

judgment that property in *custodia legis* cannot be attached in the execution of a decree except after the fulfilment of the specific purpose for which property is held.

Roop Chand
v.
Gulzari Lal,
etc.

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A. N. Bhandari,
C. J.

For these reasons, I would accept the petition, set aside the orders of the Courts below and direct that as the money which is alleged to have been withdrawn by the landlord was in *custodia legis* and could not be withdrawn until the specific purpose for which it was deposited had been fulfilled, it should be restored to the Court. The appellant will be entitled to costs here and below.

CIVIL WRIT

Before Kapur, J.

A. S. BHASIN,—*Petitioner*

versus

CUSTODIAN, EVACUEE PROPERTY PUNJAB AND
OTHERS,—*Respondents*

Civil Writ No. 207 of 1953

Administration of Evacuee Property Act (XXXI of 1950) Section 8 (5), 9 and 12—Administration of Evacuee Property Rules—Rule 14 (5)—Powers of Custodian under—Cancellation of leases and allotments—Position of lessee or allottee after cancellation of the lease or allotment—Power of Custodian to take possession of property vested in him where person in possession refuses to surrender possession.

1953

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Dec. 1st

Held, that under section 12 the Custodian has the power to vary or cancel leases and rule 14 (5) gives to the Custodian the power where he is of the opinion that it is necessary or expedient for the proper management of the property to cancel the lease or the allotment, and if the allotment is cancelled the position of the allottee is nothing more than that of a trespasser and under section 8 (5) read with section 9 the Custodian has the power to take possession of the property which is vested in him where any person who is holding it refuses to surrender possession.

Petition under Article 226 of the Constitution of India, praying that a writ of Mandamus, Certiorari, Prohibition or such other writ or order or direction be issued to :—

- (i) *Respondent No. 1 quashing the order passed by him leasing out the premises to Respondent No. 3,*
- (ii) *Respondent No. 2 quashing orders passed by him ejecting the petitioner from the premises occupied by him, further praying that the proceedings may kindly be stayed pending the disposal of this petition.*

C. L. LAKHANPAL, for—Petitioner.

A. M. SURI and D. R. MANCHANDA, for Respondents.

ORDER.

Kapur, J.

KAPUR, J. This is a rule obtained by Attar Singh Bhasin against the Custodian, Evacuee Property, Simla, and two others praying that an order should issue against the respondent (No. 1) quashing the order passed by him leasing out the premises to Lajwanti, respondent No. 3 and quashing the order passed by him ejecting the petitioner. Rule was issued by a Bench of this Court on the 21st July 1953 and the Custodian and Lajwanti have shown cause.

Elysium Hotel, Simla, is evacuee property and had been allotted to one Shiv Nath who is son of respondent No. 3 Lajwanti. The petitioner alleges that he was in occupation of set No. 23 of this hotel as a tenant since February 1950 and that he remained in occupation as a tenant directly under the Assistant Custodian, Evacuee Property, Simla, to whom he was paying rent directly. On the 21st May 1953 an order was passed by the District Rent Officer, Simla, to the effect that the Custodian, Punjab, with the approval of the Punjab Government had allotted Elysium Hotel to Lajwanti and all persons who were residing in that hotel were directed to settle their sub-tenancy terms with the lessee directly and they should pay their future rents to her with effect

from 21st May 1953. The lessee has the right to keep tenants of her own choice and previous rent should be paid to this office." It is further alleged in this petition that the petitioner Attar Singh Bhasin "approached Lajwanti for executing the agreement of tenancy but she put him off," that he informed the Custodian's Department of all these facts but they kept silent, that Lajwanti made an application to the Authorised Deputy Custodian (the Deputy Commissioner) for ejection of the petitioner from the premises, that no notice was given of this application to him, nor were the allegations disclosed to him, but an officer did go to the spot to hold enquiries and the petitioner was not given any opportunity to meet the allegations. He goes on to say that on 8th July 1953 he was informed by an Inspector of the Custodian's Department that the petitioner was to be ejected from the premises within three days and that he was offered an alternative accommodation in Sanjauli, a place which is unsuitable for his residence .

A. S. Bhasin
v.
Custodian
Evacuee Pro-
perty, Punjab,
and others
—
Kapur, J.

The petitioner's complaint is contained in paragraph 14 where he states that he was not given an opportunity before or after the 21st May 1953 when premises were leased out to respondent No. 3 Lajwanti, that respondent No. 2 cannot order his ejection, that this amounts to usurping the functions of a Civil Court and that "the orders of the Custodian are *malafide* and have the effect of defrauding the Government of huge amounts of arrears due from Diwan Shiv Nath, the previous allottee, that the cancellation of allotment of the son on account of certain defaults and leasing out the premises to the mother is clearly a circumventing of the legal and moral position," that "the family is said to be connected with ministerial circles and that is why so much indulgence is being shown to them at Government expense."

These various allegations are denied by the Custodian. It is admitted that the petitioner's allotment was cancelled on the 14th March 1953

A. S. Bhasin
 v.
 Custodian
 Evacuee Property,
 Punjab,
 and others

—
 Kapur, J.

and his eviction was ordered, if necessary, with the help of the Police and it was only then that the petitioner made payment of the arrears due from him and the Custodian thereupon allowed him to continue to occupy set No. 23. In paragraph 6 it is pleaded that the petitioner refused to execute the deed of lease in favour of respondent No. 3 and his behaviour was a source of nuisance to her and when she made a complaint to the Custodian an enquiry was made by the Treasury Officer who reported against the petitioner. It is denied that the petitioner is entitled to any notice and the allegations of paragraph 14 of the petition were specifically denied.

