the result that their property being evacuee property vested in the Custodian. As there was no claimant to the property, it was taken over by the Evacuee Property Department and reconstructed. The appellant was held to be having no relation whatsoever with the original owner of the property, namely, Sultan Khan. Sardar Begum could not Will away the property which had not devolved upon her and vested in the Custodian under the provisions of the Act, at the time of the execution of the `Will' and her death. The Will was held to be not having any effect on the property which concededly had vested in the Custodian.

It appears that despite the disposal of the application of the appellant on 4.12.1970, another Custodian (S.A. Qayum) again dealt with the matter and accepted his claim. The appellant was held entitled to 1/4th share of Sardar Begum in that property and to its restoration. He was further appointed as Manager of the remaining 3/4th property of the evacuees with the direction to render proper accounts. In his Order dated 25.9.1972 the Custodian specifically stated that he was dealing with the application of Sardar Begum filed under Section 8 of the Act. He did not notice the disposal of the application by the Custodian, after remand, by the then Custodian vide his Order dated 4.12.1970. The Custodian found that Hussain Bibi, the daughter of the original owner had died before 1947. She was stated to be having one son namely, Ghulam Mohammed and two daughters, namely, Sardar Begum and Shah Begum. Ghulam Mohammed was held to have become an evacuee. The Custodian found that there was nothing to show as to whether Ghulam Mohammed had died or left any other heir except Sardar Begum. Fate of Shah Begum also could not be ascertained. Sardar Begum was held entitled to 1/4th share of the whole property under Mohammadan Law. As noticed earlier the appellant was held entitled to the property to the extent of her share. Showing his over-enthusiastic interest in the property, the then Custodian (S.A. Qayum) addressed a letter to the Secretary General, Government Department on 14.10.71 (Annexure P-6) requesting for handing over the possession of Flat No.6 situated in Rajinder Bazar to the appellant because the Flat was under Government occupation being retained for the accommodation of State Secretariat employees who move to Jammu during winter (the occasion popularly known as Darbar Move) .

Not fully satisfied with the order of the Custodian, the appellant preferred an appeal before the Custodian General with prayer for modifying the order directing him to pay the cost of the construction incurred by the Custodian. The Custodian General vide his order dated 29.9.1972 again remanded the case back to the Custodian for fresh enquiry. It appears that after the remand, the then Custodian (Shri N.G. Dar) dealt with the matter afresh and vide his order dated 18.8.1987 ultimately held the appellant entitled to the whole of the disputed property. He further directed the deletion of the property from the register of the properties of the Evacuee Property Department as a consequence of the acceptance of appellant's application under Section 8 of the Act.

Feeling aggrieved by the restoration of the whole of the property, the tenants, who were put in possession of the property by the Custodian preferred a revision petition under Section 30 of the Act before the Custodian General of the State. The then Custodian General (G.M.Parra) elaborately dealt with various aspects of the disputes and ultimately set aside the order of the Custodian dated 18.8.1987. The Custodian General, while going through the record referred to a number of applications and statements of Sardar Begum made by her before her death. He found that the property for the return of which the claim was preferred before the Custodian, was the self-acquired property of the maternal grand-father of Sardar Begum, who did not have any dependant. Sardar Begum in her Statement recorded by the Custodian had mentioned that her grand-father had died when she was a child. She was brought up by her grand- mother who also died long ago when her statement was recorded by Commission appointed by the Custodian on 26.8.1965. She claimed that being the only heir of the deceased, her mother namely, Hussain Bibi remained in possession of the property. She further stated:

"In disturbances of 1947 when we were fleeing to Sialkot we were attacked. In the attack my brother was separated from me and I was kidnapped and taken to Hira Nagar. From Hira Nagar I was recovered from the house of Dr. Prithvi Raj and brought to Jammu. My brother is missing even since then. Ever since then I have neither heard about him not has any body told me that he is alive in Pakistan. Even since disturbances I am in possession of one house. three shops - property

aforesaid, as owner. After that Custodian built shops and flats and I was promised that after its constructions and keeping it for recovery of cost of construction, the property shall be returned to me. But instead of doing so, the property was included in list of Evacuees property. I have applied for the return of possession which is till under consideration. I as sole owner of the property am entitled to its return to me. My two shops which were demolished - Sic - were not"

The Custodian General did not believe the statement of the witnesses produced by the appellant holding that they had no knowledge about the property or its owner. The will executed by Sardar Begum was found to be shrouded with doubts. The Custodian General further found that there was no reliable evidence with regard to the other owners of the property, namely Ghulam Mohammed and Shah Begum, who were found to have migrated to Pakistan in the disturbances of 1947. He concluded:-

"I, therefore, find strong grounds for setting aside the impugned order dated 18.8.1987 of the Custodian and accept the revision petition filed by the applicants. It may also be pointed out here that non-applicant Ghulam Qadir has not compiled with the orders of the Custodian and even those of the Additional Session Judge who granting the probate as he has not rendered any accounts so far for property which had remained in his managership. In view of the malafide attitude of Ghulam Qadir, I see no reason to allow continuance of managership with him, which is hereby cancelled. The file be consigned to records after due completion".

Being deprived of the whole of the property the appellant approached the Jammu and Kashmir Special Tribunal under Section 30-A of the Act. It may be noticed that the Custodian General and the allottee tenants of the property were arrayed as respondents in the Revision Petition filed by the appellant. His revision was accepted by setting aside the order of the Custodian General and by restoration of the order of the Custodian which was termed to be well reasoned and based upon evidence led by the appellant.

The Writ Petition filed by the tenant allottees was dismissed on 21.8.1991 by the learned Single Judge(S.S.Kang, C.J) of the High Court holding that the petitioners had no locus standi to file the writ petition. Finding that the order of the learned Single Judge was against law, as earlier settled by the Jammu and Kashmir High Court, the tenants-allottees filed LPA No.210 of 1991 in the High Court. Realising that the Custodian being deprived of the valuable property and that the rights of the evacuees were jeopardised by the order passed by the Tribunal, the Custodian General and the Custodian of the evacuees property also filed a Writ Petition No.304 of 1994. Both the LPA and Writ Petition have been disposed of by the impugned common judgment. The Division Bench of the High Court held that the appellant is not entitled to claim the property which shall continue to vest in the Custodian. The tenants were held entitled to remain in possession of the property subject to terms and conditions which may be fixed by the Custodian General.

Assailing the judgment impugned, Shri P.P. Rao, Senior Advocate, appearing for the appellant has submitted that the said judgment is not sustainable and liable to be set aside on the following grounds:-

(i) That neither the Custodian nor the allottee had any locus standi to challenge the order of Jammu and Kashmir Special Tribunal passed in exercise of the powers vested in it under Section 30-A of the Evacuee Property Act;

(ii) Accordingly, the learned Single Judge had rightly dismissed the writ petition filed by the allottee

holding that they had no locus standi to challenge the order of the authorities under the act;

(iii) That the High Court was not justified to go into the questions of sufficiency of proof with regard to succession of a family and with regard to execution of a `Will', or the rights of the survivor and the successor in interest of its executor;

(iv) The High Court committed a mistake of law in not relying upon the probate issued by a competent court of Jurisdiction in accordance with law applicable on the point and that the appellant had proved the execution of `Will' beyond any shadow of doubt;

(v) That the Custodian General committed an error of law by going into the questions of fact while exercising revisional jurisdiction under the Act.

