

Om Prakash Kapur Vs The Competent Officer and Others

Court: High Court of Himachal Pradesh

Date of Decision: Dec. 9, 1976

Acts Referred: Administration of Evacuee Property Act, 1950 â€” Section 10, 10(1), 10(2)

East Punjab Urban Rent Restriction Act, 1949 â€” Section 13

Evacuee Interest (Separation) Act, 1951 â€” Section 7

Evacuee Interest (Separation) Rules, 1951 â€” Rule 11B

Citation: (1977) ShimLC 245

Hon'ble Judges: C.R. Thakur, J

Bench: Single Bench

Advocate: K.L. Kapoor and H.K. Bhardwaj, for the Appellant; P. Malhotra, for the Respondent

Judgement

Chet Ram Thakur, J.

The facts as given below have been taken from the judgment of the Division Bench because the same are given in

detail on the basis of the petition as also the record placed before it.

2. There is a building known as ""Exchange Building"" situate on the Mall, Simla, which was a Muslim evacuee property. It contained several shops

and flats for business and residential purposes. A 1/2 share in the building belonged to one Khan Bahadur Inayatullah, who later migrated to

Pakistan. This one-half share was treated as evacuee property and, therefore, vested in the Custodian of Evacuee Property. The other half share in

the building is Muslim Wakf property and belongs to the ""Kashmiri Mosque"" administered by the trustees of the Muslim Trust Properties which has

now been substituted by the Punjab Wakf Board.

3. In 1947 Shri Ram Ditta Mal, the father of the present Petitioner, was allotted a shop in the building and subsequently it was transferred to the

Krishna Furnishing Company, of which the Petitioner is a partner. An adjoining shop in the same building was allotted to Om Kapur separately.

4. On April 28, 1959 the trustees of the Muslim Trust Properties on behalf of the Kashmiri Mosque made an application u/s 7 of the Evacuee

Interest (Separation) Act, 1951 pointing out that the building was composite property and praying that the evacuee interest should be separated by

metes and bounds. The Sub-inspector, Evacuee Property, expressed the view that partition by metes and bounds would be a difficult task and

take much time. On April 28, 1959 the Competent Officer made an order deciding that it would be more convenient if the evacuee's share in the

property was sold by public auction and thereafter the auction purchaser could have the property partitioned through a civil Court. In case, he

noted, an adequate price was not fetched at the auction then partition by metes and bounds could be resorted to for separating the evacuee from the

non-evacuee property. Accordingly, the auction was fixed for June 12, 1959. The Petitioner and the trustees of the Muslim Trust Properties bid at

the auction. The highest bid of the Petitioner of Muslim trust Properties was Rs. 45,300/- whereas the bid of the Petitioner was Rs. 45,100/- The

petitioner was declared the highest bidder and he deposited 10% of the bid-money on the same date. For more than two years the Petitioner did

not hear from the authorities in the matter, and on August, 23, 1961 he wrote to the Settlement Officer, Patiala, setting out the facts and praying

that the building be sold. On March 2, 1962 the Competent Officer, Patiala, informed the Petitioner that the bid offered by him for the half share in

the building had not been accepted because it was less than the minimum reserved price fixed, and that now the whole building would be sold. On

May 12, 1962, the entire building was put to auction. The trustees, i.e. Respondent No. 3 did not bid. The Petitioner offered the highest bid of Rs.

61,500/- and deposited 10% thereof. It appears that the Government Auctioneer, Messrs Bhardwaj and Co. made a report that the property

could fetch more if re-auctioned. On July 9, 1962, the Competent Officer, Patiala, wrote to the Petitioner that the bid had been rejected as being,

below the reserved price, and that in case the Petitioner proposed to make a higher offer for the property he should appear before the Competent

Officer on July 25, 1962. It appears that meanwhile the Respondent No. 3, i.e. the trustees of the Muslim Trust Properties, made representations

claiming that the evacuee interest should be transferred to it at the market value, and that if auction was to be effected for the purpose of separating

the evacuee interest, only the evacuee interest should be sold. In the meeting of July 25, 1962, both the Petitioner and the President of the trust

were present before the Competent Officer. The Competent Officer made an order on that date noting that the whole building had been valued at

Rs. 1,20,000/- and that the evacuee interest could therefore be valued at Rs. 60,000/- He observed that "under Rule 11-B of the Evacuee Interest

