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person for the use and occupation of the said land. Therefore, even after the requisition, the person permitted to remain in occupation or the person to whom the requisitioned premises are allotted becomes a licensee of Government. Formerly, under s. 9A of the Act, which has been subsequently repealed, it was within the competence of Government to make the allottee a tenant of the premises requisitioned and the relationship of landlord and tenant arose between the allottee and the person whose premises were requisitioned. But s. 9A has been deleted and the person to whom the requisitioned premises are allotted continues to hold them as a mere licensee from Government under sub-s. (*3*) of s. 8B.

We, therefore, think that an allottee of the requisitioned premises has no *locus standi* in the proceedings before the Compensation Officer and has no right to file an appeal under s. 8 of the Bombay Land Requisition Act against an order passed by the Compensation Officer.

We must, therefore, hold that the present appeal which has been filed by the allottee is incompetent and must, therefore, dismiss it with costs.

Appeal dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL

1952
July 8

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.

EBRAHIM ABBOBAKAR AND ANOTHER, APPELLANTS (ORIGINAL PETITIONERS) *v.* U. M. MIRCHANDANI, RESPONDENT.*

Administration of Evacuee Property Act (XXXI of 1950), ss. 2 (d) (i), 2 (d) (ii), 7, 24, 25—Order made by the Deputy Custodian declaring petitioners evacuees under s. 2 (d) (i) and s. 2 (d) (iii)—Petitioner's appeals to District Judge and to the Custodian—Whether appeal lies to the Custodian.

The Deputy Custodian passed an order under s. 7 of the Administration of Evacuee Property Act, 1950, declaring the properties of the Appellants as evacuee properties and holding that they were evacuees within the meaning of both s. 2 (d) (*i*) and s. 2 (*d*) (*iii*). The Appellants preferred an appeal from the order of the Custodian to the District Judge. They also preferred an appeal to the Custodian without prejudice to their contention that no appeal lay to the Custodian. When the

* O. C. J. App. No. 70 of 1952; Misc. Petition No. 87 of 1952.

Custodian fixed a date for the hearing of the appeal before him the Appellants preferred a petition to the High Court for issue of a Writ of Prohibition directing the Respondent, *inter alia*, to forbear from hearing the appeal before him, On the question as to the jurisdiction of the Custodian to hear the appeal.

Held, that the scheme of ss. 24 and 25 of the Administration of Evacuee Property Act, 1950, is to provide two appeals where cases fall both under s. 2 (*d*) (*iii*) and under s. 2 (*d*) (*i*) or s. 2 (*d*) (*ii*).

that where the Deputy Custodian declared a person evacuee both under s. 2 (*d*) (*i*) and s. 2 (*d*) (*iii*) an appeal lay to the Custodian to the extent that the finding of the Deputy Custodian related to the ground under s 2 (*d*) (*i*) or s. 2 (*d*) (*ii*) and to the District Judge to the extent that the finding related to the ground under s. 2 (*d*) (*iii*).

The scheme of ss. 24 and 25 is that general jurisdiction is conferred upon the Custodian to hear all appeals against orders made by the Deputy Custodian under s. 7, excepting orders passed in one class of cases, namely, where the Deputy Custodian holds the person aggrieved to be an evacuee within the meaning of s. 2 (*d*) (*iii*). In such cases jurisdiction is conferred exclusively upon the District Judge to hear the appeal.

On September 27, 1950, the Deputy Custodian of Evacuee Property, Bombay, issued notices to the petitioners under s. 7 of the Administration of Evacuee Property Act, 1950, requiring them to show cause why they should not be declared evacuees on the grounds specified in the notices and why all their properties should not be declared evacuee properties. After a long and protracted inquiry the Deputy Custodian passed an order on December 28, 1951 declaring the petitioners as evacuees both under s. 2 (*d*) (*i*) and s. 2 (*d*) (*iii*) and declaring certain properties belonging to the petitioners as evacuee properties. On January 8, 1952 the petitioners filed an appeal against that order of the Deputy Custodian to the District Judge at Thana being the District Judge nominated in that behalf, contending that the said order was bad both under s. 2 (*d*) (*i*) and s. 2(*d*) (*iii*). During the pendency of the appeal before the District Judge, Thana, the petitioners filed another appeal before the Custodian of Evacuee Property, Bombay, (the respondent herein) on January 25, 1952 without prejudice to their contention that no appeal lay against the said order to the respondent inasmuch as the said order had been made under s. 2 (*d*) (*i*) as well as s. 2 (*iii*) of the said Act and that the District Judge was the only person competent to hear the appeal against the said order.

