

Govind Ram Vs. Regional Settlement Commissioner Rajasthan, Jaipur and ors.

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Court : Rajasthan

Decided On : Jan-04-1960

Reported in : AIR1960Raj177

Judge : Sarjoo Prosad, C.J. and; L.N. Chhangani, J.

Acts : [Constitution of India](#) - Article 226; Displaced Persons (COmpensation and Rehabilitation) Act, 1954 - Sections 10 and 20

Appeal No. : Civil Writ Petn. No. 174 of 1957

Appellant : Govind Ram

Respondent : Regional Settlement Commissioner Rajasthan, Jaipur and ors.

Advocate for Def. : D.P. Gupta, Adv. for Respondent No. 3

Advocate for Pet/Ap. : B.P. Beri, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. This petition by Govind Ram son of Uttamchand Shivanani, a displaced person residing at Ajmer, was originally filed impleading the Regional Settlement

Commissioner, Rajasthan, Jaipur (hereinafter to be referred to as respondent No. 1) as the sole respondent and invoking the jurisdiction of this Court under Articles 226 & 227 of the Constitution and praying for a writ of prohibition or any other appropriate writ in the nature thereof restraining the said respondent from acting on the order of the Deputy Chief Settlement Commissioner, New Delhi, (who is now respondent No. 2 in the amended writ petition) cancelling the transfer of property No. A. M. C. XIX/165 (now AMC. XXI/213) made in his favour and further prohibiting him from resuming the said property or selling it by public auction or otherwise.

On the 10th of October. 1957 when the case came up before a Bench of this Court, it was ordered that as the validity of the order of respondent No. 2 dated 7-9-1957, is being challenged, he should also be made a party. It was also ordered that Gagandas Balani (respondent No, 3) on whose appeal respondent No. 2 ordered the cancellation of the transfer being an interested party should also be impleaded as opposite party. The writ application was consequently amended and respondent No, 2 and Gagaridas Balani as respondent No. 3 were made parties and a prayer for the issue of an appropriate writ or direction was also added. For a proper understanding and appreciation of the contentions requiring to be answered in this case, it is necessary to set forth in detail the facts and circumstances leading to this petition.

2. Property No. A. M. C. XIX/165 (now AMC XXI/213) (hereinafter referred to as the disputed property) belonged to one Mohd. Abdul Hafiz. The present petitioner took on rent in the year 1947 this disputed property from the said Mohd. Abdul Hafiz, who subsequently having migrated to Pakistan, the property vested in the Custodian of Evacuee Property and the petitioner obtained an allotment of the property in his favour under Order No. 1406/1904. The petitioner's, application for receiving compensation on account of his claim in respect of properties left in Pakistan was pending with the competent authorities. He accordingly applied for allotment of the disputed property on a permanent basis in lieu of his claim to the Regional Settlement Commissioner, Aimer, who, however, by his order dated 24-11-1955 found that the petitioner was entitled to a compensation of Rs. 5699/- only and adjusted this amount towards public dues outstanding against him.

One of the items of the public dues found outstanding against the petitioner was an amount of Rs. 193/8/- on account of the rent of this disputed property for a period upto 31-10-1955. As no amount was payable to the petitioner on account of compensation on the findings of the. Regional Settlement Commissioner, the question of the allotment of the disputed property to the petitioner did not arise. The petitioner thereupon preferred an appeal to the Chief Settlement Commissioner, New Delhi, in which amongst other contentions he raised a plea that the property be given to him and that rent should not have been charged from him with effect from 1-11-1953.

The Chief Settlement Commissioner, after making necessary enquiries into matters to be proved for allotment of the property to the petitioner, held that the petitioner was in occupation, of the property and that no rent should have been charged from him with effect from 1-11-1953. The Chief Settlement Commissioner observed that as the petitioner 'had put in an application in 1953, the rules relating to the remission of rents to claimants of his category should have applied (and) (sic) arrears after 1-11-1953, should not have been deducted'.

3. After this order, on information supplied to the Custodian, Evacuee Property, Ajmer, by the Regional Settlement Commissioner, Ajmer', the Assistant Custodian of Evacuee Property Aimer by his Order No. 17747 dated 2-7-1956 granted to the petitioner a quasi-permanent allotment of the property with effect from 1-11-1953. Later, on 13-9-1956 the Regional Settlement Commissioner, Aimer adjusted out of the compensation paid to the petitioner the value of the property assessed at Rs. 3144/- and made an entry in the compensation certificate and finally on 15-10-1956, the-Managing Officer. Aimer executed a formal conveyance deed in favour of the petitioner on behalf of the President of India.

