(1956) 08 MP CK 0001

Madhya Pradesh High Court (Indore Bench)

Case No: Civil Miscellaneous Case No. 3 of 1955

Ramtello Horilal and Another		APPELLANT
	Vs	
Custodian of Evacuee Property		RESPONDENT

Date of Decision: Aug. 2, 1956

Acts Referred:

- Administration of Evacuee Property (Central) Rules, 1950 - Rule 14, 14(2), 14(4), 14(5)
- Administration of Evacuee Property Ordinance, 1949 - Section 7(1)
- Constitution of India, 1950 - Article 226, 311

Citation: AIR 1957 MP 4

Hon'ble Judges: Samvatsar, J; Newaskar, J

Bench: Division Bench

Advocate: C.S. Chhajad and S.M. Zavar, for the Appellant; K.A. Chitale, Advocate-General and N.C. Bahel, for the Respondent

Judgement

Newaskar, J.

This is a petition under Arts. 226 and 227 of the Constitution submitted by Petitioners Ramtello and his son Ghisalal against the Custodian of Evacuee Property.

2. The principal allegations made by them are that the Petitioner Ramtello had taken one room in House No. 44 Jail Road, Indore on a monthly rent of Rs. 4/- from its owner Seth Abdulla the said Abdulla, it is said, left for Pakistan and the house in question was declared an Evacuee Property and vested in the opponent for possession and management.

3. Thereafter the Petitioners continued to pay rent to the opponent Custodian at the same rate but on 13-10-1954 the opponent served them with notice requiring them to pay rent at Rs. 10/- per month. The enhanced rent was demanded from 1-8-1954 i.e., from a date prior to the notice.

It is contended by the Petitioners that before the opponent could do so he was bound to issue notice to the Petitioners under Rule No. 14 (4) of Administration of Evacuee Property (Central) Rules 1950. The Petitioners further stated that the opponent threatened to eject them whereupon they paid at the rate demanded under protest.

4. The Petitioners therefore pray for the issue of a writ of certiorari for quashing the aforesaid notice dated 13-10-1954 and for a direction restraining the opponent from recovering rent in excess of original rent at Rs. 4/-per month.

5. The opponent opposed the petition firstly on the ground that the Petitioners have not availed themselves of the alternative and adequate remedy under Evacuee Property Act, secondly, on the ground that the order in question is of an administrative character and that no fundamental right of the Petitioners is affected thirdly, on the ground that the Petitioner Ghisalal had failed to raise the plea regarding his having taken land on annual rent of Rs. 3/- and his having constructed a room thereon except orally before the Custodian and that the Custodian had reject ed that plea on 16-1-1951.

This decision of the Custodian not having been challenged became final and binding and lastly on the ground that there is nothing in Rule 14 of the Rules under Evacuee Property Act to abridge or limit the power of the Custodian to vary the terms of a lease if it be necessary according to the opinion of the Custodian for prudent management of the property.

6. The Custodian challenged the contention of the Petitioner that no notice as required by Rule 14 (4) of the Administration of Evacuee Property (Central) Rules of 1950 had been given to the Petitioners before enhancing the rent from Rs. 4/- per month to Rs. 10/- per month.

7. The particular notice referred to by the Custodian. is the one dated 30-7-1054 a copy whereof is filed at index ''A''

8. This notice is addressed to ""all the tenants of 44, Jail Road Indore". By this notice they were all informed that the Custodian would inspect the premises on 31-7-1954 and were further requested to remain present on the spot to enable him to gather information from them.

9. Rule 14 (4) is as follows:

Before cancelling,, or varying the terms of a lease or before evicting any lessees the Custodian shall serve the person or the persons concerned With a police to show cause against the order proposed to be made and shall afford him a reasonable opportunity of being heard.

It is clear from the wordings of this, rule that the notice contemplated by this sub-rule should be one to show cause against, the order proposed to be made and

ought to afford a reasonable opportunity to the lessee of being heard.

10. It is frankly conceded by the learned Advocate General that the notice put forward by the Custodian dated 30-7-1954 referred to above does not satisfy this requirement but his main contentions are that the order of the Custodian enhancing rent in this case is of an administrative Character and no writ in the nature of certiorari can lie. He was prepared to concede that a writ of mandamus could have been issued if other conditions requisite for such in issue had been satisfied. He however urged that the Petitioner rushed to Court without making a demand of performance and refusal aw is necessary for the issue of such a writ.

