

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 3188 OF 2000

JAMEET SINGH

Appellant (s)

VERSUS

NAZIR AHMED & ANR

Respondent(s)

(With appln(s) for permission and office report )

Date: 01/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. E.C. Agrawala, Adv.  
Ms. P. Dhanalakshmi, Adv.

For Respondent(s) Mr. Anis Suhrawardy, Adv.

For RR 3 and 4 Mrs. Shamama Anis, Adv.,  
Mr. S. Mehdi Imam, Adv.  
Mr. Samir Ranjan, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order. No costs.

(J.S. Rawat)  
Court Master

(Kanwal Singh)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3188 OF 2000

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Appellant (s)

Versus

Nazir Ahmed & Anr.

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O R D E R

This appeal by grant of special leave is directed against the judgment of the Division Bench of the High Court of Jammu & Kashmir which has reversed the order passed by the Single Judge upholding the order passed by the J & K Special Tribunal, Jammu (herein-after referred to as "the Tribunal") who had remanded the case to the Deputy Custodian General (Commissioner) for a fresh decision.

The facts of the case in short are that House No.441-EP (Evacuee Property) situated in Talab Khatikan, Jammu has two portions, out of which one was allotted in favour of the appellant-Jameet Singh and the other in favour of Nain Chand. Both the allottees, namely, Jameet Singh and Nain Chand, were displaced persons from "Pakistan Occupied Kashmir"area (POK) of the State.

Nazir Ahmed, Respondent No.1 herein, in the year 1989 made an application before the Custodian, Evacuee Property (EP), Jammu stating therein that Jameet Singh had constructed his own house in Gandhi Nagar in Jammu city and the portion of the evacuee property allotted to him was lying in dis-use. He prayed that the allotment made in favour of Jameet Singh be cancelled and the property be allotted to

him on preferential basis. The Custodian (EP), Jammu vide order dated 3.4.1989 cancelled the allotment made in favour of Jameet Singh and ordered his eviction. The property was allotted to Nazir Ahmed, Respondent No.1. This order was challenged in revision by Jameet Singh before the Tribunal. The Tribunal vide its order dated 15.10.1990 set aside the order of the Custodian and remanded the case to the Custodian for a fresh decision after holding a proper inquiry. It was ordered that Nain Chand who was a co-allottee should also be afforded reasonable opportunity of being heard before allotting the house in question to any other person.

After the remand, the Custodian (EP) initiated proceedings but subsequently transferred the same to the Dy. Custodian for final adjudication. Dy. Custodian (EP) vide order dated 14.5.1991 cancelled the allotment made in favour of Jameet Singh and restored the same in favour of Nain Chand. This order of the Dy. Custodian, Jammu was challenged in a Revision Petition before the Tribunal. The Tribunal dismissed the Revision Petition on 8.11.1991. The appellant-Jameet Singh as well as Nazir Ahmed (Respondent No.1 herein) challenged the said order of the Tribunal by filing two separate writ petitions. The writ petitions were accepted and order passed by the Dy. Custodian (EP) was set aside and a direction was given to conduct a fresh inquiry and decide the matter after affording the concerned parties a reasonable opportunity of being heard. The Division Bench in the Letters Patent Appeal (LPA

No. 259/92) modified the order of the Single Judge to the extent that a fresh inquiry was to be conducted by the Divisional Commissioner exercising the powers of the Dy. Custodian General, Jammu and not by the Dy. Custodian, Jammu. This order was passed on 4.3.1993.

The Divisional Commissioner exercising the powers of Dy. Custodian General vide order dated 11.5.1993 cancelled the allotment made in favour of the appellant and allotted the same to Nazir Ahmed. The appellant as well as Nain Chand being aggrieved filed Revision Petitions before the Tribunal. Revision Petition filed by Nain Chand was dismissed while that of Jameet Singh was accepted. It was held that the Dy. Custodian General had failed in his duty to conduct the inquiry in accordance with law.

