

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

1. OWP No. 813/2007
CMP Nos. 313/2008 & 1185/2007
2. OWP No.814/2007
CMP Nos. 314/2008 & 1186/2007

Date of Decision: 14..07. 2008

1)Gurmukh Singh & Ors. Vs. J&K Spl.Tribunal & Ors.
2)Veryam Singh & Ors. Vs. J&K Spl.Tribunal & Ors.

Coram:

Mr. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mr. M.R.Qureshi, Advocate.

For Respondent(s) : Mr. S.S.Lehar, Sr. Advocate with
Mr. Bhushan Lal, Advocate.

i)	Whether to be reported In Press/Journal/Media:	Yes
ii)	Whether to be reported In Digest/Journal :	Yes

Khairati Lal, respondent no. 7's parents, and other adult members of the family were killed by raiders during the disturbances of 1947 in the State of Jammu and Kashmir. Khairati Lal, taken to Pakistan Occupied Kashmir during the disturbances, however, managed to return after about 6/7 years. The properties of the family, in the meanwhile, had been however, declared as Evacuees' Property and

allotted to various local, and non-local displaced persons. Khairati Lal had obtained requisite certificate under Rule 16 (4) of the Rules framed under the Jammu and Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006 for restoration of his property in full. A detailed enquiry appears to have been held in the matter by Assistant Custodian, Rajouri, who directed restoration of the property to him. The property, which was in possession of the locals, was restored to his possession whereas only part of the possession of the property in occupation of the displaced persons could be delivered to him as the other displaced persons had resisted the delivery of possession.

Custodian Evacuees' Property, Jammu, therefore, directed the Assistant Custodian, Rajouri to deliver the possession of land which stood restored to respondent, Khairati Lal in 1955 pursuant to the orders passed by Assistant Custodian, Rajouri in this behalf. This was done vide his letter No. 930-AP of September 19, 1964.

This letter of the Custodian Evacuees' Property, Jammu directing delivery of possession to respondent Khairati Lal, was questioned by Gurbaksh Singh, Jeet Ram, Bishan Singh and Lal Singh, in appeal, before learned Custodian General, who dismissed it vide his detailed order of January 27, 1965.

This decision of the Custodian General remained unquestioned for about twenty two (22) years whereafter the successors of one Mohan Singh questioned Custodian General's Order of January 27, 1965 before the Jammu and Kashmir Special Tribunal, Jammu in Revision Petition No. STJ/A26.

It needs to be noticed, at this stage, that Lal Singh and Mohan Singh are the sons of one Sobha Singh, and that Mohan Singh, during his life time, had not questioned the order of restoration of Property in favour of Khairati Lal, respondent.

Jammu and Kashmir Special Tribunal, however, dismissed the revision petitions as not maintainable.

The legal representatives of Mohan Singh i.e. Rajinder Kour, his widow, and his sons, And one S. Harjit Singh, son of Lal Singh, appear to have questioned the Special Tribunal's Order by OWP Nos. 874/1995 & 76/1996 in this Court.

These writ petitions were allowed vide judgment of October 22, 1998 by issuing a direction to the Tribunal for fresh decision in the matter in accordance with the observations made in the judgment.

Questioning the judgment of learned Single Judge, Khairati Lal, respondent filed two Letters Patent Appeals being LPA (OWP) Nos. 495/1998 and 634 /1999 which were disposed of by a Division Bench of this Court with the following observations/directions:-

“After hearing learned counsel for the appellant, we do not find any ground to interfere with the order passed by the learned Single Judge as we are of the view that the revision petition before the Tribunal was maintainable. However, in the circumstances of this case, we direct the Tribunal that before deciding the revision petition on merit, it would be apt to framed preliminary issues in regard as to whether the revision petition is filed within time or any sufficient cause has been made out for condoning the delay in filing the revision petition and secondly whether the revision petitioner has a locus-standi to file the revision petition. It is only after giving finding on the said issue, the revision petition would be decided on merit, if necessary. In case the parties wish to lead

evidence on the said issues, they shall be permitted to do so.

In view of the above, both these appeals stand disposed of.”

After deciding the issues in terms of the directions issued by the Letters Patent Bench, the Jammu and Kashmir Special Tribunal dismissed these revision petitions. Petitioners have approached this Court with these two writ petitions questioning the order of the Special Tribunal dated August 20, 2007 whereby their revision petitions have been dismissed.

As similar questions have been raised in the two writ petitions relating, inter alia, to the validity of restoration of property in favour of Khairati Lal respondent in both the writ petitions, so these petitions taken up for joint hearing are being disposed of by this common judgment.