4. Gagandas Balani, respondent Nos. 3, who as per his own admission had knowledge of the petitioner's application for allotment and subsequent proceedings, did not intervene at any stage; but on 12-11-1956, alleging himself to be aggrieved by the allotment of the property to the petitioner, preferred an appeal, to the Chief Settlement Commissioner, on the ground that he (Gagandas) was in actual possession of the property and that the respondent was not in the sole

occupation of the premises and prayed that the allotment in favour of the petitioner should be set aside and an allotment order on quasi-permanent basis be made in favour of Gagandas. It was also prayed that in case the allotment order is not made in favour of Gagandas, the property should be put to auction. Originally the appeal was not accompanied by any order sought to be cancelled but later on it appears that a copy of the transfer-deed was produced.

The appeal was heard by respondent No. 2, who treating it as an appeal against the order of the Regional Settlement Commissioner conveying the evacuee property to the respondent accepted it and set aside the order conveying the property to the respondent and directed that the property be resumed and sold by auction. The petitioner challenges the order of respondent No. 2 as illegal, unlawful and without jurisdiction and apprehending disturbance of his right by the enforcement of the order has prayed for the issue of appropriate writs.

5. Respondents Nos. 1 and 2 did not enter appearance to oppose the writ application. Only respondent No. 3 has filed a written statement and has strongly opposed the prayer of the petitioner. His case is that he himself was in possession of the disputed property and that the petitioner was never in occupation thereof. He alleges that the¹ petitioner in collusion with him applied for the allotment of the disputed property and took further proceedings by way of appeal and inasmuch as the petitioner is not in possession of the property, it cannot be allotted to him under the rules. He also pleaded that this Court has no jurisdiction to issue a writ against the respondent No. 1 inasmuch as his order has merged into the order of respondent No. 2.

6. We have heard Mr. B. P. Beri on behalf of the petitioner and Mr. D. P. Gupta on behalf of Gagandas respondent No. 3. At the outset Shri Gupta pressed his preliminary objection to the effect that this Court has no jurisdiction to entertain any of the prayers made by the petitioner. It was submitted that the order of respondent No. 1, who is functioning in Rajasthan having merged in the order dated 17-10-1957 of respondent No. 2, an authority located outside the jurisdiction of the High Court, this Court cannot issue any writ or direction against the respondent, in respect of his actions taken in pursuance of the appellate order of

respondent No. 2.

It was urged that this Court cannot examine the order even for the limited purpose of ascertaining whether an appeal to that authority was competent and whether he had the jurisdiction to pass the order and, therefore, cannot prevent the respondent No. 1 from interfering with the property of the petitioner in pursuance of that order. The preliminary objection has been strongly opposed by Mr. Beri. A number of cases including various Supreme Court decisions were cited at the Bar in support of the respective contentions.

7. The question of the territorial jurisdiction of the High Courts for issuing writs came up for consideration before the Supreme Court in *Election Commission, India v. Venkata Rao*, AIR 1953 SC 210. In that case, Subba Rao J. of the Madras High Court, sitting single, had issued a writ of prohibition against the Election Commission, India, a statutory authority constituted by the President and having its office permanently located at New Delhi, preventing that authority from enquiring into the alleged disqualifications of respondent Saka Venkata Rao for the membership of the Madras Legislative Assembly. Subba Rao J., held that if a tribunal or authority permanently located and normally carrying on its activities elsewhere, exercises jurisdiction within the territorial limits of the High Court so as to affect the rights of parties therein, such tribunal or authority must -be regarded as 'functioning' within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226. On appeal by the Election Commission, the Supreme Court of India disapproved the above principle and held that the Madras High Court had no jurisdiction to issue the writ. The Supreme Court laid down two rules conditioning the issue of any such writs:

The writs issued by the Court cannot run beyond the territories subject to its jurisdiction. Secondly the person or authority to whom the High Court is empowered to issue such writs must be 'within those territories'.