(vi) That the questions of facts based upon rival claims of the parties could not be adjudicated by the High Court in exercise of its Writ Jurisdiction. The Act does not supercede the law of succession by which the parties are governed. If the evacuee died any time after the commencement of the Act, succession to his property, though declared as evacuees property, would devolved upon his legal heirs who are residing and are available in the State of Jammu & Kashmir. Alternatively, it has been argued that in no case Sardar Begum could be held not even entitled to at least 1/4th share in the disputed property.

(vii) That the Custodian, the appropriate authority under the Act, had on facts rightly held Sardar Begum and the appellant entitled to the property both under Section 8 as well as Section 14 of the Act. The principle underlying Section 14 is deemed to be applicable to the proceedings under Section 8 of the Act as well.

Supporting the judgment of the High Court and the Order of the Custodian General (G.M. Parra) Mr. E.C. Agrawala, the learned counsel,who appeared for the allottees in occupation of the property submitted that: (i) the application filed by Sardar Begum was not entertainable being barred by limitation; (ii) Sardar Begum failed to show that she had any interest in the evacuees property as she could not establish her relation with the evacuee who was the owner of the property at the time of disturbances and partition of the country in the year 1947; and (iii) that Sardar Begum had been taking contradictory stands with respect to her claim over the property. She had preferred her claim both under Section 8 as well as Section 14 of the Act which are mutually contradictory as they deal with different situations. Referring to the prevalent situation in the State, the learned counsel has submitted that Section 8 is being resorted to by dishonest and unscrupulous litigants with the object of destroying evacuees property and thereby taking away the rights of those for whose benefit the Act was enacted and the Custodian entrusted with the job of protecting their properties. Such persons' modus operandi is that they procure one or two casual/chance witnesses to prove their false claim for establishing relationship with the evacuee, without placing any document on record to show that the evacuee had died issueless and heirless, while in Pakistan. Sardar Begum and the appellant are alleged to have procured some orders in their favour by misrepresentation of facts and by production of hired witnesses. They are further alleged to have hidden their claim under the veil of secrecy so that the persons who knew the facts could not resist their unfounded claim.

Mr. Anis Suhrawardy, who appeared for the Custodian General vehemently argued that the scheme of the Act clearly shows that the authorities under the Act were performing dual duties i.e. (i) they deal with the responsibility of maintaining, managing and protecting the property left over by the evacuee; and (ii) exercising quasi judicial powers conferred upon them for achieving the objects for

which the law was enacted. He has conceded that frequent resort to Section 8 of the Act is being availed by persons not really entitled to it.

To appreciate the rival contentions of the parties, it would be profitable to refer to the scheme and the relevant provisions of the Act, necessary for the disposal of the controversy in this appeal

As noticed earlier the Act was promulgated by the State under the then prevalent constitution with the object to provide for the administration of evacuees property in the State of Jammu & Kashmir by providing mechanism and procedure for its preservation, protection and restoration whenever and wherever needed. Section 2 (c) of the Act defines the Evacuee to mean :-

(c) "evacuee" means any person, -

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances , leaves or has, on or after the Ist day of March, 1947, left, any place in the State for any place outside the territories now forming part of India, or

(ii) who is resident in any place now forming part of Pakistan or in any such part of the territory of the Jammu and Kashmir State as is under the operational control of the Pakistan armed forces, and who for that reason is unable to occupy, supervise or manage in person his property in the State or whose property in the State has ceased to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 14th day of August, 1947 acquired by way of allotment or lease or by means of unlawful occupation or lease or other illegal means, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan or any such part of the territories of the Jammu and Kashmir State as is under the operational control of the Pakistan Armed Forces."

Section 2(d) defines the Evacuee Property is as :- "evacuee property" means any property in which an evacuee has any right or interest (whether personally or has a trustee or as a beneficiary or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer unless such transfer has been confirmed by the Custodian, but does not include-

(i) any ornaments, any wearing apparel, cooking vessels or other household effects in the immediate physical possession of an evacuee,

(ii) any property belonging to a Joint Stock Company, the registered office of which was situated before the 15th day of August, 1947, in any place now forming part of Pakistan or any such part of the territories of the Jammu and Kashmir State as is under the operational control of the Pakistan Armed Forces and continues to be so situated after the said date;

Section 3 provides that the Act, the Rules and Orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

Chapter II deals with the Evacuee Property and vesting thereof in the Custodian. Section 4 provides that the Government may, by Notification in the Official Gazette, appoint Custodian General and as many as Dy. Custodian General, Additional, Deputy or Assistant Custodians as may be necessary

for the purposes of discharging the duties imposed upon the Custodian General and Deputy Custodian General by or under the Act.

Section 5 deals with the vesting of the evacuee property in the Custodian and provides :-

" Subject to the provisions of this Act, all evecuee property situate in the State shall be deemed to have vested in the Custodian/-

(a) in the case of the property of an evacuee as defined in sub-clause (I) of clause (c)of section 2, from the date on which he leaves or left any place in the State for any place outside the territories now forming part of India;

(b) in the case of the property of an evacuee as defined in sub-clause (ii) of clause (c) of section 2, from the 15th day of August, 1947; and

(c) in the case of any other property, from the date it has been registered as evacuee property

(2) Where immediately before the commencement of this Act, any property in the State had vested as evacuee property in any person exercising the powers of a Custodian under any corresponding law in force in the State immediately before such commencement, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed under this Act, and shall continue to so vest.

(3) Where any property belonging to a joint stock company had vested in any person exercising the powers of a Custodian immediately before the commencement of this Act, then, nothing contained in clause (d) of Section 2 shall affect the operation of sub-section (2) but the Government may, by notification in the Government Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period, as may be specified in the notification."

Section 6 provides that the Custodian may, from time to time, notify, either by publication in the Jammu & Kashmir Government Gazette or in such other manner as may be prescribed, Evacuee properties which have vested in him under the Act.

Section 8, with which we are concerned in the present appeals, provides:-

"Any person claiming any right to, or interest in, any property, which has been notified under section 6 as evacuee property, or in respect of which a demand requiring surrender of possession has been made by the Custodian, may prefer a claim to the Custodian on the ground -

(a) the property is not evacuee property; or

(b) his interest in the property has not been affected by the provision of this Act.

(2) Any claim under sub-section (1) shall be preferred by an application made within thirty days from the date on which the notification was issued or the demand requiring surrender of possession was made by the Custodian:

Provided that the Custodian may, for sufficient reasons to be recorded, entertain the application even if it is made after the expiry of the aforesaid period:

(3) On receiving an application under sub-section (2) the Custodian shall hold a summary inquiry in the prescribed manner take such evidence as may be produced and pass an order, stating the reasons therefor, either rejecting the application or allowing it wholly or in part.

(4) For the purposes of this section Custodian means the Custodian appointed under Section 4 for any Province of the State."

Section 9 deals with the powers and duties of the Custodian General and provides that without prejudice to the generality of the provisions, the Custodian may, for any of the purposes:-

"(a) carry on the business of the evacuee;

(b) appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section;

(c) enter or authorise any other person to enter on any land or premises to inspect any evacuee property;

(d) take all such measures as may be necessary to keep any evacuee property in good repair;

(e) complete any building which has vested in him and which requires to be completed'

(ee) improve with the previous sanction of the Government any evacuee property;"

Under Section 10 of the Act, the Custodian further has the power to cancel any allotment or terminate any lease or amend the terms of any such lease or of any agreement on which any evacuee property is held or occupied by any person, whether such allotment, lease or agreement was granted or entered into before or after the commencement of the Act. However, no allotment can be cancelled except as provided for in the Rules framed by the Government in that behalf.

