

**HIGH COURT OF JAMMU & KASHMIR AT**  
**JAMMU**

**OWP No. 1010/2010**

**CMA No. 1378/2010**

Date of Order: 27.02.2015

Custodian General

vs.

Hassan Din and ors.

**Coram:-**

**Hon'ble Mr. Justice Janak Raj Kotwal, Judge**

**Appearing counsel:**

For the petitioner/appellant(s): Mr. F. A. Natnoo, Advocate

For the respondents(s): Mr. Nirmal Kotwal, Advocate

(i)	Whether to be reported in Press, Journal/Media:	Yes/No
(ii)	Whether to be reported in Journal/Digest:	Yes

1. This petition under Article 226 of the Constitution of India read with section 103 of the Constitution of Jammu and Kashmir is directed against order dated 26.05.2010, whereby learned Special Tribunal, Jammu in a revision petition filed by the respondents has set aside order/notice dated 01.04.2008 passed/issued by the Custodian General J&K Government under sub section (5) of section 30 of the J&K State Evacuees (Administration of Property) Act, Svt, 2006 (hereinafter for short, the E.P.Act).
2. Facts leading to this petition have been stated in detail by the learned Tribunal in the impugned order, which I may, however, restate precisely:

In the year, 1995 respondent Nos. 2 & 3 filed an application under section 8 of the E.P. Act before the then Custodian Jammu for restoration of land under Khewat No. 34 and 35 situated in village Digiana Tehsil, Jammu. The Custodian accepted the claim of the respondents by his order dated 28.10.1998 and directed the claimants to lay claim for compensation of the said land under Section 14-A of the E.P. Act. After a period of about 14 months, 17 persons, who were in possession of the land in question, filed an appeal against the order of the Custodian before the Custodian General, who allowed the same by holding that claim under Section 8 of the Act was time barred and remanded the case back to the Custodian for passing fresh order. On remand, the Custodian by his order dated 13.11.2003 dismissed the claim of the respondents as time barred. Respondents assailed order dated 13.11.2003 in appeal before the Custodian General, who by his order dated 09.03.2005, allowed the appeal, set aside the Custodian's order dated 13.11.2003 and upheld the Custodian's order dated 28.10.1998.

3. Pursuant to the Custodian General's order dated 09.03.2005, read with the Custodian's order dated 28.10.1998, the Custodian on 25.04.2007 seems to have submitted the case of the respondents for

payment of compensation of the land restored in their favour to the Custodian General. The Custodian General, however, at this stage, instead of passing order in regard to payment of compensation, after examining the record relating to the restoration of the land, by his order dated 01.04.2008 took a view that the order dated 09.03.2005 (supra) passed by the then Custodian General was not in consonance with the law and necessitates re-examination of the compensation case submitted by the Custodian. The Custodian General, therefore, resolved to satisfy himself about the correctness and legality of order dated 09.03.2005 passed by his predecessor, initiated proceedings under sub section (5) of section 30 of the E.P.Act and issued notice to the restorees, respondents herein, directing them to appear in his court.

4. The respondents instead of appearing before the Custodian General, assailed order/notice dated 01.04.2008 passed/issued by him in a revision before the learned Special Tribunal, Jammu. They assailed the order, mainly, on the ground that the Custodian General has no jurisdiction to pass such order as the Custodian General cannot suo moto review order of his predecessor. Learned Special Tribunal allowed the revision and set aside order/ notice dated 01.04.2008

taking the view that the Custodian General does not have suo moto power to review his own order as such power can be exercised only on an application by an aggrieved person.

5. The question raised for determination in this writ petition primarily and mainly is, whether the Custodian General can suo moto exercise his powers of review under sub section (5) of section 30 of the E.P.Act.
6. Mr. F. A. Natnoo, learned counsel for the petitioner, submitted that the Custodian General has power to review the order passed by him or his predecessor suo moto even if no application for review is filed and can review the order if case for review is made out. In support, Mr. Natnoo relied upon a Division Bench judgment of this Court reported as 1976 KLJ 347. Mr. Natnoo submitted that learned Special Tribunal committed illegality by relying upon Single Bench judgment of this Court reported as 1989 KLJ 146 and ignoring the reported Division Bench judgment.
7. Per contra, Mr. Nirmal Kotwal, learned counsel for the respondents, supported the order of the learned Special Tribunal. Mr. Kotwal submitted that learned Special Tribunal has rightly relied upon the Single

Bench judgment as the same is based on an earlier Full Bench judgment reported as 1970 KLJ 26.

- 8. Sub section (5) of section 30 of the E.P. Act confers power on the Custodian General and other officers of the Evacuee Property department to review their own order. It reads:

“(5) The Custodian General, Custodian, Additional Custodian or authorised Deputy Custodian, but not a Deputy or an Assistant Custodian, may, after giving notice to the parties concerned, review his own order.”

- 9. Likewise sub section (4) of section 30 confers revisional power on the Custodian General and the Custodian to call the record of officers subordinate to them. Sub section 4 reads:

“4. The Custodian General or the Custodian may, at any time, **either on his own motion or on application made to him in this behalf**, call for the record of any proceedings under this Act which is pending before, or has been disposed of, by an officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of any order passed in the said proceeding and may pass such order in relation thereto as he thinks fit:  
Provided that the Custodian General or the Custodian shall not under this sub-section pass an order revising or modifying any order affecting any person without giving such person a reasonable opportunity of being heard:

.....  
.....”