Learned counsel appearing for the petitioners submitted that the Tribunal had erred in dismissing petitioners’ revision petitions holding these to be barred by time and that principles of natural justice had not been violated by the authorities under the Jammu and Kashmir State Evacuees’ (Administration of Property)

Act, Svt. 2006 in directing restoration and delivery of property to respondent Khairati Lal.

Learned counsel for Khairati Lal respondent, on the other hand, submitted that petitioners' revision petitions were misconceived, in that, they had no right to claim the property which legally belonged to Khairati Lal and during his forced absence from the State of Jammu and Kashmir to Pakistan when his parents and other family members had been killed, had been declared as Evacuees' Property. Learned counsel submitted that after having returned to the State and obtained requisite permission from the competent authority under the Jammu and Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006 (hereinafter to be referred as the "Act"), for restoration of land, to facilitate his settlement in his own State and country, Khairati Lal, cannot, by any stretch of reasoning, be deprived of his fundamental right to hold property and in securing possession thereof which had been ordered to be delivered to him pursuant to the orders passed by Assistant Custodian, Rajouri in 1955

which had not been questioned either by the local allottees or other displaced persons.

Learned Counsel strenuously urged that the petitioners had no locus standi to question the restoration of respondent's property to him when their predecessors-in-interest had opted not to question the respondent's right to restoration and possession thereof by not questioning the appellate order of the Custodian General passed in the year 1965.

It was specifically urged by the learned counsel that Veryam Singh, his brothers and mother, the successors-in-interest of S. Mohan Singh had no locus standi to question the order of restoration made in favour of Khairati Lal respondent, because their predecessor-in-interest, S. Sobha Singh, the father of Mohan Singh, had not questioned either the Assistant Custodian's order of 1955 or that of the Custodian made on September 17, 1964.

I have heard learned counsel for the parties, considered their submissions and gone through the orders passed by the authorities under the Act, and by this Court.

Records bear testimony, and even otherwise, it is admitted, on facts, by the parties that the basic order of restoration of property was made in favour of Khairati Lal in the year 1955. All the persons in possession of the property, which had been ordered to be restored to Khairati Lal, appear to have been summoned by Assistant Custodian, Rajouri. Whereas only some of them had appeared in answer to the summons, the others had opted to remain absent. Even bailable warrants are shown to have been issued to the allottees for delivery of possession to Khairati Lal.

S. Mohan Singh, one of the allottees, does not appear to have contested either the order of restoration or delivery of possession passed by the Custodian in this behalf. His brothers had, however, questioned the Custodian's order of September 17, 1964 before Custodian General. Mohan Singh's legal representatives too had not preferred any proceedings still less an appeal to question the order of the Custodian.

In view of Mohan Singh's, predecessor-in-interest of Veryam Singh and others, having all along accepted the order of Assistant Custodian and the Custodian

directing restoration of evacuees' property and delivery of possession thereof to Khairati Lal, Veryam Singh and others, his successors-in-interest, would not be entitled to any fresh hearing in the matter and the submission of their counsel, that by not providing hearing to them, the order of Custodian directing delivery of possession to respondent Khairati Lal was violative of the principles of natural justice and could not be executed, is misconceived and is, accordingly, rejected.

Custodian General's order passed on January 27, 1965 was appealable to the High Court under Section 30 of the Act.

No appeal having been preferred against this order by the petitioners or their predecessors-in-interest had thus provided finality to the order of the Custodian.

Jammu and Kashmir Special Tribunal has dismissed petitioners' revision petitions as barred by time as it had not found any justification for the delay in filing the revision petitions after about twenty two years, besides holding that the petitioners had no locus standi to question the order of restoration made in favour of Khairati Lal respondent.

I will now proceed to examine the submissions of learned counsel for the parties to see as to whether the Tribunal has committed any error in dismissing petitioners' revision petitions as barred by time and whether the petitioners had no locus standi to question the restoration of property in favour of Khairati Lal respondent.

Limitation prescribed for filing revisions, appeals and review against the orders of the authorities under the Act may be found in the Jammu and Kashmir State Evacuees' (Administration of Property) Rules, Svt. 2008. Rule 27 of these Rules prescribes the period for filing appeals, review and revisions. It reads thus:-

“27. Appeal, review and revision

- (1) 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.
- (2) The petition or appeal shall be presented in person or through a legal practitioner or a recognized agent, when the appeal lies to the Custodian General the petition of appeal may be sent by registered post.
- (3) Every petition shall state sufficiently the grounds on which order appealed from is attacked and shall be accompanied by a certified copy of such order unless the appellate authority dispenses with such copy.
- (4) Except as otherwise expressly provided in the Act or in these rules, the procedure laid down in order XLI of Civil Procedure Code shall, so far as applicable, apply to the hearing and the disposal of appeals under the Act.