Sub rule 3 of Rule 14 of the Rules framed under the Act authorises the Custodian to cancel the allotment and evict the allottee, if he is satisfed that:-

"(i) the allottee has secured the allotment by misrepresentation or fraud; or

(ii) the allottee is in possession of more than one evacuee property of the same kind, that is to say, more than one residential premises, or more than one business premises or more than one industrial premises; or

(iii) the allottee is in occupation of accommodation which, in the opinion of the Custodian, is in excess of the requirement of the allottee either in the State or outside; or

(iv) the allottee or any person normally residing with him or dependant on him, has been granted by the Government a plot of land for constructing a house thereon; or

(v) the allottee or any person normally residing with him or dependant on him, has built a house or otherwise acquired residential accommodation; or

(vi) the allottee has sub-let or permitted any other person to occupy the property allotted or leased

out to him ; or

(vii) the allottee has obtained gainful employment in a place other than the place where the evacuee propertyd allotted to him is situate; or

(viii) the property is required for any public purpose; or

(ix) the allottee has kept arrears of rent of any three months unpaid; or

(x) the allottee is using the property for a purpose other than the one for which it was allotted or leased or keeping the property in disuse:"

Chapter III of the Act deals with the Consequences of the property vesting in the Custodian.

Section 25 of the Act provides that no transfer of any right or interest in any evacuee property, made in any manner whatsoever by or on behalf of an evacuee shall be effective so as to confer any right or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian General. Under Section 25-A no property to which claim is established under Sections 8 or 14, whether possession thereof has been taken or not by the claimant, can be sold or disposed of in any manner whatsoever without the previous permission of the Government.

Section 27 of the Act provides:-

"Where in pursuance of the provisions of this Act the Custodian has taken possession of any evacuee property, such possession shall not be deemed to be wrongful nor shall anything done in consequence thereof be deemed to be invalid or affected by reason only that at the material time the evacuee who had a right or interest in the property had died or had ceased to be an evacuee"

Section 30 of the Act deals with the rights of appeal, review and revision. Under this Section, any person aggrieved by an order made under Section 8, Section 14, Section 25 or Section 29-A may prefer an appeal to the Custodian, where the original order has been passed by the Deputy or an Assistant Custodian and to the Custodian General, where the original or the appellate order has been passed by the Custodian, an Additional Custodian or an Authorised Deputy Custodian. An appeal is also provided to the High Court against the Order of the Custodian General. However, no appeal is maintainable in the High Court against the concurrent finding of the Custodian and Custodian General.

Sub-section 4 of Section 30 provides that the Custodian General or the Custodian may, at any time, either on his own motion or on application made to him in that behalf, call for the record of any proceeding under the Act which is pending before, or has been disposed of, by an officer subordinate to him, for the purposes of satisfying himself as to the legality or propriety of his Order passed in the said proceeding and is empowered to pass such order in relation thereto as he thinks fit. However, no order under this sub-section can be passed by revising or modifying any order which affects any person without giving such person a reasonable opportunity of being heard. Section 30- A empowers the Minister Incharge of the Evacuee's Property Department to call for the record of any proceeding in which any Custodian or Custodian General has passed an order under the Provisions of the Act for the purposes of satisfying himself as to the legality or propriety of any such order and is authorised to pass such orders in relation thereto as he thinks fit. It may be noticed at this stage that the powers of the Minister Incharge under this Section are presently being exercised by the Jammu & Kashmir Special Tribunal.

In exercise of the powers conferred by Section 39 of the Act, the Government has made the Jammu & Kashmir State Evacuee (Administration of Property) Rules 2008, (hereinafter referred to as "Rules"). Rule 15 deals with the procedure in relation to claims under Section 8 of the Act and provides:

"Procedure in relation to claims under section 8 _ (1) An application under section 8 shall contain full particulars of the property, the nature of the interest or rights which the claimant has in that property and the facts upon which the same is based and the names of the persons, if any, who are interested in the property. The application shall be accompanied by two copies thereof. It shall be stamped with a court-fee stamp of three rupees and shall be verified in the manner prescribed for the verification of pleadings in rule 15 of Order VI of the Code of Civil Procedure, 1977. The application shall be presented in person or by a duly authorised agent or pleader to the Deputy or Assistant Custodian having jurisdiction or any person authorised by him in writing to receive such applications:

.....

(2) Notice of the application may be given by the Deputy or Assistant Custodian to any person who in his opinion is interested in the proceedings.

(3) If a party making an application fails to appear on the date fixed when the case is called for hearing the Deputy or Assistant Custodian may dismiss the application for default or proceed to decide the application on the materials before him in the absence of the party.

(4) Where the application is dismissed under sub-rule (3), the applicant shall be precluded from making a fresh application on the same facts with respect to the same property. But he may apply within 30 days from the date of the order of dismissal or of the knowledge of such dismissal for an order to set aside the order of dismissal and if he satisfies the Deputy or Assistant Custodian that there was sufficient cause for his non-appearance when the case was called for hearing the Deputy or Assistant Custodian shall make an order setting aside the orders of dismissal upon such terms as he thinks fit and shall appoint a day for proceeding with the application.

....."

Rule 16 provides the procedure for restoration of property under Section 14 of the Act. It says:-

"(1) Subject to the provision of this rule, an application under section 14 for restoration of property and inquiry into the claim shall be made in accordance with the provision of rule 15 in so far as they are applicable.

(2) A public notice of such application shall be made in a local daily newspaper at the expense of the applicant:

.....

(3) The applicant shall before any order for restoration is made produce a "No Demand Certificate" from the relevant branches of the office of the Custodian:

(4) A certificate under the proviso to sub-section (1) of section 14 shall be granted by the Government when it is satisfied that the evacuee has returned to his original place of residence for

peaceful and permanent rehabilitation and that he is not engaged in any subversive activities:"

Rule 27 provides that all appeals under the Act shall, when they lie to the Custodian, be filed within thirty days of the date of the order appealed against and when they lie to the Custodian General or the High Court, within sixty days of such date. Sub-rule 7 of Rule 27 provides that the provisions of Section 4, 5 and 12 of the Jammu and Kashmir Limitation Act, 1995 shall, so far as they are applicable, apply in computing the period of limitation provided in this rule.

Rule 29 mandates that all immovable property, taken possession of by the Custodian, shall be recorded in registers in Form Nos. 9 and 10. The aforesaid forms specifically provide a column relating to, "Name of the owner with parentage and previous address"

Cabinet Order No.578 (c) of 1954 deals with Rules relating to allotment of land to displaced persons, mentioned in the opening part of this judgment as refugees.

Regarding locus standi of the respondents to file the writ petition against the order of the Tribunal, Shri Rao has launched a two-pronged attack submitting that the respondent-tenants being not the aggrieved parties had no right to challenge the order passed against them as they claimed through the custodian and did not have any independent right in themselves. So far as the authorities under the Act are concerned, it is submitted that they could not have preferred a writ petition being a quasi-judicial authority entrusted with the powers of adjudication of rights of the claimants over the property vesting in such authorities. In support of his submissions he has referred to various provisions of the Act and relied upon some pronouncements of this Court.

