

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case No.OWP No. 725/07
Custodian General v. J&K Special Tribunal and ors
Evacuee Property,
Jammu

Dated:-21.9.12

Coram:

Hon'ble Mr Justice Muzaffar Hussain Attar, Judge

Appearing counsel:

For the Petitioner(s) :Mr Farooq Ahmed Natnoo, Adv.
For the Respondent(s) : Mr Jagjit Rai, Adv. for Res.1
to 3.
Mr Surinder Singh, Adv.
For Res.4.

**Approved for reporting in
Digest/Journal.**

Yes

(Oral)

A petition captioned '*Kartar Singh v. Dina Nath and ors*', seeking restoration of possession of evacuee land, was filed before the Custodian, Jammu. Dina Nath and Nirmal Devi, the respondents in the said petition, filed an application seeking transfer of the case from the files of Custodian, Jammu, to any other competent court for its disposal on merits, before the Jammu and Kashmir Special Tribunal, Jammu (for short called the "Tribunal"). The Tribunal vide its order dt. 1st of June'07, allowed the said transfer application and directed the transfer of the case from Custodian, Jammu, to the Custodian General, Jammu, for its disposal under law. It was also provided that the Custodian General can assign the case and delegate

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powers to any officer in terms of Rule 4 and 4-A or any provision of the Evacuee (Administration of Property) Rules. It is this order, which is called in question in this petition on the ground that the Tribunal has no power to order for transfer of the case from the files of Custodian, Jammu, to the files of Custodian General, Jammu.

Learned counsel for the petitioner submitted that in terms of the Jammu and Kashmir Special Tribunal Act, 1988 (for short called the "Act of 1988"), no power has been conferred to the Tribunal for transferring a case from the files of one authority to another authority. Learned counsel submitted that the order impugned has been passed by the Tribunal without any authority and the same requires to be quashed.

Learned counsel for the respondents, while referring to Section 3 of the Act of 1988, read with Rule 2(g) of the Jammu and Kashmir Special Tribunal Rules, 1986 (here-in-after called the 'Rules of 1986'), submitted that the Tribunal has the power and authority to entertain the transfer application and to order transfer of the case from the files of one authority to another authority. Learned counsel also submitted that in terms of Rule 23 of the Rules of 1986, the Tribunal has also the power to call for the record of subordinate courts/authorities of any case suo moto or on a petition filed by any party and this power

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can be exercised even for transfer of a case from the files of one authority to another authority.

Section 2(b), 3 and 4 of the Act of 1988, Rule 2(g), and Rule 23 of the Rules of 1986 are taken note of:

"Sec.2(b): *"Tribunal" means the Special Tribunal constituted under this Act."*

"Sec.3.Appeals, revisions etc. to the Tribunal

(1) Notwithstanding anything contained in any law made by the State Legislature, but save as otherwise provided in sub-Section (2) an appeal, revision or review petition which under any such law lies to the Government or a Minister shall, from such date as may be appointed by the Government by notification in the Government Gazette, lie or be so preferred, brought, made or presented to the Tribunal and accordingly any reference in any provisions of such law,, which relate to the matters aforesaid, to the Government or the Minister shall be construed as a reference to the Tribunal."

(2) Nothing in sub-section (1) shall apply to any appeal, revisions or review petitions arising by or under the provisions of Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963, or the rules framed thereunder.

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(3) The Tribunal shall also exercise all the jurisdiction, powers and authority in relation to such appeals, revisions and review petitions as the Legislature may by law provide."

"Section 4. Establishment and composition of the Tribunal.

(1) The Government may, by notification in the Government Gazette, establish a Tribunal to perform the functions and to exercise the powers under this Act....."

"Rule 2(g): "Petition" means appeal, revision, review or an application."

"Rule 23. The Tribunal shall have the power to call for the record of subordinate courts/authorities of any case suo moto or on the petition filed by any party."

