1961

March 10.

BHAROO MAL AND OTHERS

v.

CUSTODIAN GENERAL, EVACUEE PROPERTY.

(K. SUBBA RAO, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Evacuee Property—Custodian, Powers of—Whether can determine and recover rent in summary manner—Administration of Evacuee Property Act, 1950 (31 of 1950), s. 10—Administration of Evacuee Property (Central) Rules, 1950, r. 10.

The appellants exchanged their property in Pakistan with the property of an evacuee in India. They applied for confirmation of the transaction which was granted by the Deputy Custodian. Later, the Custodian revised the order and set aside the confirmation and ordered the ejectment of the appellants from the properties which were the subject of exchange. He further ordered that they should render accounts of the rents and profits realised by them from this property. The appellants contended that the Custodian had no jurisdiction to pass any order requiring them to render accounts of the rents and profits.

Held, that the Custodian had no power under the Administration of Evacuee Property Act to direct a person in unauthorised possession of evacuee property to render accounts of rents and profits thereof without resorting to the ordinary remedy provided by law, that is, by way of suit.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 7 to 9 of 1959.

Appeals by special leave from the judgment and order dated June 25, 1955, in cases Nos. 0551-R/CG/54, 0602-R/CG/54 and 0503-R/CG/54 of 1954.

Achhru Ram and *B. R. L. Ayengar,* for the appellants.

Gopal Singh and *T. M. Sen,* for the respondents.

1961. March 10. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR, J.—These are appeals by special leave from three orders against an order passed on March 12, 1954 by the Custodian General, Evacuee Property, disposing of three revision petitions, two of which were preferred by one Bharoo Mal (since deceased)

and one by his wife, and now widow, Padma Devi. Even though a common order was passed by the Custodian-General, three appeals have been preferred before this Court.

The facts leading upto the appeals are briefly as follows:

An agreement was entered into between Bharoomal and one Nanan Begum on April 11, 1948 for the exchange of Bharoomal's properties at Sukkar in Sind, Pakistan for Nanan Begum's properties at Lucknow. Prior to that, on April 7, 1948 a similar agreement was entered into between Padma Devi and one Tahir Ali. It is common ground that in pursuance of the agreement Bharoomal and Padma Devi entered into possession of the properties obtained by them in exchange from Nanan Begum and Tahir Ali respectively and the latter entered into possession of the properties belonging to the former situated in Sukkar. The deed of exchange was to be executed within two years of the date of agreement; but in fact it was never executed. Consequently in the year 1950 Bharoomlal and Padma Devi instituted three suits for specific performance. These suits were decreed and sale deeds conveying certain properties to Bharoomal and certain properties to Padma Devi were executed by the Court in February, 1952.

In October, 1949 the U. P. Administration of Evacuee Property Ordinance, 1949 (I of 1949) was promulgated and shortly thereafter the Administration of Evacuee Property (Chief Commissioners Provinces) Ordinance, 1949 (12 of 1949), promulgated by the Central Government, was extended to the United Provinces replacing U. P. Ordinance I of 1949. Nanan Begum and Tahir Ali having migrated to Pakistan, Bharoomal and Padma Devi made three applications under cl. 25(2) of the Central Ordinance for confirmation of the exchanges in their favour. These applications were granted by the Deputy Custodian of Evacuee Property in the year 1950. Sometime in the year 1951 the Custodian of Evacuee Property *suo motu* revised the orders of the Deputy Custodian passed in the year 1950 on the ground that the agreements on the basis

1961

Bharoo Mal & Others v. Custodian General, Evacuee Property

Mudholkar J.

of which the applications for confirmation were made by Bharoomal and Padma Devi do not amount to transfers and that consequently they could not be confirmed. He also held that the deeds of transfer obtained by Bharoomal and Padma Devi from the Court were not confirmed by the Custodian and that, therefore, the possession of Bharoomal and Padma Devi over the properties in question which were admittedly evacuee properties was unauthorised. He, therefore, ordered that possession of the properties be taken back from Bharoomal and Padma Devi and that they should be required to account for the rents and profits realised by them from these properties. These persons preferred applications for revision before the Custodian-General of Evacuee Property. Their applications were, as already stated, rejected by him.