There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea-change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dis-lodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

The allottee of a property, under the Act, cannot be held to be having no right enforceable under Article 226 of the Constitution of India. The scheme of the Act and the rules made thereunder, as noticed hereinabove, would establish that an allottee of an evacuee property in the State of Jammu & Kashmir is a quasi-permanent allottee who cannot be evicted from the premises unless the conditions specified under the Act and the Rules are shown in existence and has a legal right to remain in possession unless evicted by the custodian under the law. Any action initiated by a person other than the custodian would give such allottee a legal right to defend his possession as an allottee by opposing the claim of the person intending to dispossess him by obtaining orders under the Act which are likely to adversely affect his possessery interests in the said property. Such allottees of the property in the State of Jammu & Kashmir have acquired quasi-permanent rights and are entitled to

protection of the constituted authorities and the courts. Even though such an allottee does not have a right to the evacuee property as contemplated under Article 31 of the Constitution, yet it cannot be disputed that he has a legal right to remain in possession under the Act. Section 9 of the Act gives the custodian power to take such measures as he considers necessary or expedient for the purposes of administering, imposing or preserving and managing the evacuee property. Section 10 provides that an allotment made by the custodian or a lease granted by him can be cancelled, amended or terminated by him subject to the condition that the custodian shall not cancel any allotment except as provided under the rules framed by the Government in that behalf. Sub-rule (3) of Rule 14 empowers the custodian to cancel the allotment and evict an allottee only if he is satisfied that the allottee has secured the allotment by misrepresentation or fraud or such allottee is in possession of more than one evacuee property of the same kind or the allottee was in occupation of accommodation which is in excess of his requirement or the allottee or any person normally residing with him or dependent on him has been granted by the Government a plot of land for constructing a house thereon or the allottee or any person residing with him has built a house or the allottee has sub-let the property to some other person or the allotee has obtained gainful employment in a place other than the place where the evacuee property is situated or the property is required for any public purpose or the allottee has kept arrears of rent of any three months unpaid or the allottee is using the property for the purposes other than the one for which it was allotted or leased or is keeping the property in dis-use. Even despite the existence of any of the grounds justifying the eviction, the allottee has a right to be served with a notice for a period of not less than six months and afforded reasonable opportunity to show cause. The allottee of an evacuee property, therefore, cannot be equated with a contractual lessee. Having acquired statutory rights, the allottee of the evacuee property cannot be said to be a stranger having no locus standi to challenge an order which, if not prevented, is sure to affect his quashi-permanent rights. The scheme of the Act and the Rules made thereunder clearly show that if allotment of a lessee under the Act is cancelled by a statutory authority without complying with the conditions of the Act or the Rules made thereunder, there is a direct invasion of his legal rights conferred upon him by the Act entitling him to approach the High Court for correcting the error of law committed by any authority under the Act in order to keep it within the bounds of law. In such a situation, the allottee cannot be held to be asking the court to enforce any fundamental right but only seeking protection of his legal rights which are alleged to be violated without jurisdiction or in direct contravention of statutory provisions of law.

In State of Punjab v. Suraj Prakash Kapur, etc. [AIR 1963 SC 507] this Court dealt with the cases of the evacuees from Pakistan who were allotted some land on quasi-permanent tenure. After the allotment, the State Government issued a notification under Section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 declaring its intention to make a scheme for the consolidation of the holdings and in 1955 the Consolidation Officer proposed substitution of some other lands of lesser value for the lands allotted to the petitioners. Another notification was issued by the Central Government acquiring all the evacuee properties. Feeling aggrieved, the allottees filed a petition under Article 226 of the Constitution of India for the issuance of appropriate writ to quash the scheme of consolidation and the notification issued under Section 12 of the Act. The writ petition was resisted by the State on the ground that the allottees had no legal right to maintain the petition under Article 226 of the Constitution of India. Repelling such a contention this Court held:

"(4) The existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the court under Article 226 of the Constitution. The right that can be enforced under Art.226 of the Constitution shall ordinarily be the personal or individual right of the applicant. It may be first considered whether the respondents had such a right on the date when they filed the

petition under Art.226 of the Constitution. They filed the petition on November 9, 1955, i.e., after the Central Government issued the notification acquiring all the evacuee properties and before it issued the sanad conferring proprietary rights on the respondents in respect of the land allotted to them. The nature of the interest of a displaced person in the properties allotted to him under the evacuee law has been authoritatively decided by this Court in Amar Singh v. Custodian, Evacuee Property, Punjab 1957 Subhash Chand Rai (A2) 801: [(S) AIR 1957 SC 599]. There, Jagannadhadas, J. speaking for the court after an elaborate survey of the law on the subject came to the conclusion that the interest of a quasi permanent allottee was not property within the meaning of Art.19(1)(f) and Art.31(2) of the Constitution. But the learned Judge made it clear that, notwithstanding the said conclusion an allottee had a valuable right in the said interest. The learned Judge stated the legal position in the following words at p.836: (at p.612 of AIR):

"In holding that quasi-permanent allotment does not carry with it a fundament right to property under the Constitution we are not to be supposed as denying or weakening the scope of the rights of the allottee. These rights as recognised in the statutory rules are important and constitute the essential basis of a satisfactory rehabilitation and settlement of displaced land-holders. Until such time as these land-holders obtain sanads to the lands, these rights are entitled to zealous protection of the constituted authorities according to administrative rules and instructions binding on them, and of the courts by appropriate proceedings where there is usurpation of jurisdiction or abuse of exercise of statutory powers."

It may be mentioned that the learned Judge in coming to the conclusion noticed all the relevant Acts on the subject, including the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) and particularly S.12 thereof. The observations of this Court indicate that notwithstanding such notification an evacuee has a valuable right in the property allotted to him, and that the said right is entitled to the protection of the constituted authorities and the courts. A perusal of the relevant provisions of Act 44 of 1954 demonstrates the correctness of the said observations.

(5) Section 10. Where an immovable property has been leased or allotted to a displaced person by the Custodian under the conditions published --

(a) by the notification of the Government of Punjab in the Department of Rehabilitation No.4891-S or 4892-S, under the 8th July, 1949; or

(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 persons 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.

Section 12(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, beinga purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

A reference to R.14(6) of the rules made under the Administration of Evacuee Property Act, 1950, will also be useful in this context. Under that rule the cusodian has no power to make any order after July 22, 1952 cancelling or varying the allotments made, subject to certain exceptions with which we are not concerned here. The result of these provisions is that under the Administration of Evacuee Property Act, the respondents became quasi-permanent allottees in respect of land allotted to them in 1950. After July 22, 1952, the Custodian ceased to have any authority to cancel or modify the said allotment. After the notification issued by the Government under S.12 of the Act, so long as the property remained vested in the Central Government, the respondents continued to be in possession of the property on the same conditions on which they held the property immediately before the date of acquisition, that is, under a quasi-permanent tenure. The contention that on the issue of the said notification, the respondents ceased to have any interest in the said land is without any foundation. It is, therefore, clear that on the date when the respondents filed the petition in the High Court they had a very valuable right in the properties allotted to them which entitled them to ask the High Court to give them relief under Art.226 of the Constitution.

(6) That apart, on February 23, 1956, the Central Government issued a sanad to the respondents conferring an absolute right on them in respect of the said properties. Though the sanad was issued subsequent to the filing of the petition, it was before the petition came to be disposed of by the High Court. At the time the High Court disposed of the petition, the limited right of the respondents had blossomed into a full-fledged property right. In the circumstances of the case, the High Court was fully justified in taking note of that fact. From whatever perspective this case is looked at, it is obvious that the respondents have sufficient interest in the property to sustain their petition under Art.226 of the Constitution."