On the other hand Mr. Chhajad for the Petitioner contended that the act of the Custodian in varying the terms of the lease contrary to the requirement of Rule 14 of the Rules in question can by no stretch of imagination be said to be a purely administrative act. The learned Counsel in this connection relied upon the decisions reported in -- ''Bai Marium v. Assistant Custodian of Evacuee Property, Jetput AIR 1952 Sau 1 (A): Sardara Singh v. Custodian Muslim Evacuee''s Property AIR 1952 P&H 12 (B), and distinguished the case reported in -- Dunichand Hakim and Others Vs. Deputy Commissioner (Deputy Custodian Evacuee Property) Karnal, State of Punjab and Others,

In the latter case according to him there was no lease. It was a case of allotment of premises. Had the case been one relating to the variation or cancellation of a lease, their Lordships of the Supreme Court would certainly have directed issue of a writ of certiorari according to the learned Counsel.

11. Before considering the main question in this case as to whether the order in question is administrative or quasi-judicial it will be convenient to determine status of the Petitioner. He occupied the premises as a lessee from the evacuee Abdulla Isa and continued to occupy the same as, such even after the property had vested in the Custodian for possession and management.

In support of his contention he has filed receipts Ex. A to I. These receipts describe the Petitioner Ramatello as a tenant. He further states that the property had been given to him on lease and that a certain sum mentioned therein had been received at the rate of rent fixed, at Rs. 4/-per. month.

12. The learned Custodian in the return Para 5 did not specifically deny the fact that the Petitioner Ramatello was a tenant in the premises nor did he aver that he was trespasser. He referred to the alleged case set up by the Petitioner orally before him that he (Petitioner) had taken only land underneath the room in question on lease from Abdulla Isa to the fact of rejection of that case by his order dated 16-9-1949.

13. It is thus clear from these averments and the receipts that Petitioner Ramatello''s position was that of a lessee and not that of a trespasser or an allottee.

14. Thus it cannot be doubted that the Custodian by his order contained in notice CEP/10999 dated 13-10-1954 varied the amount of rent payable by the Petitioners in respect of the premises in their occupation and that this was done without any notice to them as required by Rule 14 (4) of the Administration of Evacuee Property (Central) Rules, 1950 and further that the Petitioner Ramatello continued to be a lessee of the premises in question till the aforesaid notice had been given.

15. It therefore, follows that in case the act or order in question is quasi-judicial the Petitioners will be entitled to the issue of a writ of certiorari for quashing that order.

16. Next question, therefore, to be considered is whether the order is purely administrative or quasi-judicial.

17. This subject has been discussed at length in -- Province of Bombay Vs. Kusaldas S. Advani and Others,

18. In that case Das J., after discussing cases bearing on this question observed as follows:

What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are; (i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially.

19. It is thus clear that where a statutory '' authority has power to do any act which will pre judicially affect the subject then, even in the absence of two opposing parties apart from the authority the determination by him will be quasi- judicial if the authority is required by the statute to act judicially.

20. It is also clear that the act of the Custodian in effecting variation of rent prejudicially (aitected)(sic) the right of the Petitioners. The question then which remains to be considered is whether the Custodian is required by the statute to act

judicially.

21. Rule 14 which is material in this connection reads as follows:

Cancellation or variation of leases and allotments:

(1) The Custodian shall not ordinarily vary the terms of a lease subsisting at the time he takes possession of immovable property or cancel any such lease or evict a person who is lawfully in occupation of such property under a lease granted by the lessor before he became an evacuee and not in anticipation of becoming an evacuee unless the Custodian is satisfied that the lessee has done or omitted to do something which renders him liable to eviction under any law for the time being in force.

(2) In case of a lease or allotment granted by the Custodian himself, the Custodian may evict a person on any ground justifying eviction of a tenant under any law relating to the Control of Rents for the time being in force in the State concerned, or for any violation of the conditions of the lease or the allotment.

(3) The Custodian may evict a person who has secured an allotment by misrepresentation or fraud or if he is found to be in possession of more than one evacuee property or in occupation of accommodation in excess of his requirements.

(4) Before cancelling, or varying the terms of a lease or before evicting any lessee. the Custodian shall serve the person or the persons concerned with a notice to show cause against the order proposed to be made and shall afford him a reasonable opportunity of being heard.