The Supreme Court's attention was invited to certain decisions of the High Courts dealing with situations where the authority claiming jurisdiction of the matter at first instance is located in one State and the appellate authority is located in another State but the Supreme Court did not decide which High Court should have

jurisdiction in such cases and left the question open. This was followed by another Supreme Court decision in *K. S. Rashid and Son v. Income-tax Investigation Commission*, AIR 1954 SC 207. In this case the Punjab High Court had refused to issue a writ against the Income-tax Investigation Commission on the ground that the assesses and the Income-tax Authorities which dealt with the matter were in the State of Uttar Pradesh and the mere accident of the location of the Commission within the jurisdiction of the Punjab High Court could not give it jurisdiction.

The Supreme Court overruled this view and held that the Punjab High Court had jurisdiction to issue the writ. The question whether the Allahabad High Court had also jurisdiction in the matter which it could exercise in respect of the authorities functioning within its jurisdiction did not arise and was not decided. Both the Supreme Court decisions thus did not lay down any rule in regard to cases of the original authority and the appellate authority functioning within the jurisdiction of different High Courts and consequently a controversy arose in the various High Courts as to whether a High Court could issue a writ or direction to restrain the actions of an authority within its jurisdiction undertaken or purporting to be undertaken in compliance with or in pursuance of orders or directions or proceedings of appellate or revisional authorities or superior controlling and directing authorities.

In *Thangalkunju Musaliar v. Venkitachalam Potti*, AIR 1954 Trav-Co. 131, the facts were that Shri M. Venkitachalam Potti, Income-tax Officer at Trivandrum was appointed authorised official by the Income-tax Investigation Commission functioning at Delhi. He having sent to the opposite party Thangalkunju Musaliar a copy of the notification investing him with the powers of the authorised official intimated his desire to investigate into the petitioner's income for the period from 1940 onwards. The opposite party applied to the Travancore-Cochin High Court for a writ against the Income-tax Commissioner at Trivendrum as first respondent and the Income-tax Investigation Commission as 2nd respondent. The High Courts jurisdiction to issue the writ was disputed on the ground that the Income-tax Officer or authorised official was a mere agent of the Investigation Commission, New Delhi, which operated outside the jurisdiction of the Court and no writ could be issued against him.

The Travancore-Cochin High Court overruled the objection and granted the petitioner's prayer which had the effect of paralysing the Income-tax Officer's hands and thus preventing the mischief. It was pointed out that 'as a writ against the first respondent, if issued, is sufficient for stopping completely the mischief complained about, it is unnecessary for us to decide whether a writ can be issued or not as far as the second respondent is concerned'. The High Court's jurisdiction to afford protection to subjects against the actions of authorities functioning within its jurisdiction was thus maintained, in spite of the location of the office of the controlling and supervising authority being outside its jurisdiction.

8. A different view was however taken in the following cases:

In *Burhanpur National Textile Workers Union v. Labour Appellate Tribunal*. (S) AIR 1955 Nag 148, an Industrial Court within the jurisdiction of the Nagpur High Court decided a dispute, but the matter was taken in appeal to the appellate tribunal, Bombay, which dismissed the appeal. After the dismissal of the appeal, the Nagpur High Court was moved for the issue of writs against, the various authorities and its jurisdiction was challenged. In the leading judgment Hidayatullah J., sustained the objection and observed that: 'On a true interpretation of their Lordships ruling (reference is to the Supreme Court decision in the Election Commission's case, (AIR 1953 SC 210)), and its implications even though their Lordships reserved the consideration of such cases, there can be no other opinion but that the jurisdiction to quash the orders of the Labour Appellate Tribunal did not exist in this Court even though the dispute originated here.'

The learned Judge at a later stage of the judgment further observed as follows:

'It is no doubt true that a case is an authority for what it decides and not for what might be deduced from it. But this case did decide, and conclusively, that Article 226 makes no reference to the cause of action or where it arises but insists that the presence of the person or authority should be within the territory in relation to which the High Court exercises the jurisdiction conferred by that Article. This dictum is not dependent on any fact in controversy in that case.'

9. It may be incidentally observed that so far as the issue of a writ to an authority outside is concerned, the decision of the Supreme Court is conclusive and is not dependent upon any fact in controversy but the same cannot be predicated with regard to the issue of a writ against authorities within the High Court's jurisdiction functioning under order or direction from an outside authority. Evidently this aspect was not considered by the learned judge and on the main assumption he decided that a writ could not be issued against the local authorities also. The learned Judge relied upon two main reasons for this conclusion:

'(1) This Court does not do indirectly what it cannot do directly and this Court should be loath to quash an intermediate orders so as to get rid of a subsequent order by implication;

(2) Our actions in quashing the order of the Industrial Court would place that court and the Registrar on the horns of a dilemma. Under the Act they would be bound by the order of the Appellate Tribunal, and equally bound to give effect to our order. If we do not quash the order of the Appellate Tribunal and leave it operative, we indirectly compel the Industrial Court to disobey that order. The Industrial Court and the Registrar are thus exposed to a commitment for contempt at the instance of the Appellate Tribunal and equally at our instance, if they disobey our writ. Such a situation cannot be allowed and is against the practice of the courts.'