(Separation) Rules the evacuee interest could be transferred to a non-evacuee co sharer if it was of value less than Rs. 10,000/-". He explained

that the auction of the whole building was ordered because it was considered that the reserve price would not be fetched in case a half-share only

was auctioned but he went on to observe that in view of the statement of the President of the Trust that the Trust could bid Rs. 60,000/- for the

evacuee interest, he ordered the auction of the evacuee interest only on the Respondent No. 3 depositing Rs. 6,000/-, failing which the entire

property would be put to auction. The Trustees of the Muslim Trust Properties deposited Rs. 6,000/- and on August 2, 1962, the Competent

Officer made an order directing the auction sale of the evacuee interest in the building, and further that the bid should commence from Rs. 60,000/-

. The auction sale was fixed for September 17, 1962, and the Petitioner was informed accordingly.

5. It is further alleged that Lt. Col. K.M. Sayed, who was representing the Muslim Trust was pulling some wires in order to prevent the auction sale

of the property and that a D.O. letter was also sent by Shri Hafiz Mohammad Ibrahim, the then Minister for Irrigation and Power in the

Government of India, who had interested himself in the matter on behalf of the Trust. This D.O. letter was written to Shri Dharam Vira, Secretary,

Rehabilitation Department, Ministry of Works, Housing and Supply, Government of India, recommending that the property should not be

auctioned but that the evacuee interest should be sold to the Muslim Trust Committee. Thus according to the Petitioner, it became clear that

political pressure was being brought to bear in the matter. The record shows that the Settlement Commissioner Conveyed a copy of the Minister's

letter to the Custodian, Evacuee Property, Punjab, and on August 17, 1962 the Additional Custodian wrote to the Settlement Commissioner giving

the reference to the D.O. letter of the Minister that the Competent Officer had been requested to stay the auction on the ground that the evacuee

portion of the Exchange Building is to be transferred to the Muslim Trust Committee, Simla on the basis of negotiation. A case u/s 10(2)(o) of the

Administration of Evacuee property Act to transfer the evacuee portion on its reserved price to the Trust was being sent separately for approval of

the Custodian-General. The Additional Custodian wrote to the Competent Officer intimating that it was proposed to transfer the evacuee property

to Respondent No. 3 and the case was being referred to the Custodian-General for his concurrence u/s 10(2)(o) of the Administration of Evacuee

Property Act. The Additional Custodian requested the Competent Officer to stay the auction proceedings and intimate the reserved price of the

evacuee share so that reference could be made to the Custodian-General. The auction of the property was accordingly stayed by the Competent

Officer.

6. On September 14, 1962 the Custodian Evacuee Property enquired from the Competent Officer whether any party was willing to offer more

than Rs. 60,000/- for the evacuee interest in the building. On September 25, 1962 the Competent Officer replied that no definite offer of more

than Rs. 60,000/- had been received but it could be expected that the Petitioner, who was the highest bidder in the previous sale, would offer a

higher price because on July 25, 1962, when the offer of Rs. 60,000/- was made by the Trustees of the Muslim Trust Properties, i.e. Respondent

No. 3, and it was decided to auction the property, the Petitioner had indicated his desire to participate in the auction. Meanwhile the Petitioner

wrote to the Custodian-General in the matter and he was informed by the Custodian-General on September 29, 1962 that ""since half-share in the

property in question has been dedicated to a mosque at Simla known as "Kashmiri Mosque", the property is being transferred to the Muslim Trust

Committee"". The Petitioner protested against that decision.

7. On November 17, 1962 the Competent Officer noted that although three months had expired, no information had been received from the

Additional Custodian in regard to the property, and as the organisation of the Competent Officer was expected to be wound to be wound up in

February 1963, the case could not be kept pending any longer and it was necessary from him proceed in the matter. Accordingly, by an order of

that date he directed that sale warrants be issued with a note that the binding would start from Rs. 60,000/- as the bid of Respondent No. 3, i.e.

the Trustees. The auction was fixed for January 1, 1963 and the Petitioner as well as the Respondent No. 3 were informed accordingly.