(5) Nothing in this rule shall be deemed to abridge or limit the power of the Custodian to cancel or vary the terms of a lease relating to evacuee property or to evict a lessee of such property, Where he is of the opinion that, for reasons to be recorded in writing, it is necessary or expedient to do so for the preservation or the proper administration of management of such property of for carrying out any other object of the Act.

(6) Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in each of the States of Punjab and Patiala and East Punjab States Union shall not exercise the power of cancelling any allotment of rural evacuee property on a quasi-permanent basis, or varying the terms of any such allotment, except in the following circumstances:

(i) Where the allotment was made although the allottee owned no agricultural land in Pakistan;

(ii) Where the allottee has obtained land in excess of the area to which he was entitled under the scheme of allotment of land prevailing at the time of allotment;

(iii) Where the allotment is to be cancelled or varied.

(a) in, accordance with an order made by a competent, authority u/s 8, East Punjab Refugees (Registration, of Land Claims) Act, 1948 ;

(b) on account of the failure of the allottee to take possession of the allotted evacuee property within six months of the date of allotment;

(c) In consequence of a voluntary surrender of the allotted evacuee property, or a voluntary exchange with other available rural evacuee property a mutual exchange with such other available property.

(d) In accordance with any general or special order of the Central Government.

Provided that where an allotment is cancelled or varied under Clause (ii), the allottee shall be entitled to retain such portion of the land to which he would have been entitled under the scheme of quasi-permanent allotment of land:

Provided further that nothing in this sub-rule shall apply to any application for revision, made u/s 26 (or Section 27) of the Act, within the prescribed time, against an order passed by a lower authority on or before 22-7-1952.

22. Thus sub-Rule (1) provides that a Custodian shall not ordinarily vary the terms of a lease subsisting at the time he enters into possession or cancel any lease or evict a person in bona fide occupation of it under a lease granted by the evacuee.

Sub-rule (2) authorises the Custodian to evict any person in occupation in pursuance of a lease granted by him but if the tenant is entitled to protection under any law relating to control of rent he should not be evicted. Nor should he be evicted unless he has violated the conditions of the lease.

Sub-rule (4) specifically lays down that before cancelling or varying the terms of a lease or before evicting any lessee the Custodian shall serve the person concerned with notice to show cause against the order proposed and afford him reasonable opportunity of being heard.

Sub-rule (5) saves the ultimate power of the Custodian to cancel or vary the terms of lease or to evict a lessee of an evacuee property where he is of the opinion that this should be done for preservation or proper administration of management of such property or for carrying out any other object of the Act.

23. u/s 12 a Custodian is authorised to terminate any lease or amend its terms in respect of any evacuee property provided that in the case of any lease granted by the evacuee before 14-8-1947 the Custodian is not authorised to exercise that power unless he is satisfied that the lessee has either sublet, assigned or parted with the possession of the whole or any part of the property leased to him or has used such property for a purpose other than that for which it was leased to him or has failed to pay rent in accordance with the terms of the lease.

24. The rules under Administration of Evacuee Property Act (1950) are made by the Central Government in exercise of its powers u/s 56 and the material Rule 14 is made u/s 56 (i). This rule therefore will have to be taken subject to the provision of Section 12 which specifically provides circumstances in which the terms of a lease granted prior to 14-8-1947 could be amended.

25. It, therefore, follows that in the case of such leases the power can be exercised where particular circumstances mentioned in the proviso exist and not at his discretion or subjective decision and that too after giving due notice and a proper hearing to the person concerned. The act of the Custodian in pursuance of power such as this therefore cannot be said to be purely administrative but is quasi-judicial and the High Court has, therefore, power to, control that power by a writ of certiorari.

It need not be emphasised that even an apparently administrative authority has under certain circumstances to act judicially where the statute so provides. In that case his decision in that respect is quasi-judicial and not executive or purely administrative.

26. The learned Advocate-General contended that the mere fact that a notice is to be given to the person concerned or an opportunity is to be given to him to have his say does not necessarily make his decision quasi-judicial. He, in this connection referred to the decision of this Court reported in -- ''Mrs Lilawati (Mtatkar)(sic) v. State of Madhya Bharat ILR (1952) MP 253 : AIR 1952 MP 105 (E), and contended that the decision of the Custodian in the present case can be "equated to the decision of an authority regarding the dismissal, removal or reduction in rank as referred in Article 311 of the Constitution. He further referred to the decision of their lordships of Supreme Court reported in -- Rai Bahadur Kanwar Raj Nath and Others Vs. Pramod C. Bhatt, Custodian of Evacuee Property, wherein it was laid down that the Custodian has under, Section 12 the power and had always the power to cancel leases created not merely by the evacuee but also by himself and further that Section 12 expressly authorizes the Custodian to vary the terms of the lease and that this power is unqualified and absolute.

