

metalled road on which public vehicles and the general public are allowed to pass. In these circumstances, the order made by the Settlement Commissioner on 7-3-1960 treating the entire property as one unit and transferring the same to Habib Ahmad Khan was open to serious objection, and was bound to be set aside in appeal or revision. The Settlement Commissioner had no power to combine entirely independent and separate residential premises into one unit for the purpose of transferring them to a single applicant. The petitioners' predecessor being in possession of only one portion of the property, and the same having been transferred to him by the learned Settlement Commissioner in review, after holding the entire property to be divisible into four portions, the petitioners have no genuine grievance. They could not be transferred more than one house.

For the foregoing reasons, the petition fails and is hereby dismissed.

Leave refused.

1974 S C M R 92

Present: Hamoodur Rahman, C. J. and Muhammad Gul, J

MUHAMMAD ALAM KHAN AND 3 OTHERS—Petitioners

versus

MAHMUD AHMAD AND 2 OTHERS—Respondents

Civil Petition for Special Leave to Appeal No. 527 of 1972, decided on 1st October, 1973.

(From the judgment and order dated 19-9-1972 passed by the Lahore High Court Lahore, in Letters Patent Appeal No. 169 of 1971).

Pakistan (Administration of Evacuee Property) Act (XII of 1957)—

— S. 3—Treatment of property as "evacuee"—Government land granted to non-Muslims under Colonization of Government Lands (Punjab) Act (V of 1912)—Government issuing notification and deciding that State land abandoned by non-Muslim grantees be treated as evacuee property—Property consequently shown in revenue records to be in possession of Rehabilitation Commissioner—*Held*: land in circumstances "treated" as evacuee property. [p. 94]A

Sharif Hussain Bokhari, Advocate Supreme Court instructed by *Rana Maqbul Ahmad Kadri*, Advocate-on-Record for Petitioners.

Ch. Qadir Bakhsh, Advocate Supreme Court instructed by *Sh. Abdul Karim*, Advocate-on-Record for Respondent No. 2.

Nemo for the Remaining Respondents.

Date of hearing: 1st October 1973.

JUDGMENT

MUHAMMAD GUL, J.—The dispute in this leave petition concerns what was once State land measuring 223 *kanals* 13 *marlas* situate in Chak No. 8/GB, district Sheikhpura. Prior to Independence it was granted to a non-Muslim on statement of conditions issued under the Colonization of Government Lands (Punjab) Act, 1912, under which the grantee was to become occupancy tenant and ultimately proprietor in the land on making certain periodical payments. The grantee became an evacuee and the land was re-allotted on temporary basis to incoming refugees. On

18th June 1951 the Additional Naib Tehsildar made an order purporting to extinguish the rights of the evacuee grantee owing to his failure to deposit Zar-e-Malkyat, and for the resumption of the land. Shortly thereafter, that is to say on the 11th July 1951, the provincial Government issued a memorandum stating that it had been decided to treat the State land abandoned by non-Muslim grantees as evacuee property to be utilised for the re-settlement of refugees. In July 1952 by another memorandum the provincial Government directed all grants of State land whether or not any payment had been made for acquisition of occupancy or proprietary rights therein should be treated as evacuee property for the purposes of Rehabilitation and Settlement Scheme. As a result, the land in dispute continued to be shown in the revenue records to be in possession of the Rehabilitation Commissioner notwithstanding the order dated 18th June 1951 by the Additional Naib Tehsildar purporting to resume the land to the Government.

2. On 18th January 1963, the land was allotted under the Rehabilitation and Settlement Scheme to Mahmud Ahmad, a claimant displaced person (respondent No. 1 herein) in satisfaction of his claim. He later sold the land to Muhammad Munshi (respondent No. 2 herein) by a registered sale-deed dated 22nd February 1963. Manzur Hussain Shah (petitioner No. 2 herein) an allottee of portion of the land in dispute under the Ejected Tenants Scheme issued under the 1912 Act filed an appeal against the allotment in favour of respondent No. 1 on the ground that the land in dispute was State land and not evacuee land and, therefore it could not have been allotted to respondent No. 1 under the Rehabilitation and Settlement Scheme. The appeal was dismissed by the Deputy Settlement Commissioner *vide* order dated 29th October 1963. This was followed by separate revision petition before the Additional Settlement Commissioner by each of the petitioners herein, who were allotted different portions of land in dispute under the Ejected Tenants Scheme. These revisions were dismissed by a single order on 1st February, 1964. A further revision by Manzur Hussain Shah, Petitioner No. 2, before the Settlement Commissioner, however, succeeded. The learned Settlement Commissioner *vide* order dated 19th January 1965 gave effect to the order of resumption made by the Additional Naib Tehsildar on 18th June 1951 and held that the aforesaid office memoranda of July 1951 and July 1952 directing the State land to be treated as evacuee property in the relevant circumstances could not operate retrospectively so as to nullify the order of resumption dated 18th June 1951, by the Additional Naib-Tehsildar. It was further held, that the land in dispute being State land could not have been allotted to respondent No. 1 under the Rehabilitation and Settlement Scheme. As a result, allotment of the entire land in dispute under the Ejected Tenants Scheme was restored in favour of the petitioners herein.