8. It appears that Respondent No. 3 approached the Minister for Irrigation and Power again. On December 29, 1962 the Deputy Settlement

Commissioner wrote to the Additional Custodian or Evacuee Property referring to the communication received from the Minister for Irrigation and

Power that the property had been fixed for auction on January 1, 1963 and he requested the Additional Custodian to ask the Competent Officer

to stay the auction. In reply, the Additional Custodian wrote on December 29, 1962 pointing out that the Respondent No. 3 had already agreed to

participate in the auction and had deposited 10% of the reserved price and therefore the action to transfer the evacuee interest to the Trust of the

Muslim Evacuee Property (Respondent No. 3) u/s 10(2)(o) of the Administration of Evacuee Property Act should be deferred. He stated that the

Competent Officer had intimated that a large number of people had come forward to offer higher bids and it was expected that the Custodian

would get a good price at the re-auction. But, on December 31, 1962, the Deputy Settlement Commissioner wrote to the Assistant Custodian that

we have already committed ourselves to transfer the evacuee's share in the above property to the Muslim Trust Committee on the basis of the

proposal made by Shri Adya in his D.O. letter dated the 17th August, 1962, In view of this it would not be desirable to put the property to

auction". He directed that the sale of the property should be stayed and a proposal for transfer of the evacuee's share to the Respondent No. 3 u/s

10(2)(o) of the Administration of Evacuee Property Act should be submitted. The Settlement Commissioner sent a telegram to the Competent

Officer ordering that the sale be stayed. Simultaneously, the Respondent No. 3 informed the Competent Officer that a telegram from the

Rehabilitation Ministry was on its way for cancelling the auction. Upon that, the auction fixed for January 1, 1963 did not take place.

9. On January 24, 1963 the Custodian of Evacuee Property wrote Custodian-General for permission to sell the evacuee share at the reserved

price of Rs. 60,000/- to the Respondent No. 3, i.e. the Trust u/s 10(2)(o). The approval of the Chief Settlement Commissioner cum-Custodian

General to the proposal was conveyed to the Custodian by a letter dated February 16, 1963. On February 27, 1963, the Custodian informed the

Respondent No. 3 that sanction had been accorded and they should deposit Rs. 60,000/-. The Competent Officer was also informed accordingly

by a letter dated April 24, 1963. Thereafter the Custodian wrote to the Competent Officer that the Respondent No. 3 had deposited Rs. 54,000/-

, and the entire amount now deposited by them should be transferred from the Competent Officer's account to the Custodian's account.

10. On August 13, 1963 the Competent Officer made an order dropping the proceedings pending before him on the original claim made by the

Respondent No. 3, and he directed that the amount of Rs. 60,000/- be transferred to the Custodian as requested.

11. Thereafter in December 1963, the evacuee interest in the Exchange Building was sold by the Custodian of Evacuee Property to the

Respondent No. 3. According to the averments made in the petition the Petitioner and other occupants of the building were unaware of the

developments and they offered to purchase the property on the basis that they were entitled as refugee-tenants to the property. On December 13,

1963 they were informed that their proposal could not be considered because it was composite property.

12. On September 18, 1964 the Respondent No. 3 applied u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 for possession of the

building. The occupant as given in the application was shown as "Shri Jagdish Lal son of Ram Dutta, Proprietor, Krishna Furnishing House, Shops

Nos. 2 and 3, Exchange Building, the Mall, Simla". According to the Petitioner this was a deliberate misdescription of the tenant and no attempt

was made to serve notice of the application on the Petitioner's address and that instead notice was sent to an address at Chandigarh. According to

the Petitioner it was only on April 20, 1965 that it came to be known that an ex parte order of eviction had made.

13. In May 1965, the Petitioner filed this writ petition praying for the quashing of the proceedings culminating in the transfer of property to

Respondent No. 3 and praying for an order directing the auction of the property. This writ petition was dismissed by Hardyal Hardy, J. According

to the findings, the learned Judge found that the Minister, Shri Hafiz Mohammad Ibrahim, had, in fact, been persuaded to interest himself in the

case. However, he further found that the correspondence on the file did not show any attempt at influencing the decision of the Custodian-General

or the Competent Officer, and in any event there was no evidence of "direct approach by the Central Government Minister" to the Competent

Officer. He further found that the letters written by Shri Hafiz Mohammad Ibrahim had actually influenced the eventual action taken by the

Custodian Department in transferring the property to the Respondent No. 3. But he took the view that the ultimate action taken by the authorities

was substantially in conformity with the Act and the rules, and no right of the Petitioner had been infringed.

14. Against this order a Letters Patent Appeal was filed by the Petitioner. The appeal was allowed and the judgment and order of the single Judge

were set aside and the case was remanded back for fresh decision in the light of the observations made therein.