It may further be noticed in the instant case, that aggrieved by the order of the custodian deleting the property in favour of the appellant herein, the allottees had filed a revision petition before the Custodian General in which the appellant and the Custodian, Evacuee Property had been arrayed as party-respondents which was accepted vide orders of the Custodian General dated 11.2.1989 (Annexure P-11). Before the Custodian General, the appellant herein had raised an objection regarding the locus standi of the allottee. The objection was over-ruled by the Revisional Authority vide its order dated 9.4.1988. The Custodian General further invoked suo moto jurisdiction vesting in him under Section 30 of the Act and allowed the allottees an opportunity to argue the case. The counsel of the allottees was further directed to assist the authority for proper adjudication of the claim preferred by the appellant keeping in view the interests of the evacuees. After the revision petition was allowed, the appellant herein preferred a further revision before the Jammu & Kashmir Special Tribunal wherein besides Custodian General, all the tenants were impleaded as party-respondents. In his revision petition, the appellant never objected to the right of the allottees to invoke the revisional jurisdiction of the Custodian General. When, ultimately, the order of the Custodian General, passed in favour of the allottee was set aside by the Tribunal, the allottees filed the writ petition in the High Court which was dismissed by the learned Single Judge holding that the allottees had no locus standi to file such a petition. It appears that the learned Single Judge ignored earlier judgments of the same High Court in Tej Ram Vs. Custodian General and Ors. [AIR 1967 J & K 8) and Matwal Singh & Ors. v. Hon'ble Minister Incharge Evacuee Property Deptt. & Ors. [1990 J&K Law Reporter 303]. Rejecting such an objection, the High Court in Matwal Singh's case (Supra) dealt with the scheme of the Act and Rules made thereunder and had held:

"The Act was enacted to provide for the administration of the evacuees' property in the State and to protect it from being wasted or destroy. Chapter II of the Act deals with the appointment of the authorities under the Act, the evacuees property and vesting thereof in the custodian. Sec.8 provides

that any person claiming any right to, or interest in, any property which has become notified under Sec.6 as evacuee property, or in respect of which a demand requiring surrender of possession has been made, may prefer a claim to the Custodian on the ground that the property was not the evacuee property or that his interest in the property has not been affected by the provisions of the Act. Under sub-sec.(2) of Sec.8 of the Act, the application has to be preferred within 30 days from the date on which the notification was issued or the demand requiring surrender of possession was made by the Custodian. On receiving the application under sub-sec.(2), the Custodian is required to hold an enquiry to take such evidence as may be produced and pass an order stating the reasons therein either rejecting the application or allowing it wholly or in part. The rules have been framed under the Act regulating the procedure for restoration or deletion of the property under Sec.14 and Sec.8 of the Act besides the issuance of guidelines by the appropriate authority in that behalf. According to the procedure, admittedly prevalent, a notification is issued to the general public for filing objections to the claim made with respect to the evacuee property within the time specified. the objection, as and when raised, is required to be decided by the Custodian after holding enquiry in terms of sub-sec.(2) of Sec.8 of the Act. The issuance of the notice to the general public for raising objections and resisting the claims is intended mainly to protect the evacuee property from being wasted, destroyed or wrongfully taken away on false pretext, pleas and concocted evidence. The nature of the proceedings intended to be held while disposing of the claim petition are basically of quasi judicial nature requiring proper determination on the basis of the objections raised by any person. The authorities under the Act must be happy and satisfied if some prudent citizens comes forward to resist the false pleas and claims preferred. The property of the evacuee has to be protected till the Act remains in force and the normalcy restored in the State. The person in possession of the property, therefore, has a right to resist the claim with respect to the property in his occupation preferred by any other person either under Sec.8 or Sec.14 of the Act. Once the person in occupation is held to be having a right to oppose the proposed action resulting in his eviction, it cannot be said that he has no locus standi to file the petitioner in this Court, if ultimately the order is passed against him by the authorities under the Act. In this case also it is not disputed that the advertisement notice was issued in the DAILY UJALA inviting objections from all and not debarring the petitioners herein from raising such objections. When the authorities under the Act themselves gave the option to all persons including the petitioners to raise objections it does not lie in their mouth subsequently to say that the petitioners have no locus standi to challenge the order passed to their prejudice. The petitioner in the absence of the order of restoration or deletion have a statutory right to remain in occupation of the leased property and cannot be evicted unless the existence of any of the grounds specified under rule 14 framed under the Act, is proved. It may further be pointed out that despite restoration of the property, an evacuee is not entitled to possession in all cases, sec.14-A being one of the exceptions. The judgment of the Division Bench reported in 1984 KLJ 107 was, therefore, passed without reference to the judgment of the Supreme Court and the earlier judgment of this Court and cannot be held to be a good law. The said judgment being in conflict with the judgment of the Supreme Court, is non-existent and has no effect on the present petition. The petitioners are, therefore, held entitled to file the present petition being lessees in possession of the evacuee property. The authorities under the Act are held under an obligation to issue notices to the lessees-in-possession of the evacuee property, of the applications filed either under Sec.8 or Sec.14 of the Act."

This Court has, in Udit Narain Singh Malpaharia v.Additional Member Board of Revenue, Bihar & Anr. [AIR 1963 SC 786] held that in the absence of a necessary party the writ petition itself is incompetent. It further held that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose

presence is necessary for complete and final decision on the question involved in the proceedings. On the basis of various judicial pronouncements, the Court concluded that in a writ of certiorari not only the Tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued, are necessary parties.

Relying upon the judgment of this Court in Udit Narain's case (supra), the Division Bench of the High Court, vide the judgment impugned, rightly held the allottees being aggrieved persons by the order of the Tribunal were entitled to maintain the writ petition. The order of the learned Single Judge which was bereft of any legal basis was correctly held to be not sustainable.

We also find no substance in the submission of the counsel for the appellant that the Custodian General had no authority to challenge the order of the Tribunal by filing a writ petition against the order of the Tribunal merely on the ground that it was also exercising the judicial powers under the Act. In support of his contention he has relied upon a judgment of this Court in Md.Sharfuddin v. R.P. Singh & Ors. [1962 (1) SCR 239]wherein it was held that the Custodian under the Central Act No.31 of 1950 was not a person aggrieved. Looking at the schemes of the Central Act and the State Act we find that the reliance of the learned counsel on Md.Sharfuddin's case (supra) is misplaced. In that case an Assistant Custodian had passed an order holding that the properties of the appellant were not evacuee properties. The Custodian, exercising his powers under Section 26(1) of the Central Act No.31 of 1950, called for the records of the case and after hearing the appellant dropped the proceedings. Subsequently, the Assistant Custodian (Headquarters) filed an appeal before the Custodian under Section 24(1)(a)of the said Act against the order of the Assistant Custodian. In appeal, the Custodian declared share of the brothers of the appellant in the property to be evacuee property and referred the matter for separation of their shares. In the circumstances of the case, the Court held:

"Though for the purpose of convenience of management or judicial determination of disputes the Act provides different categories of Custodians, all of them fall within the definition of "Custodian" in the Act. The Act further provides a hierarchy of tribunals under the superintendence and control of the Custodian-General. It would be anomalous were it to be held that a Custodian would prefer an appeal against the order of a Custodian. The Act does not contemplate one officer preferring appeals against the orders of another officer. If an Assistant Custodian or a Custodian went wrong in the matter of declaring a property to be an evacuee property, the Act provides that the Custodian or the Custodian-General, as the case may be, before 1956, and the Custodian-General thereafter, may set right the wrong. In the premises the words "any person aggrieved" in S.24 of the Act can only mean a person whose properties have been declared to be evacuee properties by the Custodian, or a person who moved the Custodian to get the properties so declared or any other such aggrieved person. The words "any person aggrieved" in the context of the Act cannot include any Custodian as defined in the Act."