Section 2(d) defines "Tribunal" which means the Special Tribunal constituted under the Act of 1988. Section 4 of the Act of 1988 provides for establishment and composition of the Tribunal to perform the functions and to exercise the powers under the said Act. Section 4(1) of the Act of 1988, thus, delineates the jurisdiction as also the functions of the Tribunal constituted under the Act of 1988. In terms of Section 3 of the Act of 1988, the Tribunal has been authorized

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to hear appeals, revisions or review petitions, which under any law would lie to the Government or a Minister from the date as was appointed by the Government by notification in the Government Gazette and from the appointed date, any reference to any provision of such law which relates to the **"matters"** aforesaid, and "to the Government or Minister" shall construe as a reference to the Tribunal. The Tribunal has, thus, been authorized to hear appeals, revisions or review petitions which under any law could be heard by the Government or the Minister.

The 'Minister' in terms of the Jammu and Kashmir State Evacuees (Administration of Property) Act, Svt. 2006 (for short called the "Act of Svt. 2006"), was authorized by Section 30-A of the said Act, to either of his own motion or on an application made to him in this behalf, call for the record of any proceedings' in which the Custodian or the Custodian General had passed an order under the provisions of the said Act for the purposes of satisfying himself as to the legality or propriety of any such order and would pass, in relation thereto, such order as he would deem fit. It is also provided under Section 30-A that the Minister incharge shall not pass an order under the said Section prejudicial to any person, without giving him an opportunity of being heard.

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Section 30-A of the Act of Svt.2006, is taken note of:

"Section 30-A. Powers of revision of the Minister Incharge.

The Minister Incharge of the Evacuee's Property Department may at any, time, either on his own motion or on an application made to him in this behalf, call for the record of any proceeding in which any Custodian or Custodian General has passed an order under the provisions of the this Act for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:

Provided that the Minister Incharge shall not pass an order under this section, prejudicial to any person, without giving him an opportunity of being heard."

In view of Section 30-A of the Act of Svt. 2006, the Minister had the power to call for the record either suo moto or on a petition by some person and could pass appropriate orders in respect of any of the matters pending before the Custodian or the Custodian General. In terms of Section 3 of the Act of 1988, the Tribunal would, thus, exercise only that power which the Minister incharge exercised in terms of Section 30-A of the Act of Svt. 2006. Any other power could not be exercised by the Tribunal.

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The Tribunal is created by the Statute. The jurisdiction of the Tribunal is delineated by Act of 1988 read with Section 30-A of the Act of Svt.2006, and thus, it cannot exercise any power which is not conferred upon it by the Act. Dealing with the provisions of Act of 1988 in conjunction with the provisions of Act of Svt.2006, it becomes apparent on the face of record that the Tribunal had no jurisdiction to entertain the application seeking transfer of the case from the files of Custodian, Jammu, to the Custodian General. Rule 2(g) of the Rules of 1986, has to be read in conjunction with Sections 3 and 4 of the Act of 1988. By resorting to the Rule, it cannot be said that what is not provided by the parent Act can be conferred upon the Tribunal by the Rule. The expression "petition" used in Rule 2(g) of the Rules of 1986, would not mean a 'transfer application', and would have reference to only appeal, revision or review petition. Since the Minister incharge had the power only to call for the record in terms of Section 30-A of the Act of Svt.2006, the Tribunal had the jurisdiction to entertain only such petitions and no other petition.

In view of the above discussion, the Tribunal has entertained the transfer application without having jurisdiction to do the same and has exercised the powers of transferring the case which powers are not conferred upon it by the Statute.

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For the above stated reasons, this petition is allowed and disposed of in the following manner:-

1/ By issuance of writ of certiorari, order impugned dt. 1st of June'07, passed by the Tribunal is quashed. The aggrieved party, however, shall be at liberty to file appropriate proceedings, if it is still interested in seeking transfer of petition from the files of Custodian to any other competent authority.

2/ The parties shall appear before the Custodian, Jammu, on 8th of Oct'12.

(Muzaffar Hussain Attar)
Judge

Jammu
Dt. 21.9.12

SS Khalsa/