15. The Respondents had taken preliminary objection that one-half share of the evacuee in the Exchange Building had been transferred to the

Kashmiri Mosque Simla on negotiation basis on the administrative side and that this transfer cannot be challenged as the Petitioner has no vested

right to purchase the property on the assessed price. The Letters Patent Bench has decided that "the Appellant was anxious to acquire the

property for himself and this objective was pursued by him with single-minded devotion. He was an occupant of commercial accommodation in the

building, and he had been in occupation ever since about the year 1947. He participated in each auction held by the Competent Officer and was

the highest bidder in each and deposited 10% of the bid money promptly". It also further held that he had a real interest in the property and was

affected by the orders and he was, therefore, entitled to maintain a writ petition.

16. One another preliminary point raised was that the writ petition suffers from the laches and delay. This point was also decided by the Letters

Patent Bench against the Respondents.

17. The Letters Patent Bench remanded the case to this Court and the Observations on which remand was made are quoted as under:

It is clear from a reading of the aforesaid provisions that the Custodian can transfer evacuee property provided he conforms to the conditions set

out in Section 10(1). He must consider it necessary or expedient to do so ""for the purpose 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 or under this Act"". And

when he considers it necessary or expedient to do so, it is implied that he must exercise his own judgment in the matter. When making an order u/s

10(2)(o) he cannot surrender his judgment to any influence not contemplated by the Administration Act. He may take into consideration all proper

and relevant information for the purpose of making an order, and when he does make the order the judgment exercised must be his. The Statute

has entrusted the function to him, and he cannot abdicate that function and yield to the influence or persuasion of another. What are the matters

which he should take into consideration when exercising the powers u/s 10 must be gathered from the contents of Section 10(1) as well as the

provisions of section of Section 10(2), which are merely illustrative of what can be done u/s 10(1). As is clear from Section 10(1) the scope of

those powers must be spelt out from the object and policy of the Administration Act and also from such rules related to Section 10(2) as may be

available.

This aspect of the case was apparently not present to the mind of the learned single Judge when he dismissed the writ petition. The learned single

Judge has observed that the letters written by the Minister did influence the action eventually taken by the Custodian Department in transferring the

property to Respondent No. 3. He should have proceeded further to determine whether the influence so brought to bear on the Custodian

Department adversely affected the validity of the transfer having regard to the requirements of Section 10. He should have determined whether in

the presence of that influence the Custodian when acting u/s 10 kept in mind the limitations on the exercise of his power postulated by Section

10(1). He should also have determined whether the decision to transfer the property was taken by the Settlement Commissioner or other authority

and the Custodian merely adopted it, and if the answer was in the affirmative he should have gone on to the further question whether the discretion

conferred by Section 10(1) could be exercised by the Custodian only or also by some other authority. Likewise, it was also a matter for

examination whether the Custodian-General, while endorsing his approval under the proviso to Section 10(2)(o), had acted within the limitation

implied by the statute. These considerations do not appear to have been placed before the learned single Judge and it seems, with respect, that the

learned single Judge omitted to apply his mind to them. The need to consider this aspect of the case necessarily arose because of the grounds (iii)

and (iv) taken by the Appellant in the writ petition that the action of the Custodian amounted to a breach of the statutory obligations conferred on

that authority and that the transfer was decided upon under extraneous pressure. Indeed, during the hearing of the appeal by us it was pointed out

by Shri Sushil Malhotra, learned Counsel for the Respondent No. 3, that the learned single Judge had not gone into the merits of the case and that

his opinion on the merits was not before us. The error in the approach adopted by the learned single Judge arose apparently because he came to

the conclusion that the Appellant had no right to maintain the writ petition, that the action complained of by the Appellant did not infringe any right

belonging to him and that although the procedure adopted by the Custodian was irregular the Appellant was not concerned with it and no injustice

had been occasioned to him. As in my opinion, on the considerations which will be set out presently, the approach adopted by the learned single

Judge to the case before him was vitiated by material error, an enquiry which necessarily called for decision in this case was thus shut out. It is not

a question of mere irregularity in the procedure adopted by the Custodian, it is a question whether the power exercised in effecting the transfer in

favour of Respondent No. 3 was founded within the limitations of Section 10 of the Administration Act. If it was not, the transfer would be void,

and thereupon the order of the Competent Officer dropping the proceedings would also be vitiated".