- (5) Any petition for revision when made to the Custodian shall ordinarily be filed within thirty days of the order sought to be revised, while a petition for revision when made to the Custodian General shall ordinarily be made within sixty days of such date. The petition shall be presented in the same manner as a petition of appeal when it is made to the Custodian but it may be sent by registered post when made to the Custodian General. The petition shall be accompanied by a certified copy of the order sought to be revised and when made to the Custodian General, by also a certified copy of the original order unless the appellate authority dispenses with the production of any such copy.
- (6) An application for review of any order may be made within thirty days of the date of such order and shall be presented either in person or through a legal practitioner or a recognized agent.
- (7) The provisions of sections 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.
- (8) A notice of any appeal, revision or review may be given in addition to the persons concerned, to any other person who, in the opinion of the authority hearing the appeal, the revision or the review, may be interested in the same.
- (9) Any authority hearing any appeal or revision may admit additional evidence before its final disposal or may remand the case of admission of additional evidence and report or for a fresh decision, as such authority may deem fit.”

Perusal of above quoted rule demonstrates the intention of the rule making authorities to prescribe period of limitation for filing appeals, review and for moving motion of revisions against the orders of the authorities under the Act.

Section 30-A of the Act, which was introduced subsequently in the statute by way of amendment vests

additional powers of revision in the Minister Incharge. This section uses the same phraseology as had been employed by the Legislature while enacting section 30 of the Act in terms whereof power of revision against the orders of the officers subordinate to the revisional authorities vests in the Custodian and the Custodian General.

Although section 30-A does not prescribe any period of limitation for moving motion for revision before the Minister Incharge, yet going by the intention of the rule making authority, it is apparent that the Legislature, while enacting section 30-A had not intended to oust the application of the limitation period prescribed under the rules for motions of revisions before the Minister Incharge.

Same period of limitation as prescribed for moving a motion for revision before the Custodian General, would, therefore, by necessary implication, apply to the revisions, cognizance whereof, may be taken by the Minister Incharge of the Evacuees' Property Department under Section 30-A of the Act and now by the Jammu and Kashmir Special Tribunal which has been vested

with the powers which the Minister Incharge would exercise under Section 30-A of the Act.

Hon'ble the Division Bench of this Court had thus, in this background of the facts and law on the point, desired the Tribunal to opine as to whether or not any sufficient cause had been made out by the petitioners for condonation of delay in filing the revision petitions.

As against the finding of the Tribunal that the petitioners had not made out any case to demonstrate sufficient cause which had disabled them in filing revision petitions for a period of twenty two years, the petitioners have not projected any cause, much less sufficient cause, even in these writ petitions, on the basis whereof, the finding of the Tribunal may be faulted.

I am in agreement with the view taken by the Special Tribunal that the petitioners had not made out any case much less projecting sufficient cause for condonation of delay in filing their revision petitions, particularly, when their predecessor(s)-in-interest had not questioned the order of the Assistant

Custodian, Rajouri restoring the property in favour of Khairati Lal, and had acquiesced to the order passed by the Custodian General dated January 27, 1965 for about twenty two years.

Khairati Lal has fundamental right to the properties left by his predecessors-in-interest who had been killed in the holocaust of 1947. He could not thus be deprived of his property. Allotment of his property, during his temporary and forced absence from the State, to the predecessors-in-interest of the petitioners, would not, in any case, vest any such right in the petitioners which can defeat Khairati Lal's ownership rights over his property.

Petitioners' plea that they cannot be deprived of the possession of the property which had been allotted to them during the period of temporary absence of Khairati Lal, over which they had acquired proprietary rights in terms of the Government orders, is mis-conceived because Khairati Lal's return to the State for his permanent settlement would take away all that had been given

to the petitioners and their predecessors-in-interest. This is so because the petitioners or their predecessors-in-interest could claim rights of stay on the property only so long as its status remained as that of an evacuee property. The property in question having ceased to remain as evacuees' property, petitioners cannot be said to have retained any right therein which may defeat the absolute right of an owner, like Khairati Lal over his properties. The petitioners cannot thus deprive Khairati Lal, the owner of the property of the possession thereof.

The writ petitioners had, therefore, no locus standi to question the orders passed by Assistant Custodian, Rajouri and Custodian General, Evacuees' Property Jammu and Kashmir and to file revision petitions before the Jammu and Kashmir Special Tribunal.

For all what has been said above, I do not find any ground to interfere with the conclusion reached

at by the Jammu and Kashmir Special Tribunal in
dismissing petitioners' revision petitions.

These writ petitions lack substance and are,
accordingly, dismissed.

(J. P. Singh)
Judge

JAMMU:
14.07.2008
Tilak, PS