

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

OWP No. 798/2008 (O&M)

Reserved on : 14.09.2022.

Pronounced on : 20.09.2022.

Custodian General

.....Appellant(s)/Petitioner(s)

Through: Mr. F. A. Natnoo, Advocate.

Vs

J and K Spl Tribunal and others

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

01. The present petition has been filed by the petitioner – Custodian General, Evacuee Property being a statutory authority appointed under Section 3-(A) of the J&K Evacuee's Administration of Property Act which has the administrative quasi-judicial powers defined under the said Act which inter-alia include the powers as an Appellate & Revisional Authority.

02. The present writ petition raises important legal questions of law and also questions of general importance pertaining to the cases under the Evacuees Property Act and the petitioner, through the medium of the present writ petition, has challenged an order dated 23.04.2008 passed by the learned J&K Special Tribunal, Jammu, whereby the Tribunal while entertaining the revision petition against the order dated 10.04.2008 passed by the Custodian General, Evacuee under Section 30(1-b) of the J&K State Evacuees (Administration of Property

Act) Samvat 2006, and while accepting the same, directed the Custodian General to issue fresh notice to the parties and pass a fresh order on merits after hearing them.

03. The following questions of law arise in the present petition:

- A) *“Whether in presence of 30(1)(c) of the Evacuees (Administration of Property) Act Samvat (2006), respondent No. 1 is legally competent and justified in firstly entertaining the revision petition filed by the respondent No. 2 and while acceptance of the same by setting aside the order directing the petitioner to issue fresh notice to the parties, hear them and pass fresh orders on merits.*
- B) *Whether the provision of J&K Special Tribunal Act, 1988 or Evacuees (Administration of Property) Act empower the respondent No. 1 to entertain revision petition against the orders of the petitioner passed under Section 30(1)(b) of the Evacuees (Administration of Property) Act*
- C) *Whether the minister Incharge of the Evacuee Property Department may at any time either on his own motion or an application made to him in that behalf call for the record of any proceeding in which any Custodian or Custodian General has passed an order under the provisions of the 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 think fit by exercising the power under Section 30(a) of the Evacuees (Administration of Property) Act Samvat 2006.*
- D) *Whether the minister Incharge has been substituted by J&K Special Tribunal under Section 3 of the J&K Special Tribunal Act 1988.”*

04. This Court vide order dated 12.07.2022 has already set respondent Nos. 2 & 3 *ex-parte* as none had caused appearance on behalf of respondent Nos. 2 and 3 on next day.

05. Learned counsel for the petitioner has vehemently argued that under Section 30 of the J&K State Evacuees (Administration of Property) Act Svt. 2006, any person, who is aggrieved by an order made under Section 8, Section 14 [Section 25, Section 29-A], may prefer an appeal to the High Court against

the order of the Custodian General under Section 30(c) of the aforesaid Act. For facility of reference Section 30 of the aforesaid Act is reproduced as under:-

“30. Appeal, review and revision:

01) Any person aggrieved by an order made under Section 8, Section 14, [Section 25, Section 29-A] may prefer an appeal]-

(a) to the Custodian, where original order has been passed by a Deputy or an Assistant Custodian;

(b) to [the Custodian General], where the original or appellant order has been passed by the Custodian, an Additional custodian or an authorized Deputy Custodian;

(c) [to the High Court, against the order of Custodian General.

Provided that no appeal shall lie to High Court against concurrent finding of the Custodian and the Custodian General]...”

06. The further stand of the petitioner is that since the Custodian General has passed the order under Section 30 (1)(b) of the Act of 2006 against two orders passed by Deputy Custodian, Rajouri dated 09.06.1999 and 18.02.2005 by way of an Appellate Authority and, accordingly, as per Section 30(1)(c), the remedy is to approach to the High Court against the order of Custodian General provided that no appeal shall lie to the High Court against concurrent finding of the Custodian and Custodian General.

07. The further stand of the petitioner is that respondent No. 1 has exercised the power of revision against the order of the Custodian General who has no jurisdiction to entertain the revision petition by exercising the power of the revisional authority against the order passed by the Custodian General and, accordingly, he has sought quashment of the same.

08. As per the petitioner, the only remedy which was available to the respondents was to prefer an appeal to the High Court against the aforesaid order with the rider that no appeal shall lie to the High Court against concurrent finding of the Custodian and Custodian General.

09. Learned counsel for the petitioner has argued that by entertaining the revision petition filed by the respondent No. 1 and by recording positive findings, the respondent No. 1 has assumed the power which does not vest in it under law and, accordingly, he prayed that the judgment impugned be set aside.

10. The further stand of the petitioner is that the power of the revision under Section 30(1)(a) is not extendable to the cases where specific remedy is available under law and, therefore, in the light of the specific bar, the order passed by the Tribunal is without jurisdiction and merits quashment.

11. The learned counsel for the petitioner has relied upon the judgment of this Court in case reported in **2012 (4) JKJ 417 [HC]** titled "*Custodian General Evacuee Property, Jammu Vs Special Tribunal & others*".

12. For facility of reference, para 08 of the aforesaid judgment is reproduced as under:-

"08. 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 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."