27. In my view neither the decision in ILR 1952 MP 253: (AIR 1952 MP 105) (E) nor the observations of their Lordships of Supreme Court in (S) Rai Bahadur Kanwar Raj Nath and Others Vs. Pramod C. Bhatt, Custodian of Evacuee Property, have any application to the facts of this case.

28. The Petitioner had held the property under a lease created prior to 14-8-1947. The terms of such a lease could be varied only under certain specified contingencies. Moreover when it is proposed to do so a reasonable opportunity has to be given after a due notice for a hearing to the person concerned as his rights are likely to be affected. In these state of circumstance merely because under certain other circumstances the power of the Custodian is absolute and unrestricted it does not

follow the power exercisable under circumstances obtaining in the present case is of that nature nor can it legitimately be said that the power is purely executive in nature.

29. In the case reported in (S) AIR 1056 SC 105 (F). a contention has been raised on behalf or the Appellant tenant that the Custodian had no authority to vary the terms of a lease created by himself. No question was involved as regards Want of notice under Rule 14 (4). In fact the Custodian had given notice and an opportunity had been given by him for a hearing.

30. It was held by their Lordships on the construction of Section 12 that the Custodian had power to vary the terms of a lease not only created by the evacuee but by himself and that it is not necessary for him to go to a Court of law for the purpose. This does not mean that where the power is to be exercised by the Custodian under certain specified conditions and after giving due notice and hearing to the person likely to be affected it is a purely executive power. If such a contention were accepted it would make the provision for a hearing practically illusory.

31. Moreover after Custodian decides a matter it is open to the Custodian-General to revise that decision and this power is not merely confined to the questions of legality or (''urd''c''l''-r)(sic) but to propriety as well, vide Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others,

32. Therefore provisions as to notice, hearing and consideration by the higher authority even on the ground of propriety clearly indiea(sic) that the power exercisable by the Custodian in such a case is quasi-judicial.

33. I, therefore, am clearly of opinion that a writ of certiorari can lie.

34. The last question is whether the discretionary power of this Court should be exercised in favour of the Petitioner when he could have moved the Custodian-General by way of revision. I should have taken this fact into consideration but in this case the Custodian has clearly violated Rule 14 of the Administration of Evacuee Property Rules. He called upon the Petitioner to pay by 13-10-1954. The Petitioner therefore was justified in apprehending that the Custodian in exercise of- his powers would evict him causing him hardship and embarrassment.

35. Before concluding I may make a brief reference to some of the cases bearing on the question regarding the circumstances in which a writ of certiorari may be issued and the effect of existence of another remedy upon the petition under Article 226 of the Constitution.

36. In Abdul Majid Haji Mahomed Vs. P.R. Nayak, Chagla C. J. and Tendolkar J. had to deal with a case where no valid notice as contemplated u/s 7 (1), Ad ministration of Evacuee Property Ordinance (1949) had been given to the Petitioner.

37. The learned Chief Justice, who deliver ed the judgment held in that case that the power exercised by the Custodian in such a case was quasi-judicial and subject to controlling jurisdiction of the High Court under Article 226 of the Constitution and a writ of certiorari could be issued. He further held that the mere existence of a remedy by way of appeal to Custodian-General was not enough to induce the High Court to refuse to exercise that power. His Lordship observed as follows:

As we pointed out in that decision, ordinarily when fundamental principles are violated, the Court should not be reluctant to exercise its power to issue a prerogative writ in the nature of certiorari.

These observations of the learned Judge can aptly be applied to the present case.

38. In AIR 1952 P&H 12 (B), Teja Singh J. exercised powers under Article 226 of the Constitution in practically similar circumstances.

39. In view of the aforesaid considerations I deem it proper to exercise my power under Article 226 of the Constitution and direct the annulment of the order of the Custodian enhancing the rent of the premises to Rs. 10/- per month. It need not be stated that the parties are relegated to the position obtaining before the impugned order was passed and notice for compliance given.

40. Under the circumstances of the case I make no order as to costs.

Samvatsar, J.

41. I agree.