In his petition which the petitioner made on the 28th May 1953 he objected to the allotment of the premises to Lajwanti and also to the cancellation of the allotment in his favour. In paragraph 10 (ii) of that petition he stated—

“The allotment of the petitioner cannot be cancelled unless he is given an opportunity to show cause against such an order under rule 14 (4) of the Administration of Evacuee Property Act, 1950.”

He made other allegations which are not necessary for the purpose of this judgment. This petition was dismissed by a Bench consisting of the Hon'ble the Chief Justice and Dulat, J., on the 2nd June 1953 and therefore all allegations made in that petition, including his complaint that allotment in his favour could not be cancelled without notice to him, must be taken to have been then decided.

The petitioner's allegation now is that he was an allottee direct from the Custodian and his allotment could not be cancelled and he could not be ordered to vacate without notice having been given to him. As I have said above, the question of notice has already been decided by the rejection

of his previous petition which is Civil Miscellaneous Application No. 307 of 1953 and that question cannot be reagitated before me, but even if it could be I am of opinion that the Custodian has acted within his jurisdiction and, therefore, the petitioner is not entitled to any relief on that ground.

A. S. Bhasin
v
Custodian
Evacuee Pro-
perty, Punjab,
and others

—
Kapur, J.

Under section 12 of the Administration of Evacuee Property Act the Custodian has been given the power to cancel leases or allotments of evacuee property and even under rule 14 which in my opinion cannot go beyond the Act all that is provided is that the Custodian shall not ordinarily vary the terms of a lease subsisting at the time he takes possession, which is not applicable to the facts of this case. In the case of a lease or allotment granted by the Custodian himself a person can be evicted 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. Paragraph (5) of this rule is important and reads as under—

“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 or the management of such property or for carrying out any other object of the Act.”

The affidavit of Mr. Chand Narain Raina, the Deputy Commissioner, is that a complaint was made to him by Lajwanti in regard to the conduct of the petitioner. He thereupon appointed

A. S. Bhasin v. Custodian Evacuee Property, Punjab, and others
 Kapur, J.

the Treasury Officer to make enquiries and the report was against the petitioner and it was on the receipt of this report that he cancelled the allotment of the petitioner. I have seen the report of the Treasury Officer. It appears that the petitioner was heard by him, although there was no enquiry in the sense as lawyers would know it. Certain witnesses were examined who deposed as to the facts which had taken place and a Professor who was a tenant in the place did state that the petitioner had used harsh words and had insulted the lady by saying, among other things, whether she was the *chachi* of the hotel" a fact which was denied by Bhasin. The Inquiry Officer also found that the petitioner was the head of the tenants who were trying to coerce Lajwanti and that Bhasin was responsible for creating trouble for her. In the affidavit before me Bhasin denies all these facts. But I am not sitting here to enquire into the truth or otherwise of these allegations. The fact remains that Lajwanti did make complaints to the Deputy Commissioner. He sent an Inquiry Officer who made enquiries at the spot and came to the conclusion that Bhasin should leave the place. It cannot, therefore, be said that no enquiry was made.

But even on the allegations which have been made in that the allotment of Bhasin was cancelled on the 21st May 1953 which has been upheld by this Court the petitioner cannot be said to have made out any case before me. Under section 12 the Custodian has the power to vary or cancel leases and I have quoted rule 14 (5) which gives to the Custodian the power where he is of the opinion that it is necessary or expedient for the proper management of the property to cancel the lease or the allotment and if the allotment was cancelled on the 21st of May 1953 the position of Bhasin was nothing more than that of a trespasser and under section 8 (5) read with section 9 the Custodian has the power to take possession of the property which is vested in him where any

person who is holding it refuses to surrender possession. As was held by a Division Bench of this Court in *Thakar Das v. The Custodian* (1), the Custodian has been given the power to cancel leases or allotments and if he does cancel any allotment, the allottee has no remedy and besides the allottee is a mere licensee which can be revoked at any time. I am, therefore, of opinion that both because of the previous order of this Court in Civil Miscellaneous Application No. 307 of 1953 and because of the conduct of the petitioner and because of the powers given to the Custodian by sections 8 (5), 9 and 12 of the Administration of Evacuee Property Act the cancellation cannot be challenged in this Court.

A. S. Bhasin
v.
Custodian
Evacuee Property,
Punjab,
and others
—
Kapur, J.

An objection was raised by the Custodian that no remedy under Article 226 of the Constitution of India is open to the petitioner because he had the right to go in revision under section 26 of the Administration of Evacuee Property Act, a remedy which he has not availed himself of and if another remedy was open to the petitioner he cannot come to this Court to invoke the extraordinary powers of the Court. He has relied on a judgment of this Court in *Karam Singh Sobti v. The Custodian of Evacuee Property, Civil (Writ) Miscellaneous No. 741 of 1950*, which is reported in the Short Notes of Cases page 11 in 53 P.L.R.

I may also add that the petition has been couched in most reckless language. The petitioner has not hesitated to bring all kinds of allegations against the Custodian and he has even accused the Ministers to be interested in the matter. The words used are 'ministerial circles' and when I asked counsel what he meant, he said it related to Ministers.

In my view there is no case made out in favour of the petitioner. I would, therefore, dismiss this petition and discharge the rule with costs. Counsel's fee Rs. 100, two sets of costs.

(1) A.I.R. 1951 Punjab 327