The respondent fixed March 4, 1952 for the hearing of the appeal before him. On March 3, 1952, the petitioners presented a

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petition to the High Court praying *inter alia*, for issue of Writ of Prohibition against the respondent directing him to forbear from hearing the appeal pending before him or from making any order or orders in the said appeal.

The Petition was heard by Tendolkar J. who dismissed it with costs. The petitioners appealed.

P. N. Bhagwati, with *Rafiq Zakaria*, for the appellants.

M. P. Amin, Advocate-General, for the respondent.

CHAGLA C. J.—This appeal raises a short question as to the jurisdiction of the Custodian to decide an appeal under the Administration of Evacuee Property Act, 1950. On December 28, 1951 the Deputy Custodian declared the properties of the appellants to be evacuee properties, holding that they were evacuees within the meaning of s. 2 (*d*) (*i*) and 2 (*d*) (*iii*). The appellants preferred an appeal from this decision to the District Judge. They also preferred an appeal to the Custodian without prejudice to their contention that no appeal lay to the Custodian. When the Custodian fixed the date for the hearing of the appeal, the appellants preferred a petition to this Court for a writ of prohibition. We would like to observe that the petitioners should have waited for the decision of the Custodian before coming to this Court. As they had preferred the appeal to the Custodian and as they had raised the question of jurisdiction, primarily it was for the Custodian to decide whether he had jurisdiction or not. Assuming he erroneously came to a decision with regard to his jurisdiction, it would then have been perfectly competent to the appellants to come to this Court for a writ of *certiorari* or prohibition. But as the Advocate General is anxious that we should give an authoritative decision on the question raised, which is of considerable importance, we have proceeded to hear the appeal on merits.

Section 24 of the Act provides that any person aggrieved by an order made under s. 7—and I am reproducing the material portion of the section—may prefer an appeal in such manner and within such time as may be prescribed, to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian. Now, in this case the appellants are aggrieved by an order made by the Deputy Custodian under s. 7 and, therefore, under s. 24 the appeal would lie to the Custodian. But we have a proviso to this section and that proviso lays down that where the appeal is preferred on the ground that

the person aggrieved is not an evacuee within the meaning of sub-cl. (*iii*) of cl. (*d*) of s. 2, the appeal shall be preferred in the manner prescribed in s. 25. Therefore, the proviso takes out of the main section a certain ambit over which the Custodian has no jurisdiction, and the ambit is restricted to the finding of the Deputy Custodian that the person aggrieved is an evacuee within the meaning of sub-clause (*iii*) of clause (*d*) of s. 2. Then we come to s. 25 and that provides that any person aggrieved by an order under s. 7 declaring his property as evacuee property on the ground that he is an evacuee within the meaning of sub-cl. (*iii*) of cl. (*d*) of s. 2, may prefer an appeal, in such manner and within such time as may be prescribed, to the District Judge nominated in this behalf by the State Government. Therefore, s. 25 deals with those matters which are taken away from the jurisdiction of the Custodian and in those matters jurisdiction is conferred upon the District Judge. Therefore, broadly speaking, the scheme of ss. 24 and 25 is clear; general jurisdiction is conferred upon the Custodian to hear all appeals against orders made by the Deputy Custodian under s. 7; but there is one class of cases where jurisdiction is not conferred upon him, and that is the case where the Deputy Custodian holds the person aggrieved to be an evacuee within the meaning of s. 2 (*d*) (*iii*). In such a case jurisdiction is conferred exclusively upon the District Judge to decide the matter. Now, in this particular case the order complained of is made both under s. 2 (*d*) (*i*) and s. 2 (*d*) (*iii*), and Mr. Bhagwati seems to be right when he contends that the order made by the Deputy Custodian is one and indivisible, that the appellants are aggrieved by that order and only one appeal can lie against that order. Ordinarily, there would be no answer to Mr. Bhagwati's contention. But when we find a special Act which deals with special circumstances, we must hold that in this particular case although the order is one, two appeals are provided. One appeal is to the Custodian who would go into the question of the ground under s. 2 (*d*) (*i*) whichh as led the Deputy Custodian to hold that the appellants' property is evacuee property, and the other to the District Judge on the ground under s. 2 (*d*) (*iii*) which has led the Deputy Custodian to hold that the appellants' property is evacuee property. Although Mr. Bhagwati is theoretically right, we see no practical difficulty in coming to this conclusion. If the appeal is first heard by the Custodian under s. 2 (*d*) (*i*) and if he wishes to reverse the order of the Deputy Custodian, he would reverse it only to the extent that