The position under the Act is totally different as is evident from its scheme. The Special Tribunal is the creation of a statute and thus is an independent statutory authority. Orders passed by the Special Tribunal, though affecting the evacuee property or the powers of the custodian under the Act, cannot be rectified or corrected by any authority under the Act. Finality attached to the orders passed by the Special Tribunal thus directly affects the evacuee property and the powers of the authorities under the Act. If any order passed by the Special Tribunal is, on the face of it, illegal, erroneous, contrary to the provisions of the Act or the Rules made thereunder and adversely affects the interests of the evacuee, the custodian has statutory obligation and legal right to challenge such order before the appropriate forum.

As already noticed, the scheme of the State Act and the Rules made thereunder confer upon the Custodian, the right to hold and manage the property of the evacuee in accordance with the provisions of law. Any order passed by an authority, though under the Act, can be challenged by the Custodian before an appropriate authority for protection of the rights and interests of the evacuee of which he is the protector and custodian, till the property is restored to the evacuee under the Act. The custodian under the Act does not perform only judicial or quasi-judicial powers but is also entrusted with the administration of the property having the rights to deal with it as authorised by Sections 9, 9A and 10 of the Act besides the rules regulating the exercise of such powers. Similarly, we feel that the reliance of the appellant in the case of Syed Yakoob v. K.S. Radhakrishnan & Ors. [1964 (5) SCR 64] is of no help to him. In that case this Court held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by the inferior courts or tribunals where the orders are passed without jurisdiction or in excess of it or as a result of failure of jurisdiction. A writ can also be issued where in exercise of the powers, conferred upon it, the court or tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence should not be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact however grave it may appear to be. The court further held that it was not easy to define or adequately describe what an error of law, apparent on the face of the record meant. Where it is manifest or clear that the conclusions of law recorded by an inferior court or tribunal are based on an obvious misrepresentation of relevant statutory provisions or sometimes in ignorance of it or may be even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusions can be corrected by a writ of certiorari. It was further held that whether or not an impugned order is an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

Looking at the scheme of the Act, the Rules made thereunder and the powers conferred upon the custodian and the fact that Custodian- General was impleaded as a party-respondent before the Tribunal, we have come to the conclusion that the Custodian General had a right to challenge the order of the Tribunal by way of a writ petition as he was administrator of the properties and is required to protect the same particularly when various comments were made about the Custodian General and its powers curtailed by the order passed by the Tribunal.

No fault, therefore, can be found with the impugned judgment of the Division Bench holding that the writ petition filed both by the allottees and the Custodians were maintainable and none of the writ petitioners could be held to have no locus standi to challenge the order of the Tribunal, adversely affecting their rights and interests.

At this stage we deem it appropriate to deal with the objection of Shri E.C. Agarwala regarding the application of Sardar Begum being barred by time.

During the arguments, the learned counsel appearing for the parties conceded that Section 8 of the Act has, at present, out-lived its utility and has become redundant. However, Mr.Rao, learned Senior Advocate submitted that as the plea of limitation was not raised earlier, his client cannot be non-suited on that ground at this belated stage.

Let us examine the legal aspect of the matter and thereafter its effect on the claim preferred by Sardar Begum. It is not disputed that the Act was enacted to provide for the administration of

evacuee properties left over by the evacuees who, on account of outburst of communal riots, were forced to migrate either to Pakistan or to Pakistan Occupied area of the Jammu & Kashmir. The Act envisaged that because of disturbances and holocaust of communal riots some properties may have wrongly been declared as evacuee properties under the Act. Realising such a situation, Section 8 was incorporated entitling persons claiming any right to or interest in any notified evacuee property to prefer claim to the Custodian on the ground that property was not an evacuee property or the applicant's interested in property had not been affected by the provisions of the Act. Under sub-section (2) of Section 8 of the Act such a claim was required to be preferred by an application within 30 days from the date on which the notification was issued or demand requiring surrender of possession was made by the custodian. The words "claim shall be preferred by an application within 30 days" unequivocally indicate that the provision was mandatory so far as the period of limitation for preferring the claim was concerned. However, the proviso to the aforesaid sub-section authorised the custodian to entertain the application after the expiry of the period but only for sufficient reasons required to be recorded (Emphasis supplied). In the instant case such an application was filed by Sardar Begum only in the month of December, 1958, admittedly, after about 9 years of the promulgation of the Act. It does not appear as to whether Sardar Begum had also filed an application for condoning the delay or the custodian had recorded sufficient reasons thereof as mandated by the first proviso to Section 8(2) of the Act. Otherwise also the power to condone the delay contemplated under the proviso to sub-section (2) of Section 8 cannot he held to mean to condone any delay at any time without recording sufficient reasons. The extended period for entertainment of an application under the Section would be a reasonable period depending upon the facts and circumstances of each case. In no case such a period can be extended beyond 12 years, the time provided under Section 28 of the Limitation Act totally extinguishing the rights of the owner in the property and debarring him from seeking a relief with respect to that property including its possession in view of Article 142 of the Schedule of Jammu & Kashmir Limitation Act totally forbidding the enforcement of claim and the remedy, if any.

Learned counsel appearing for the respondents have submitted, which we have noticed with distress, that vested interests and unscrupulous litigants are usurping the evacuee properties in the State by filing frivolous and belated applications preferring stale claims under Section 8 of the Act, which are entertained by the authorities without reference to any period of limitation. We hold that there is no justification for entertaining any application from a person in the State of Jammu & Kashmir under Section 8 of the Act after the lapse of 12 years from the date when the property was declared as evacuee property and vested in the custodian. We further hold that Section 8 of the Act has out-lived its utility and is presently a redundant piece of legislation, still existing on the statute book. The authorities under the Act are directed not to entertain any application under Section 8 of the Act hereafter as it cannot be conceived that a person whose property was allegedly wrongly declared or vested in the custodian would keep silent for a period spread over five decades. Any such claim preferred hereafter should be deemed to be fictitious, concocted and malafide, intended to destroy and eliminate the evacuee property to the detriment of the evacuee who may ultimately be restored such property if and when he returns to the State under a valid law in existence, enacted for the purposes. We further hold that the applications under Section 8 which were entertained by the custodian after the period of 12 years and are still pending shall be liable to be dismissed on the ground of limitation. We may, however, clarify that any right or claim preferred and settled under Section 8, though on application filed after 12 years, shall not be re-opened on the basis of this judgment. This judgment shall only be applicable to the pending claims of the claimants and not finally adjudicated by the authorities under the Act.

As Sardar Begum is shown to have filed her claim under Section 8 of the Act within the outer limit

of 12 years and no objection regarding the maintainability of her claim on the ground of limitation was raised,. despite laying down the law, we decline to non-suit her and the appellant on the ground of limitation.