As this aspect of the case was not considered by the learned single Judge, we did not have the benefit of submissions thereon by learned Counsel

for the parties.

18. The order of transfer of property was purported to have been made u/s 10(2)(o) of the Administration of Evacuee property Act, 1950 (for

short, the Act of 1950). I have given the resume of the observations made by the Division Bench while remanding the case for fresh hearing and

decision. The facts have been given in detail from the judgment of the Division Bench, and, therefore, what follows is whether in the circumstances,

of this case the transfer of evacuee property by the Custodian was in accordance with the principle and spirit of the Act of 1950.

19. I have been taken through the record by the learned Counsel for the parties during the course of arguments. Section 10 of the Act of 1950

enumerates the general power of the Custodian and those powers are to be exercised by him subject to the provisions of any rules that may be

made in that behalf. He is authorised to take such measures as he considers necessary or expedient for the purpose 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 purposes as aforesaid do all acts and incur all expenses necessary or, incidental thereto.

Therefore, a duty is cast on the Custodian to administer the property for the purpose of securing, administering preserving and managing the

evacuee property. The allegation of the Petitioner as contained in para 10 of his petition was that Lit. Col. K.M. (sic)d, who was representing the

Muslim Trust was pulling some wires in (sic) prevent the auction sale of the property and further he came to know was some D.O. letter sent by

the then Minister for Irrigation and (sic) Government of India to the Chief Settlement commissioner (sic) hand over the property to the Muslim

Trust instead of putting (sic) Thus it became clear that political pressure was being brought to bear and the matter of confirmation of the sale was

being delayed in view of the pressure from above. Custodian admitted the facts in reply to the extent that the Muslim Trust Committee, Simla, who

are managing the affairs of Kashmiri Mosque moved the Government of India for transfer of the half evacuee share in the Exchange Building to

them on assessed price (through the Central Minister for Irrigation and Power) as the half share in the property was Wakf property. Therefore, it is

not disputed that the Minister for Irrigation and power was approached by the Muslim Trust Committee, Simla for transfer of the property to them.

20. Annexure A is a receipt issued for Rs. 1804/- by the office of the Regional Settlement Commissioner, Jullundur, on 12-6-1959 on account of

the deposit of 10% earnest money in respect of and against the sale of property 1/2 share Exchange Building. Annexure A/1 is a receipt of two

cheques for Rs. 1353/- each received from the Petitioner in lieu of 10% on account of purchase of property 1/2 share of Exchange Building on 12-

6-1959. This would show that the bid given by the Petitioner in respect of one-half of the property was for Rs. 75,100/- which was the highest

bid. This bid was given in the year 1959. It appears that this bid was not accepted with the result that the Petitioner had to write a letter, copy of

which is Annexure B, reminding the authorities that he had offered the highest bid for property and had paid the earnest money also and two years

had expired but no decision was communicated about the handing over of the possession of the building to him. In response to his letter, the

Competent Officer informed him vide Annexure C, dated 2-3-1962 that his bid in respect of one-half share for Rs. 45,100/- had not been

accepted because the bid offered was less than the minimum reserved price fixed and this information was given on 2-3-1962, i.e. after about two

years. Therefore, from the very beginning the mala fide intention was there. They had not disclosed as to what was the reserved price when the

Petitioner had given the highest bid of Rs. 45,100/- for one-half share of the property. It was only after two years that he was informed that the bid

was below the reserved price. The Petitioner again wrote a letter, copy of which is Annexure D, on 21-3-1962 to the Compensation Officer to re-

consider the matter about his bid. It appears one-half property was again put to auction and the Petitioner it appears was the highest bidder and his

bid was for Rs. 61,500/- and that a receipt, Annexure E, was issued by the Regional Settlement Commissioner on 14-5-1962 for the deposit of

10% of the earnest money. Again, by Annexure F, dated 9-7-1962, i.e., after about two months he was informed that his bid of Rs. 61,500/- had

been rejected because it was much below the reserved price. He was directed to appear before the Compensation Officer on 25-7-1962 at

Cedar Lodge, Simla at 10-30 AM if he wanted to make any further higher offer for the said property. It appears from Annexure G to the petition

that the Petitioner was informed that the composite property known as Exchange Building, The Mall, Simla, will be auctioned on 17-9-1962 at 9

AM and he was also told to be present if he so desired. It appears that the auction did not take place on the said date and it was followed by letter