13. I have heard learned counsel for the petitioner and perused the record.

I have also gone through the relevant provisions of Act of 2006. The petitioner has taken shelter under Section 30(1)(c) of the Act of 2006,

wherein it has been emphasized that any person aggrieved by an order made under Section 08, Section 14 may prefer an appeal to the High Court against the order of the Custodian General in terms of Section 30(1)(c) of the Act of 2006.

14. There is no quarrel with respect to the aforesaid statutory provision.

However, in the present case, respondent Nos. 2 and 3 have invoked the provisions of Section 30-A of the Act of 2006 for setting-aside the order passed by the Custodian General by way of revision.

15. For facility of reference Section 30-A of the Act of 2006 is reproduced as under:-

“[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 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 as opportunity of being heard.]”

16. From a perusal of the aforesaid statutory provision, it is emphatically clear that the Minister Incharge of the Evacuee’s Property 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 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.

17. The Minister Incharge has been substituted by the “Tribunal” in terms of Section 3 of J&K Special Tribunal Act 1988.

18. For facility of reference, Section 3 of the Act of 2006 is reproduced as under:-

“03. Appeals, revisions etc. to the Tribunal. –(1) *Notwithstanding anything contained in any law made by the [Legislative Assembly of the Union territory of Jammu and Kashmir], [xxxx], an appeal, revision or review petition which under any such law lies to the [Government of the Union territory of Jammu and Kashmir] or a Minister shall, from such date as may be appointed by the [Government of the Union territory of Jammu and Kashmir] by notification in the [Official 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 of the Union territory of Jammu and Kashmir] or the Minister shall be construed as a reference to the Tribunal.*

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

19. Thus, from the conjoint reading of Section 30-A of the Act of 2006 and Section 3 of the J&K Special Tribunal Act 1988, Tribunal has rightly exercised its jurisdiction by invoking the provisions of Section 30-A of the Evacuees (Administration of Property) Act by exercising the powers as revisional authority to revise the order dated 10.04.2008 passed by the Custodian General in an appeal titled “ *Mohammed Akbar Vs Mohammad Saber*” whereby appeals of the petitioner have been dismissed *ex-parte*.

20. Thus, I do not find any legal infirmity with the order passed by the J&K Special Tribunal, Jammu dated 23.04.2008 as the Tribunal has invoked the provisions of Section 30-A of the Evacuees (Administration of Property) Act by exercising the power as revisional authority by virtue of which, the Custodian General has been directed to issue fresh notice to the parties with a further direction to hear them and pass fresh order on merits.

21. The petitioner in the present writ petition has reproduced only Section 30 of the aforesaid Act and there is no whisper with regard to Section 30-A of

the Act of 2006, where the powers of the revision can be exercised by the Minister Incharge (now Special Tribunal).

22. The law is settled at naught that the revisional Court is supervisory and correcting Court, and it can remand the case only when fresh trial is deemed necessary and for that purpose, the Special Tribunal has invoked the aforesaid provisions of law under Section 30-A and directed the Custodian General to hear the parties and pass a fresh order on merits.

23. After issuing notice to the parties, the aforesaid direction has been issued by the Tribunal on the ground that the appellant had been regularly absenting himself and yet the Custodian General/Appellate Authority proceeded to decide the appeal in his absence on merits.

24. Rules prescribe that the appellate authority shall adopt the procedure laid down in Order XLI of Civil Procedure Code (CPC) while hearing and disposal of the appeals under the Act. Learned Tribunal has relied upon Order 41, Rule 14 and held that where the appellant is absent, the appellate authority is required to dismiss the appeal in default i.e. for non-prosecution of the appeal and abandon giving findings to the merits of the case. The Order 41, Rule 17 is as under:-

“(1) Where on the day fixed, or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.”

25. The Tribunal has rightly observed that any order passed on merits is nonest in the eyes of law, when the appellant was not present and when the case was called on for hearing. Since The Custodian General has made departure to the mandatory provision of Order 41, Rule 17 of CPC, therefore, without commenting upon the merits of the case, the order passed by the Custodian

General was set aside by the Tribunal with a further direction to the Custodian General to issue fresh notice to the parties for hearing them and passing a fresh order on merits.

26. From a perusal of the record, it is manifestly clear that the respondent Nos. 2 and 3 have not preferred any appeal in the present case before the Tribunal by resorting to Section 30(1)(c) of the Act of 2006 rather the jurisdiction of the Tribunal under Section 30-A of the Act of 2006 has been invoked for setting aside orders passed by the Custodian General by way of the revision and thus, there is no statutory violation.

27. Since there was a patent illegality for non-adherence to the mandatory provision of law which was writ large on the face of the order passed by the Custodian General, the Special Tribunal has rightly exercised the power of the revision and I do not find any legal infirmity in the same and, accordingly, I uphold the aforesaid order of Special Tribunal dated 23.04.2008 and dismiss the present writ petition, which is utterly misconceived.

28. The present petition is, accordingly, **dismissed**.

29. Interim direction, if any, shall stand vacated.

(Wasim Sadiq Nargal)
Judge

Jammu
20.09.2022
Bunt

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No