Hidayatullah J. himself considered the result as anomalous and unfortunate, but treating it as a lacuna for the Legislature to fill up held that the High Court had no jurisdiction to issue the writ or direction applied for. It may be pointed out at this stage that his Lordship was mainly influenced by the provisions of the Industrial Disputes Appellate Tribunal) Act laying down that the decision of the Appellate Tribunal shall be deemed to be substituted for the decision of the Industrial Tribunal.

10. In *Azmat Ullah v. Custodian Evacuee Property*, U. P. Lucknow, (S) AIR 1955 All 435, the Allahabad High Court adopted the same grounds while refusing the request of the petitioner to ignore the order of the outside revisional authority and to issue a writ of mandamus against the original authority functioning within its jurisdiction. There are however some observations in the judgment deserving

special notice:

'If, has not been contended that the Custodian General had no jurisdiction to make this order of 21-11-1952, in the exercise of his revisional powers under Section 27 of the Act; it is not therefore necessary for us to consider the legal issues which would arise were he to act in excess of his jurisdiction.'

11. Bearing in mind that a writ of certiorari is to be issued only in cases of lack of jurisdiction and excess of jurisdiction and the High Court in the above observation having reserved their opinion on such cases, the Allahabad case cannot be pressed in support of the contention that no writ could issue in such cases. The decision in Jogindar Singh Waryam Singh v. Director, Rural Rehabilitation, Pepsu (S) AIR 1955 Pepsu 91 follows the decision in Azmat Ullah's case, (S) AIR 1955 All 435 and adopted more or less the same line of reasoning.

12. So far as this Court is concerned it steered a middle course. In Har Prasad v. Union of India, AIR 1954 Raj 189 and Barkatali v. Custodian General of Evacuee Property of India, AIR 1954 Raj 214, it was observed that where a superior tribunal simply confirmed an order of the inferior tribunal, the real order for consideration was only the latter, and the High Court was quite competent to quash the order and issue a writ,

13. The question came up again for consideration before the Supreme Court in Thangal Kunju Musaliar v. Venkatachalam Potti, (S) AIR 1956 SC 246, on an appeal from the decision of the Travancore-Cochin High Court. The Attorney General objected to the jurisdiction of the High Court to issue a writ. He contended that the authorised official was only an agent and therefore no writ could be issued against him because it was the principal who directed the activities and not the agent who would be liable for the same. The contention was overruled on the ground that the agent could in no event exculpate himself from liability for the wrongful act done by him and it be is thus amenable to the jurisdiction of the High Court the High Court could certainly issue an appropriate writ against him under Article 226.

The second contention based on the ground of placing the original authority in the High Court's jurisdiction on the horns of a dilemma was repelled by the Supreme Court with the observation that the agent could certainly be prohibited from obeying the unlawful directions of his principal and even if the principal cannot be reached by reason of his being outside the territories the arm of law would certainly reach the agent who is guilty of having committed the wrong and the High Court could certainly issue a writ against him. The third argument based on an attempt to do indirectly what cannot be done directly was also overruled and it was observed that it is expected that once the Court has declared the law, the Investigation Commission would comply with it and would not place the agent in the wrong by directing him to act contrary to the law so declared. This shows that the main reasons adopted by the Allahabad, Nagpur and Pepsu High Courts in the decisions cited above, cannot be held to be sound in view of the above observations of the Supreme Court. In the course of the judgment of the Supreme Court, it was observed that those cases were clearly not in point and distinguished them with the following remarks:

'These decisions, however, are clearly not in point for in each of them, the order passed by the authority within the territories and accordingly within the jurisdiction of the High Court concerned had merged in the order of the superior authority which was located outside the territories and was, therefore, beyond the jurisdiction of that High Court. In that situation, a writ against the inferior authority within the territories could be of no avail to the petitioner concerned and could give him no relief for the order of the superior authority outside the territories would remain outstanding and operative against him.