(Annexure H) dated 29th September, 1962 from the Custodian-General Evacuee Property informing that since one-half share in the property has

been dedicated to a mosque at Simla, known as Kashmiri Mosque"" the property was being transferred to the Muslim(sic) Trust Committee and in

these circumstances it was regretted that his re (sic) could not be acceded to. Thereafter the Petitioner made a represent(sic) to the Custodian-

General for re-consideration and for re-hearing vide (sic) L, dated 1-10-1962. Thereafter it appears that on 20-12-1962 the (sic) Officer informed

the Secretary Muslim Trust Committee, Simla, and the Petitioner that the sale of one-half undivided share of the Exchange Building, Simla, has

been fixed on 1-1-1963 by the District Rent and Managing Officer, Ambala, who will be conducting the sale himself on that date and that the

District Rent and Managing Officer had been asked to start the bid of one-half share at Rs. 60,000/- as that of the Muslim Trust Committee and

the Petitioner was also told to participate in the auction if he so desired. So, this means that till then there was a sincere effort made by the

Custodian-General and the Compensation Officer to auction the property for as much highest price as they could fetch because that would have

gone to augment the evacuee pool and it was the main scheme under the Administration of Evacuee Property Act. In this letter it had also been

specifically mentioned that the reserve price of one-half share was fixed at Rs. 60,000/- as that was the price offered by the Muslim Trust

Committee. It appears that the property was not again put to auction, with the result that the Petitioner as also some other refugees made a

representation, Annexure K, on 28-5-1963 to the District Rent and Managing Officer for the transfer of the property to them. They were informed

vide letter, Annexure L, dated 30-7-1963 that their application cannot be considered because the property is not available for transfer, full

particulars of the property had not been given and that arrears of rent (amount not shown) upto 31-3-63 were still due from them which they had

not cared to clear despite the issue of notice and that the property was composite. Therefore, from this it would appear that there was really some

sinister move whereby this effort on the part of the District Rent and Managing Officer for putting the property to auction and to get the maximum

price to augment the evacuee pool was thwarted. The Act is intended to provide for the administration of the evacuee property and the property is

to be used for compensation the refugees who lost their properties in Pakistan and the Act contains elaborate provisions as to how the

administration is to be carried out (See Ebrahim Aboobakar and Anr. v. Tek Chand Dolwani AIR 1952 SC 298. Keeping in view the object of the

Act it was required of the authorities under the Act to have put the property to auction so as to obtain and secure the maximum price of the

property to augment the evacuee compensation pool. It would appear from the letter dated 21st December, 1962 at page 467 of file No. 21(29)-

1 Genl on the subject: "'Appointment of trustees of trust properties at Simla-Exchange Building Simla'" written by Shri J.M. Tandon. Addl.

Custodian, Punjab to Shri H.R. Nair, Deputy Chief Settlement Commissioner, Government of India, Ministry of Works, Housing and Supply that

the case regarding transfer of evacuee share in Exchange Building Simla to the Muslim Trust Committee was examined by this office and it was felt

that since the Muslim Committee at Simla had already agreed to participate in the auction after depositing 10% of the reserve price, action to

transfer evacuee portion to the Muslim Trust Committee u/s 10(2)(o) of the Act, 1950, may be deferred for the present. Further, it had been

written therein that it has been ascertained from the Compensation Officer, Amritsar, that quite a large number of people have come forward to

offer bids in the auction and it was expected that the Custodian would get fairly a good price in the re-sale. So, this was the letter written by the

Additional Custodian which shows that genuine and sincere efforts were made by the Custodian Department to get as much price for the evacuee

share of the property as could be possible and that quite a large number of people had come forward to offer bids, which, in other words, means

that there were chances of securing the maximum bid, even then subsequently it was decided that the property was to be transferred to the Muslim

Trust Committee, Respondent 3. It is also apparent from this letter that the Muslim Trust Committee at Simla had also agreed to participate in the

auction but what happened thereafter is evident from letter at page 417 of the same file, and, the letter may be re-produced in extense.

H.R. Nair,

Chief Settlement Commissioner.

D.O. No. 25 (47) Comp. and

Prop./62,

Government of India,

Ministry of Works,

Housing, and Rehabilitation

(Department of Rehabilitation),

Office of the Chief Settlement Commissioner.

Jaisalmer House, New Delhi-11

Dated the 31st December, 1962.