The arguments of Mr.Rao that the Custodian General committed an error of law by going into the questions of fact while exercising the revisional jurisdiction can be examined and decided in the light of the provisions of the Act conferring the revisional power upon the custodian and its extent.

The revisional powers under the Act cannot be equated with the revisional power of the High Court under Section 115 of the Code of Civil Procedure. A perusal of sub-section (4) of Section 30 of the Act would show that the Custodian General has the power either on his own motion or application made to him in that behalf to call for the record of the proceedings under the Act, for the purposes of satisfying himself as to the legality and propriety of any order passed in the said proceedings and may pass such order in relation thereto as he thinks fit. Sub-section (4) of Section 30 of the Act, therefore, confers a wider power of revision on the Custodian General. The power is not hedged or circumscribed. Such power of revision appears to be of wide plenitude to set right any illegal, unfair, unjust or untenable order passed in any proceedings under the Act.

In Rajbir Kaur & Anr. v. M/s.S.Chokesiri & Co. [1989 (1) SCC 19] this Court held that the scope of revisional jurisdiction depends on the language of statute conferring revisional powers. Revisional jurisdiction is only a part of the appellate jurisdiction though cannot be equated with that of a full-fledged appeal. Having regard to the language of Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, it was held that the revisional power under the said Act conferred powers which included the examination of the legality and propriety of the order under revision, and for that the High Court can, in appropriate cases, re-appreciate the evidence and interfere with the findings of fact.

Dealing with another case under the Karnataka Rent Control Act, 1961, where the power of revision under Section 50 of the Act was pari materia the same as in Section 30 of the Act, this Court in Bhoolchand & Anr. v. Kay Pee Cee Investments & Anr. [1991 (1) SCC 343] held:

"....The power of revision is not narrow as in section 115 CPC but wider requiring the High Court to examine the impugned order 'for the purpose of satisfying itself as to the legality or correctness of such order or proceeding' which enables the High Court 'to pass such order in reference thereto as it thinks fit'. It is clear that the High Court in a revision under Section 50 of the Act is required to satisfy itself not only as to the legality of the impugned order or proceeding but also of its correctness. The power of the High Court, therefore, extends to correcting not merely errors of law but also errors of fact. In other words, the High Court in a revision under Section 50 of the Act is required to examine the correctness of not only findings on questions of law but also on questions of fact."

However, the court observed that the revisional powers, even though wide under the Act, must fall short of the appellate court's power of interference. In that case the credibility of the oral evidence was assessed in the background of undisputed facts and circumstances and the conclusions of the High Court, clear on facts, was held to be within the revisional scope under the Karnataka Act.

To the same effect are the judgments of this Court in Ram Dass v. Ishwar Chander & Ors. [AIR 1988 SC 1422], Shiv Sarup Gupta v. Mahesh Chand Gupta [AIR 1999 SC 2507] and Mammu v. Hari Mohan & Anr. [2000 (2) SCC 32].

Dealing with a case under the Delhi Control Act this Court in Ram Narain Arora v. Asha Rani & Ors. [1999 (1) SCC 141] approved the proposition for power of revision in correction of errors of law which on occasions would include interference of findings of fact where the right of a party is involved and is intended to be taken away by suppression of certain facts or by misrepresentation of facts. The Court observed:

"It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter. In this case, the Rent Controller proceeded to analyse the matter that non- disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances that it became necessary for the High Court to re-examine the matter and then decide the entire question. We do not think that any of the decisions referred to by the learned counsel decides the question of the same nature with which we are concerned. Therefore, detailed reference to them is not required."

Accepting the narrow interpretation sought to be placed on Section 30(4) of the Act would deprive the revisional authority to give the intended effect of the provisions of the Act. No interpretation can be accepted which defeats the object sought to be achieved by the statute and no litigant can be permitted to take the advantage of a wrong order obtained even on facts by misrepresentation or by suppression of material facts. The revisional powers conferred upon the Custodian General and the custodian under the Act are of wider amplitude which cannot be restricted debarring the revisional authorities from satisfying themselves as to the legality or propriety of the orders passed by a subordinate authority in complete disregard to the provisions of the Act and the relevant facts. Any conclusion arrived without reference to reliable, cogent and admissible evidence, cannot be termed to be a decision arrived on facts. Permitting the revisional authority to "pass such order in relation thereto as he thinks fit" clearly indicates the extent of the power conferred upon it which cannot be limited or circumscribed as urged on behalf of the appellant.

Learned counsel appearing for the appellant referred to the judgments of this Court reported in Smt.Rukmani Devi & Ors. vs. Narendra Lal Gupta [1985 (1) SCC 144] and Chiranjilal Shrilal Goenka v. Jasjit Singh & Ors. [1993 (2) SCC 507] to urge that the probate granted in favour of the appellant by a competent court of jurisdiction is conclusive of the validity of the Will unless it is revoked and no evidence can be admitted to impeach it except in proceedings taken for revoking the probate. There cannot be any dispute to the legal proposition that the grant of probate establishes conclusively as to the appointment of the executor and the valid execution of the Will. However,it does not establish more than the factum of the Will as probate court does not decide question of title or of the existence of the property mentioned therein. If despite admitting the execution of the Will and issuance of the probate, a question arises as to its effect on the property of another person which is likely to be affected, nothing prevents the authorities under the Act to examine the Will or the probate to that extent. It is established in this case that on 4th or 9th January when the Will was executed and registered respectively, the executant, namely, Sardar Begum had not become the owner of the disputed property. The disputed property at the time of execution of the Will, admittedly, was vesting in the custodian under the provisions of the Act. Her application filed under Section 8 of the Act had been dismissed on 19th March, 1959 and her appeal was allowed by the Custodian General on 29th July, 1959 by remanding the case back to the custodian for inquiry and

order on points formulated in the remand order. Before the custodian could pass any order, Sardar Begum executed the Will on 4.1.9164 and died on 13.9.1965. It is worth mentioning here that before the death of Sardar Begum, her application which was remanded to the custodian had been dismissed for default of appearance on 23rd July, 1965. In this view of the matter, the executant of the Will had no right or authority to bequeath a property which did not belong to her. It may further be noticed that in her Will she had nowhere stated that the executor, the appellant, would be entitled to any interest in the disputed property which was vesting in the custodian at that particular time. The execution of the Will, therefore, neither affected the evacuee property vesting in the custodian nor it conferred any right upon the appellant to pray for its deletion or restoration. The properties bestowed by the Will upon its beneficiary included a house situated in Kucha General Samundar Khan, a single storey pacca house situated at Mohalla Dalpatian, five pacca shops situated in Rajinder Bazar, and two double storey shops and one pacca shop situated in Kanak Mandi, Jammu. The disputed property which vested in the Custodian, at the relevant time, comprised of four shops with two flats thereon situated in Rajinder Bazar, Jammu. No specific mention is made of such a property. She has referred only to "five pucca shops situated in Rajinder Bazar, Jammu". Double storey shops mentioned by her in the Will are stated to be in Kanak Mandi, Jammu, admittedly, a different area, though adjacent to Rajinder Bazar. Accepting the plea of the appellant would amount to authorising a person to execute a Will with respect to any property in which the executant had no right or interest including the Government property like Secretariat or official bungalows in favour of another person who in turn would rush to the courts for the establishment of his title in the property, on the basis of conferment of title upon him by way of Will. Such a course is neither permissible nor legal and in fact is against the public policy. After perusing the Will, allegedly proved to have been executed by Sardar Begam and the probate issued by the Additional District Judge, Jammu, we are of the opinion that neither the Will nor probate conferred any right upon the appellant which he could enforce in a court of law or quasi-judicial authority, such as the custodian.