In the appeal to this Court the only ground pressed is that the Custodian had no jurisdiction to pass an order requiring the appellants to render accounts of the rents and profits from the properties in their possession. Mr. Achhruram, who appears for them, accepts the position that the orders of the Deputy Custodian of Evacuee Property passed in the year 1950 confirming the transfers were rightly set aside by the Custodian in revision. Therefore, only a short question falls to be determined by us and that is whether the Custodian was right in further ordering the appellants to render accounts of rents and profits from the properties in their possession.

We asked Mr. Gopal Singh, who appears for the Custodian-General, to show us any provision in the Act or in the rules which authorises the Custodian of Evacuee Property to direct a person who is alleged to be in unauthorised possession of evacuee property to render accounts for rents and profits of those properties without resorting to the ordinary remedy provided by law, that is, by way of suit.

Mr. Gopal Singh contends that as soon as Nanan Begum and Tahir Ali migrated to Pakistan their property in India automatically vested in the Custodian of Evacuee Property under cl. 5(1) of the U. P. Ordinance I of 1949 and continued to vest under Central

Ordinance No. XII of 1949 which replaced the U. P. Ordinance. By virtue of sub-s. (2) of s. 8 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950) which came into force on April 18, 1950, the property which is vested in the Custodian under any law repealed by the Act shall be deemed to be evacuee property within the meaning of the Act and shall be deemed to have vested in the Custodian appointed under that Act. The Central Ordinance XII of 1949 was one of the laws repealed by the Act. He then referred to s. 10 and contended that thereunder the Custodian has the power to recover from an unauthorised occupant of evacuee property the rents and profits realised by him during the period of his unauthorised occupation. Sub-section (1) of s. 10 reads thus:

> "Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto."

According to him the words "for the purposes of securing, administering, preserving and managing any evacuee property" effectively confer on the Custodian power to recover rents and profits of the property from the person in possession. There is nothing in the words relied on from which a power of the kind contended for by learned counsel can be deduced. Sub-section (2) of s. 10 specifically enumerates some of the powers of the Custodian. Learned counsel was not able to point to anything in the sub-section which confers power on the Custodian to recover rents and profits from a person in unlawful possession of the properties. Learned counsel then referred to r. 10 and said that this rule would entitle the Custodian to determine and recover rents and profits from unauthorised occupants of evacuee property. Sub-rule 1

1961

Bharoo Mal & Others v. Custodian General, Evacuee Property

Mudholkar J.

of r. 10 undoubtedly authorises the Custodian to recover possession of property from the evacuee or from a person whether holding on behalf of, or under the evacuee or otherwise and not having a lawful title to possession thereof as against the Custodian. There is nothing in this sub-rule which further entitles the Custodian to determine and recover rents and profits from an unauthorised occupant of evacuee property. Sub-rule 2 of r. 10 empowers the Custodian to issue a notice to a tenant or a licencee in possession of evacuee property whom the Custodian cannot eject or does not want to eject. For one thing this sub-rule cannot apply to a person who is alleged to be in unauthorised occupation of evacuee property. Then again it does not confer any power on the Custodian to determine rents and profits or to recover rent in a summary manner. In the circumstances we must hold that this provision also does not help the respondent. Such being the legal position, we must quash and set aside that portion of the order of the Custodian, confirmed by the Custodian General, which requires the appellants to pay rents and profits in respect of properties of Nanan Begum and Tahir Ali in their possession. Both parties will, however, be at liberty to take such steps as may be open to them at law for establishing or enforcing their respective claims.

Costs of the appeal will be borne by the respondents. As the appeals were argued together there will be only one hearing fees.

Appeals allowed.