My dear Tandon,

1. Please refer to the correspondence resting with your D.O. letter No. 22729 dated the 29th December, 1962, regarding the transfer of evacuee

share in ""Exchange Building"" at Simla to the "Muslim Trust Committee".

2. We have already committed ourselves to transfer the evacuee share in the above property to the Muslim Trust Committee on the basis of the

proposal made by Shri Adya in his D.O. letter dated the 17th August, 1962. In view of this it would not be desirable to put the property to

auction. I shall be grateful if you get the sale of the property stayed and send your proposal for transfer of evacuee share in the above building to

the "Muslim Trust Committee" u/s 10(2)(o) of the Evacuee Property Act. This may be done Early.

Yours sincerely,

Sd/-

H.R. Nair

Shri J.M. Tandon,

Addl. Custodian, Punjab.

From this letter what follows is that an action had been taken to transfer the evacuee share in the Exchange Building to the Muslim Trust

Committee without putting it to auction thus depriving the refugees coming from Pakistan after having lost their property and especially a person

who was a sitting allottee of this property for the last several years. Para 2 of this letter would clearly show that the Settlement Commissioner had

had written that they had already committed themselves to transfer the evacuee share in the property to the Muslim Trust Committee on the basis of

the proposal made by Shri Adya in his letter dated 17th August, 1962. So, it means that entire efforts made before this letter for auctioning the

evacuee share in the property and to secure the maximum price were frustrated because according to the Settlement Commissioner they had

already stood committed which term would show that they had not acted honestly as was required of them under the provisions of Section 10(1)

of the Act of 1950. The authorities concerned could and did have the power to transfer the property provided it was in the best interest of

securing, administering, preserving and managing the property, but here the transfer was made because they stood committed to somebody despite

the fact that earlier they had been making all round effort to put the property to auction and the Petitioner had made highest bids and was prepared

to participate in the subsequent auction, but his request was not acceded to after 31st December, 1962 and this was because of letter from the

Minister of Irrigation and Power. Para 3 of this letter may be quoted and which is as under:

The Ministry of Irrigation and Power have reported that although the Muslim Trust Committee has deposited the earnest money of Rs. 60,000/-

the Competent Officer has fixed 1st January, 1963, for auction of the above building. It is not clear as to why the above property is being put to

auction again when you had already requested the Competent Officer to stay its sale. We would request you to ask the Competent Officer to stay

the proposed auction.

This is a letter dated 29th December, 1962 from Shri H.R. Nair, Dy. Chief Settlement Commissioner, to Shri J.N. Tandon, Additional Custodian

of Evacuee Property. Therefore, the averments made by the Petitioner that some political pressure was being brought to bear upon in order to stay

the auction and to transfer the evacuee share to the Muslim Trust Committee is established. The action of the authorities under the Act could not be

said to be bona fide and this action when read in conjunction with the letter, of 31st December, 1962, at pages 471 and 473, of the file is mala fide

and against the very purpose of the Act which enjoined that they were to administer the property keeping in view the best interest of the refugees

and to augment the compensation pool so as to compensate them for their losses sustained due to partition of the country and this action to transfer

the property has been taken under the political pressure of the Ministry of Irrigation and Power which had nothing to do with the evacuee property.

21. Again, the letter dated 24-1-1963 from the Custodian Evacuee Property, Punjab to the Custodian-General which is at page 477 of the

aforesaid file shows that the evacuee share was decided to be sold for Rs. 60,000/- to the Muslim Trust because, according to the Custodian, that

was the reserve price and that the same was reasonable price. But it would be pertinent to note that the Petitioner had even given a higher bid for

this half share which was Rs. 61,500/- and it cannot be said to be a reasonable price. It was a fraudulent transfer so to say having been brought

about under the pressure of the Ministry of Irrigation and Power and the Petitioner had deliberately been kept out from the bid. Therefore, this

action on the part of the authorities concerned was dishonest. Therefore, what follows is that this transfer being fraudulent and not in accordance

with the requirements of Section 10(2)(o) of the Act of 1950 cannot be held valid as the authorities failed to discharge their function honestly as

were required of them under the law.

22. The result, therefore, is that the transfer is quashed and it is directed that a fresh auction shall be made of the one-half evacuee share in the

building in accordance with law. The Petitioner is also awarded costs of Rs. 200/- from Respondents 1 and 2.