(Emphasis supplied)

10. It is important to note that whereas sub section (4) of section 30 by providing that revisional power can be exercised by the Custodian General or the Custodian 'either on his own motion or on an application made to him in his behalf' vests suo moto power of revision on the Custodian General and the Custodian, sub section (5) is silent in this behalf. It does not say whether the power of review is to be exercised only on application of an aggrieved person or can be exercised suo moto.
11. Question as regards the power of the Custodian General to review his own order suo moto was raised before a Division Bench of this Court in Begum Hamida Malik v. State of J&K and ors. KLJ 1976 347 in which the learned Division Bench held that 'the words "review his own order" occurring in section 30(5) are of wide amplitude and enable the Custodian General to review the order suo moto.' This question also came to be raised before learned Single Judge in Evacuee Property Department v. Zahood-ud-Din 1989 KLJ 146. Learned Single Judge, however, held that sub section (5) of section 30 of the E.P. Act does not authorise the Custodian General or the Custodian to act suo moto for reviewing his own order or order of his predecessor. Learned Single Judge supported its

view further by observing that Order 47 Rule 1 CPC too does not empower reviewing the order suo moto and observed further that only the aggrieved person has a right to move for review and the petitioner in that case was in no way an aggrieved party.

12. Both the authorities of this Court came to be cited before the learned Special Tribunal, one by the petitioners' counsel and the other by the respondents' counsel. Learned Member of the Special Tribunal, however, did not rely on the reported judgment of the Division Bench in Begum Hamida Malik's case (supra), reason being that, according to the learned Member, the same was earlier in time than the judgement in Zahood-ud-Din's case and later judgment was required to be followed. Learned Member also observed that in the earlier judgment, question of power of review of the Custodian General was not involved directly, whereas in the later judgment said question was directly in issue.
13. I may say straight that the view taken by the learned Member of the Special Tribunal in not relying on the Division Bench judgment of this Court is totally erroneous and contrary to the law governing the application of precedent. Correct it is that the later authority on a point shall prevail on an earlier authority on the same point but this principle applies

when the two judgments are by co-ordinate Benches. Later authority, however, will not prevail and will have to give way to earlier authority if the said earlier authority has been laid down by a larger Bench.

14. Here the Division Bench judgment in Begum Hamida Malik's case, even though earlier in time, should have been followed by the learned Special Tribunal and not the Single Judge judgment in Zahood ud Din's case.
15. Learned Member of the Special Tribunal has further fallen into error by observing that the question of the Custodian General's power of review was not directly involved in Begum Hamida Malik's case, whereas it was directly in issue in Zahood-ud-Din's case. Question as regards Custodian General's power was directly and specifically taken up for consideration by the learned Division Bench in Begum Hamida Malik's case. Contention raised at the bar by the learned counsel before the learned Division Bench was that the Custodian General could not suo moto review the order as section 30(5) puts fetters on his power and discretion but the learned Division Bench held that the words "review his own order" occurring in section 30(5) are of wide amplitude and enable the Custodian General to review the order suo moto. The judgment rendered by the learned Single Judge in Zahood-ud-Din's case indicates that judgment in Begum Hamida



Malik's case might not have been brought to the notice of learned Single Judge.

16. Arguments of Mr. Kotwal, learned counsel for the respondents that the Single Bench judgement in Zahood-ud-Din's case is based on the earlier Full Bench Judgment reported as 1970 KLJ 76, is not factual correct and has no substance. Learned Full Bench in the said reported judgment (Bakshi Ragnath's case) did not held that the Custodian General cannot exercise power of review suo moto. Reading of the judgment in Zahood-ud-Din's case would show that learned counsel for the petitioner in that case had referred to the Full Bench Judgment in Bakshi Ragnath's case in support of his submission that the Custodian General can exercise powers to review his order or order of his predecessor in office suo moto. Learned Single Judge, however, observed that judgment relied upon by the petitioner's counsel does not come to his rescue in this behalf taking note that in the said Full Bench judgment, their Lordships have held that the words "review his own order" used in section 30 of the Act mean that the Custodian General can review orders passed by his predecessor in office and power to review should be analogous to those now given by the Code of Civil Procedure under Order 47 Rule 1. Learned Single Judge in Zahood-ud-

Din's, as a matter of fact has taken the view that sub section (5) of section 30 of the E. P. Act does not authorise the Custodian General or the Custodian to act suo moto for reviewing any order passed by him or his predecessor on the basis of the language of the section only and not on the basis of the Full Bench judgment in Bakshi Ragnath's case.

17. I would, thus, restate precisely that the power of review conferred on the Custodian General and other officers under sub section (5) of section 30 of the J&K State Evacuees (Administration of Property) Act can be exercised suo moto as well as on the application of an aggrieved person. This power can be exercised in regard to order passed by the Custodian General/officer concerned himself or by his predecessor in office. The view taken by the learned Special Tribunal in this regard is totally erroneous and contrary to law.
18. For all that stated and discussed above, this petition has merit and is allowed. In the result, revision filed before the learned Special Tribunal stands dismissed. The parties are directed to cause their appearance before the learned Custodian General on 20.03.2015 in response to the order/notice dated 01.04.2008. The Custodian General shall proceed in the matter according to law/rules and it shall be open for the

respondents to raise any objection against necessity of exercising the powers of review.

19. Copy of this judgment be sent to the Special Tribunal, Jammu as well as the Custodian General.

**(Janak Raj Kotwal)**  
**Judge**

JAMMU  
27.02.2015  
Karam Chand\*