After the allotment made in favour of the appellant, his two sons built a house in Gandhi Nagar, Jammu. The appellant had his votes listed in the electoral rolls as a resident of House No. 441-EP in Talab Khatikan, as well as at Gandhi Nagar, Jammu, where his sons were residing. The Dy. Custodian General had recorded the findings against the appellant on the basis of the electoral rolls pertaining to Gandhi Nagar. The Tribunal held that when two contradictory sets of electoral rolls were available before the Dy. Custodian General (Divisional Commissioner), Jammu, it was his bounden duty to weigh and ascertain as to which one of them was correct and which one of them was fabricated. It was observed that the Dy. Custodian General

had appreciated the evidence in a casual and perfunctory manner. Accordingly, the order of the Divisional Commissioner exercising the powers of Dy. Custodian General was set aside and the case was remitted back to the Divisional Commissioner to hold a de novo inquiry in the light of the directions given in the earlier writ petitions as modified by the Division Bench of the High Court in LPA No. 259/92. Nazir Ahmed being aggrieved against the order of the Tribunal filed W.P. No.391/94 which was dismissed by the learned Single Judge of the High Court vide order dated 29th March, 1995.

Aggrieved against the order of the Single Judge Nazir Ahmed filed LPA No. 117/95 which has been disposed of by the impugned order. The Division Bench has set aside the order of the Single Judge and the Tribunal and upheld and restored the order of the Divisional Commissioner. Hence, the present appeal.

Nazir Ahmed, respondent no.1 herein, was duly served and he appeared in person in this Court on 13th of December, 1999. After filing of the supplementary affidavit by the appellant wherein it was stated that Nazir Ahmed was not entitled to the allotment as he had already been allotted a plot of land on 24.11.1994, of which he had taken possession, Nazir Ahmed stopped appearing in court. He is ordered to be proceeded ex parte. Appellant moved an application to implead the State of J&K as well as the Custodian General (Evacuee Property), Jammu as party-respondents, which was allowed. Both these

added respondents are represented by Mr. Anis Suhrawardy, Adv., who does not contest the appeal.

We have perused the order of the Tribunal, the learned Single Judge and the impugned order passed by the Division Bench of the High Court. In our considered view, the order of remand passed by the Tribunal for a de novo inquiry and a fresh decision was correct. The learned Single Judge had rightly upheld the same. The Tribunal vide its order dated 22nd of April, 1994, had directed the Divisional Commissioner with the powers of the Dy. Custodian General to hold a de novo inquiry on various aspects in the matter.

The Local Commissioner appointed by the High Court had submitted a report showing that the house-hold articles were lying in the house in question which had been allotted to and occupied by the appellant. The list of articles found in the house in question, contains: double bed, Godrej almirah, Refrigerator, sofa set, dining table with chairs, one ceiling fan, one table, utensils, gas cylinder, L.P. Gas Stove, Television, Air cooler, Crockery, single bed, quilt, electric iron, which clearly showed that the house which had been allotted to the appellant was not in dis-use, as had been alleged by the Nazir Ahmed. We have referred to the report of the Local Commissioner to show that the house in question may not have been in dis-use and that the appellant may have been residing in this very house.

We are in agreement with the view taken by the Tribunal that

the matter required a deeper probe and a fresh inquiry was required to be conducted; especially in view of the two conflicting voters' lists (i) showing the appellant continuing to live in his own house in question and (ii) showing the appellant's name in the voters' list as a resident of House No.441-EP, Talab Khatikan, Jammu in which had been constructed by his sons in which they are living with their families; coupled with the fact that ration card of the appellant shows that he continues to live in the house in question. This fact was dependent upon the facts which ought to have been proved by the person who made the complaint against the appellant which resulted in the cancellation of the allotment of the residential house which was under the appellant's occupation for many decades. It is alleged by the appellant that he was not paid the compensation for the property which had been left by him in POK area. Another question which may arise is that if, after the allotment, the sons construct a house on a plot of land purchased by them/allotted to them in the same town, then would the authorities be justified in cancelling the allotment made in favour of a displaced person on the ground that subsequent to the allotment, some members of the family have constructed a house?

For the reasons stated above, this appeal is accepted, impugned judgment of the Division Bench of the High Court is set aside and that of the Single Judge and the Tribunal are upheld. The order passed by the Dy. Custodian General is set aside and the Divisional Commissioner is

directed to make a de novo inquiry and decide the matter afresh in the light of the order of remand made by the Tribunal and the probe to be conducted by him.

We make it clear, nothing stated in the order be taken as an expression of opinion on the merits of the case. The Divisional Commissioner would be at liberty to decide the matter afresh in the light of the inquiry to be conducted by him.

The question of law decided by the Division Bench of the High Court on the interpretation of Rule 14(iv) of the Evacuees Properties Act, is left open.

The appeal stands allowed accordingly.

Since the contesting respondent is not present, there shall be no order as to costs.

J. ....  
(ASHOK BHAN)

New Delhi; .....  
J.  
February 01, 2005. (A.K. MATHUR)