In view of such facts it cannot be said that the Custodian General or the Division Bench of the High Court committed any mistake of law while dealing with the Will and the Probate, as we have found that by the said Will and the probate, no right was conferred upon the appellant to pray for the deletion of the disputed property from the record of the custodian in terms of Section 8 of the Act. The application filed by the appellant on 6.10.1965 cannot be held to be an application in continuation of the application filed by Sardar Begum which was, admittedly, dismissed on 23rd July, 1965, obviously, in terms of Sub-rule (3) of Rule 15 of the Rules. For the person aggrieved by such an order, the appropriate remedy is specified under sub-rule (4) of Rule 15 of the said Rules which unmistakably provides that where the application is dismissed under Sub-rule (3), the applicant is precluded from making a fresh application on the same facts with respect to the same property. He has, however, a right to apply within 30 days from the date of order of dismissal or of the knowledge of such dismissal for an order to set aside the order of dismissal. As no application in terms of Sub-rule (4) of Rule 15 was filed, the Custodian did not get the jurisdiction to deal with the matter on the application filed by the appellant. Despite there being a bar for entertaining the application, the custodian is shown to have entertained the application of the appellant on 6.10.1965, dealt with it for over a period of more than 5 years and ultimately dimissed the same holding that after the death of Sardar Begum the appellant did not acquire any right as Sardar Begum was not the only heir of the property in dispute because the other evacuees who were co-sharers were alive and living in Pakistan.

It is true that the Act neither supersedes the law of succession applicable to the evacuee nor does it confer powers upon the authorities under the Act to adjudicate the right to succession of the claimant. If the claim of a person approaching the custodian is undisputed on admitted facts, such a

claim may be adjudicated by the authorities in accordance with the provisions of the Act and the procedure prescribed under the rules which envisages the service of a notice to all concerned. We have no doubt in our mind that the tenants of the property are definitely such persons who have interest in the property and thus being necessary parties are required to be served a notice before adjudicating the claim of the person approaching the custodian for the relief in terms of Section 8 or Section 14 of the Act. It is evident from the record that when the appellant preferred his claim to the property after the death of Sardar Begum, the then custodian rightly directed him to establish his title in the civil court. Such a direction of the custodian was upheld by the Custodian General later vide his order dated 24.5.1977. Despite the orders of the custodian and Custodian General which had become final, the appellant did not get his title establish in any civil court and instead he preferred claim on the basis of a probate. The probate proceedings cannot be equated with the adjudication of the right to succession by the civil court. In the absence of declaration of his right to succession by a civil court, the appellant was rightly held not entitled to any right to the property (vide order of the Custodian General dated 11.2.1989 - Annexure R-11). After the death of Sardar Begum, under the circumstances of the case, the appellant was not entitled to prefer any claim in respect of a right or interest in the property which had been declined during her life time. The Special Tribunal, therefore, fell in error in allowing the claim filed by the appellant who, on the relevant date, is proved to have no right or interest in the property. We further hold that even if Sardar Beghum had any interest in the property which could be established, the same cannot devolve upon the appellant for the reasons already noticed hereinabove.

We do not agree with the submission of the learned counsel appearing for the appellant that the custodian on facts had rightly held Sardar Begum and the appellant entitled to the property both under Section 8 as well as Section 14 of the Act. We also do not agree that principle underlying Section 14 is also applicable to the proceedings under Section 8 of the Act as well. Section 8 and Section 14 deal with different situations under distinct contingencies. Whereas, under Section 8 the claimant to the property has to show that the property declared and vested in the custodian, was in fact, not an evacuee property or his interest in such property had not been affected by the provisions of the Act, the person claiming under Section 14 is such person who became an evacuee within the meaning of Section 2(c) of the Act or was a person claiming to be the heir of the evacuee praying for restoration of the property in his favour. Before applying, such person has to obtain a certificate from the Government or from any person authorised by the Government in that behalf to the effect that the evacuee property may be restored to him if he is otherwise entitled thereto. Further he has to submit an affidavit to the effect that the property claimed is not subjudice before any court of law. He has also to produce a certificate granted by the Government to the effect that the evacuee has returned to his original place of residence for peaceful and permanent rehabilitation and is not engaged in any subversive activities. In other words whereas heirs of the evacuee have a right to pray for restoration under Section 14 of the Act, no such right is conferred upon the heirs of a claimant under Section 8 of the Act. Reasons are obvious, because Section 8 contemplates the preferring of claim within 30 days of the date of the vesting of the evacuee property in the custodian which does not envisage the claim by a legal heir whereas application under Section 14 can be preferred at any time when the evacuee returns back to the State of Jammu & Kashmir. It may further be noticed that the legal heirs contemplated under Rule 14 are such heirs which an evacuee has, meaning thereby the heirs who had also become the evacuee or became his heir outside the State of Jammu & Kashmir, having interest in the property by operation of law. To simplify the position it can be said that any person who himself did not become an evacuee within the meaning of Section 2(c) cannot prefer a claim on behalf of an evacuee on the ground of becoming his heir with the lapse of time. Conferment of rights upon the persons living in the State of Jammu &

Kashmir with respect to the property of an evacuee would defeat the very purpose of the Act, particularly the one intended to be achieved by Section 14. The aforesaid section was enacted to encourage such persons who were forced to leave their homes, to come back and settle and become the part of the mainstream of the political life in the State of Jammu & Kashmir. It may not be out of place to mention that the Constitution of Jammu & Kashmir itself has made provision for such people reserving almost one fourth of the Legislative Assembly seats for them which can be filled up only when they become a part of the mainstream of the socio-political-economic life of the people of the said State.

In view of our findings that the allottees/lessees of the evacuee property are necessary parties to the proceedings initiated either under Section 8 or Section 14 and the custodian under the Act performs dual duties of administering the property and adjudicating the claims over the evacuee properties under the Act, we find no fault with the judgment impugned holding that both the allottees as well as the Custodian General had locus to challenge the order of the Special Tribunal. The scope of revisional power under the Act is wider than the powers exercisable in revision petitions filed under the Code of Civil Procedure or the Code of Criminal Procedure and in appropriate cases the revisional authority can go into the questions of fact to decide the legality and propriety of the action taken and for the purposes of giving appropriate directions. While exercising the revisional jurisdiction, in the present case, the Custodian General had not committed any error of law by lookiing into the facts for the purposes of ascertaining as to whether appellant had acquired any interest on the basis of the Will executed by Sardar Begum or the probate issued in his favour. The questions of title with respect to the evacuee property cannot be adjudicated under the Act for which appropriate proceedings are required to be instituted in the civil court. It is further held that with the passage of time Section 8 of the Act has out-lived its utility and has become redundant. No further application under the said section can be entertained and the plea of limitation with respect to the pending disputes has to be decided as per our directions in this judgment. It is hoped that the State Government and the authorities under the Act shall take effective steps to safeguard and protect the properties of the evacuee for whose benefit the Act has been enacted. The judgment of the learned Single Judge 21.8.1991 does not lay good law and the order of the Special Tribunal is not sustainable.

There is no merit in these appeals which are accordingly dismissed but under the circumstances without any order as to costs.