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the Deputy Custodian was in error in holding that the appellants were evacuees within the meaning of s. 2 (*d*) (*i*); he would not be able to set aside the order, because the order was based not only on the ground under s. 2 (*d*) (*i*), but also on the ground under s. 2 (*d*) (*iii*). When the appeal is heard by the District Judge under s. 2 (*d*) (*iii*), if the District Judge is also of the opinion that the Deputy Custodian was in error in holding the appellants to be evacuees under s. 2 (*d*) (*iii*), then the order would be insupportable on both the grounds and, therefore, the order would be liable to be set aside. If, on the other hand, the District Judge came to the conclusion that the Deputy Custodian was right in the view that he took with regard to the ground under s. 2 (*d*) (*iii*), then, notwithstanding the Custodian holding against the Deputy Custodian under s. 2 (*d*) (*i*), the order would have to be sustained because one ground would be sufficient to sustain the order. Therefore, in practice no difficulty should arise in working out these two sections.

Now, Mr. Bhagwati has appealed to us to look at the language of the section, and, according to him, looking to the proviso, if an appeal is preferred and one of the grounds of the appeal is that the person aggrieved is not an evacuee within the meaning of sub-cl. (*iii*) of cl. (*d*) of s. 2, then the District Judge alone has jurisdiction to hear the appeal and the jurisdiction of the Custodian is ousted. In the first place, it is not possible to give that interpretation on a plain grammatical construction of the proviso. A proviso merely carves out something from the section itself; a proviso never destroys the section as a whole; and if this interpretation were to be given to the proviso, it would mean that by means of the proviso the power conferred upon the Custodian to hear appeals under s. 7 on grounds falling under s. 2 (*d*) (*i*) and s. 2 (*d*) (*ii*) has been taken away; it would mean that although the Deputy Custodian decided on three grounds, s. 2 (*d*) (*i*), (*ii*) and (*iii*), merely because he decided on ground 2 (*d*) (*iii*) the jurisdiction of the Custodian was taken away and the District Judge had the jurisdiction to decide on all the three grounds on which the order was made by the Deputy Custodian. It is impossible to accept the contention that the expression "the ground" means one among many grounds. On the other hand, there is force in the Advocate General's contention that the proviso only applies where the sole ground on which the Deputy Custodian has held the aggrieved person's property to be evacuee property is that he

is an evacuee within the meaning of sub-cl. (*iii*) of cl. (*d*) of s. 2; because it is possible to argue that the general jurisdiction being conferred upon the Custodian, the exceptional jurisdiction conferred upon the District Judge was confined to a case where the Deputy Custodian held that the aggrieved person was an evacuee within the meaning of sub-cl. (*iii*) of cl. (*d*) of s. 2; in other words, where the finding was based on more than one ground, appeal would only lie to the Custodian and not to the District Judge. We have not been able to accept the contention of the Advocate General because in our opinion there was good ground why the Legislature conferred jurisdiction upon the District Judge to decide cases falling under sub-cl. (*iii*) of cl. (*d*) of s. 2. The cases that fall under this sub-clause relate to complicated questions of title and, therefore, the scheme of the Act was that such questions should be decided by a trained judicial authority and s. 27 further provides that if the Custodian-General wishes to revise the decision of the District Judge and he differs from the view taken by the District Judge, he has no power to set aside the order of the District Judge, but he has to refer the matter to the High Court. Therefore, we are not inclined to give an interpretation to s. 24 the result of which would be to oust the jurisdiction of the District Judge to decide complicated questions of title. Therefore, in our opinion, the learned Judge below was right when he came to the conclusion that looking to the scheme of ss. 24 and 25 two appeals are provided where cases arise under ss. 2 (*d*) (*iii*) and under s. 2 (*d*) (*i*) or s. 2 (*d*) (*ii*). As in this case the Deputy Custodian held the appellants to be evacuees both under s. 2 (*d*) (*i*) and 2 (*d*) (*iii*) an appeal would lie to the Custodian to the extent that the finding of the Deputy Custodian related to the ground under s. 2 (*d*) (*i*) and to the District Judge to the extent that the finding related to the ground under s. 2 (*d*) (*iii*).

The result is, the appeal fails and is dismissed with costs.

Attorneys for appellant: *Amarchand* and *Mangaldas.*

Attorneys for respondent: *Little and Co.*

Appeal dismissed.

P. M. P.