3. Aggrieved by the above order respondents Nos. 1 and 2 moved Writ Petition No. 287/R of 1965 which was heard by the learned Single Judge of Lahore High Court who *vide* order dated 24th June 1971 set aside the order of the learned Settlement Commissioner and remanded the case for reference to the Custodian, Evacuee Property, under section 41 of Act XII of 1957, to determine whether in the circumstances of the case the land in dispute could be treated as evacuee property. According to the learned Single Judge, the decisions of the various Settlement Authorities, treating the land in dispute, as evacuee or as the case may be, non-evacuee, were without jurisdiction because under the aforesaid statute the Custodian

had the exclusive jurisdiction to determine the evacuee character of a property.

4. Two cross appeals under the Letters Patent were filed against the order of the learned Single Judge. In the appeal by the petitioners, the plea taken was, that the land was resumed by the Naib-Tehsildar under instructions from the Collector and therefore, it had reverted to the Government before the aforesaid two office memoranda were issued and that these memoranda could not operate retrospectively to affect the status of land which has already been resumed. The plea of the respondents on the other hand was, that in the revenue records the land had throughout been shown in possession of the Rehabilitation Commissioner. This demonstrates its evacuee character. Therefore any reference to the Custodian to determine its character was otiose. The learned Judges of the Division Bench accepted the respondents' appeal and rejected that of the petitioners and held that the entries in the revenue records consistently showed the property to be in possession of the Rehabilitation Commissioner. This amounted to its "treatment" as evacuee property prior to 1st March 1957. They further opined that the order of resumption dated 18th June 1951 by the Naib-Tehsildar being opposed to the instructions issued by the provincial Government was *ultra vires*.

5. The petitioners as allottees under the Ejected Tenants scheme, seek leave for appeal against the judgment of the Letter Patent Bench. Their learned counsel repeated the argument which had earlier weighed with the learned Settlement Commissioner to treat land in dispute as non-evacuee property to sustain its allotment to the petitioners under the Ejected Tenants Scheme. It is noteworthy that both before the learned single Judge and the Letters Patent Bench, the main question debated was whether prior to 1st March 1957, the land in dispute was "treated" as evacuee property within the meaning of section 3 of Act XII of 1957. On this short question, the learned Judges of the Division Bench in our opinion rightly came to the conclusion that entries in the successive revenue records clearly showed that the land was in possession of the Rehabilitation Commissioner which made it manifest that the land was "treated" as evacuee property throughout after the original grantee had become an evacuee at the time of Independence. This finding is supported by the entries in the revenue record. Another significant fact in the case is that the Government had never asserted its rights as owner since the original non-Muslim grantee abandoned the land in dispute in 1947.

6. We do not find any force in this petition which is hereby dismissed.

Petition dismissed.

1974 S C M R 94

Present: Hamoodur Rahman, C. J. and Muhammad Gul, J

INAMUL HAQ AND ANOTHER—Petitioners

versus

THE PAKISTAN REFUGEES REHABILITATION FINANCE
CORPORATION AND ANOTHER—Respondents

Civil Petition for Special Leave to Appeal No. 119 of 1973. decided on

1994 S C M R 456

[Supreme Court of Pakistan]

Present: Abdul Shakurul Salam and Muhammad Afzal Lone, JJ

Capt. ASMAT HAYAT KHAN and others---Appellants

versus

YOUSAF MASIH and others---Respondents

Civil Appeal No. 802 of 1984, decided on 22nd January, 1991.

(On appeal from the judgment of the Lahore High Court, Lahore, dated 5-3-1975, passed in Writ Petition No. 776-R/69).

(a) Displaced Persons (Land Settlement) Act (XLVII of 1958)---

---S. 2(3)---West Pakistan Rehabilitation and Settlement Scheme, 1956, para. 29---Constitution of Pakistan (1973), Art. 185---Houses built by respondents on Ghair Mumkin Abadi---Such site was allotted in favour of appellants as agricultural land---Validity---For purposes of allotment in terms of para. 29, Rehabilitation and Settlement Scheme, 1956, only that classification of land as entered in Special Jamaband, had to be taken into consideration---Site in question, was recorded in special Jamabandi as Ghair Mumkin Abadi; therefore, it could not have been dealt with under the provisions of Displaced Persons (Land Settlement) Act, 1958 and allotted as agricultural land---Allotment of such site as an agricultural land in favour of appellants was thus void ab initio. [p. 458] A

(b) Displaced Persons (Land Settlement) Act (XLVII of 1958)---

---S. 2(3)---Constitution of Pakistan (1973), Art. 199---Constitutional jurisdiction, exercise of---Question of delay in approaching High Court---Such question having not been raised before High Court, could not be raised before Supreme Court in appeal---Objection as regards delay in approaching High Court was not warranted for respondents were in settled possession of their houses and as soon as appellants interfered with peaceful enjoyment of property respondents agitated first before Chief Settlement Commissioner and thereafter through invocation of Constitutional jurisdiction---Constitutional petition was thus competent and could not have been thrown away on plea of laches---Judgment of High Court setting aside allotment in question, being in conformity with law was maintained in circumstances. [p. 458] B

Malik Muhammad Afzal and Tauqir Afzal, Advocates Supreme Court instructed by Hamid Aslam Qureshi, Advocate-on-Record for Appellants.

M.S. Baqar, Advocate Supreme Court instructed by Sh. Salahuddin, Advocate-on-Record for Respondents.

Date of hearing: 22nd January, 1991.