As, therefore, no writ could be issued against that outside authority and as the orders against the authority within the territories would, in view of the orders of the superior authority, have been infructuous, the High Court concerned had, of necessity, to dismiss the petition There was here 'no question of merger of any judicial order of respondent 2'.' The underlining (here in ' ') is ours.

14. On the basis of these observations, it is contended that the Supreme Court recognised the doctrine of merger in relation to orders of Administrative Tribunals

and agencies and that the principle of the decision of the Supreme Court should be limited to those cases where two conditions are present:

(1) The authority functioning within the High Court's jurisdiction must have statutory powers and should not be merely a mouth-piece of the superior authority or a conduit-pipe transmitting the orders or directions of the superior authority.

(2) The superior authority should not be an appellate or revisional authority.

15. For reasons detailed below we have doubts that the Supreme Court while distinguishing these cases as not applicable should be taken to have expressed any final opinion on the question of merger or at any rate on its exact extent and import:

(a) The question as to which High Court should have jurisdiction in cases where the original and appellate authorities are located in the jurisdiction of different High Courts was specifically left open in the Election Commission's case, AIR 1953 SC 210, and in Thangal Kunju's case, (S) AIR 1956 SC 246 that question did not directly arise and was not considered and decided.

(b) As already discussed, the reasons given by the Nagpur, Allahabad and Pepsu High Courts for coming to their decision are in apparent conflict with the views positively held by the Supreme Court and as such cannot be adopted as any safe guide.

(c) The use of the word 'judicial' in the above decision of the Supreme Court is highly suggestive and is in contradistinction of any quasi-judicial order or an order made beyond the purview of the law.

(d) Further as held in *Hari Vishnu Kamath v. Ahmad Ishaque*, (S) AIR 1955 SC 233 a writ of certiorari is directed against a record and as a record can be brought up only through a human agency, it is issued to a person or authority whose decision is to be reviewed; it may also be issued to any other person having the custody of the record or other papers to be certified. In this view, the jurisdiction of the High Court to issue a writ of certiorari when the record is within its jurisdiction, even though the authority may not be within its jurisdiction, or has ceased to exist,

has to be recognised.

(e) Lastly it is difficult to note any distinction between a direction issued by a controlling and supervising authority and an appellate or revisional authority in administrative proceedings. It also appears unconscionable that an illegal and unlawful order passed by an appellate or revisional administrative authority should be allowed to afford a safe cover to an authority functioning within the High Court's jurisdiction, in committing wrong and encroaching upon the citizen's rights.

16. The respondent's contention for limiting the Supreme Court decision to cases where the two conditions specified by him should be present, does not appear to us to be sound. So far as the first condition is concerned, that will be present in most cases, because most of the administrative authorities have statutory functions. In the present case also the Regional Settlement Commissioner, and the Managing Officers, have statutory functions. So far as the second condition is concerned, as stated above, there is no logic in making a distinction, between the illegal and unlawful directions of superior controlling authorities as such and appellate and revisional administrative authorities. The learned counsel, however, has relied upon a few cases where the aforesaid decision of the Supreme Court in (S) AIR 1956 SC 246 has been considered and interpreted.

17. In *Dungardas v. Custodian Rajasthan*, AIR 1956 Raj 163 this Court recognised the doctrine of merger and held that the earlier decision in *Barkat Ali's case*, AIR 1954 Raj 214 was not good law and that the High Court had no jurisdiction to pass any order against the Custodian General, New Delhi and that the applicant could not ask the High Court to issue a writ to the Deputy Custodian functioning in the State when the order was upheld and confirmed by the Custodian General functioning outside the State. This Court observed as follows:

'*Barkat Ali's case*. AIR 1954 Raj 214, was unfortunately not cited before the Supreme Court; but the observations, which we have set out above, are, in our opinion, very specific and clear-cut, and, in view of these observations, we have to hold that the view taken in *Barkat Ali's case*, AIR 1954 Raj 214 can no longer be sustained.'

The later decision of the Court may be correct on its own facts but it does not provide an adequate criterion for the decision of the present case, where it is still open to us to consider the implications of the rule laid down by the Supreme Court in the case aforesaid. In *Collector of Customs, Madras v. A.H. A. Rahiman*, (S) AIR 1957 Mad 496, of the Madras High Court, the following view was expressed by Rajamannar C. J. :

'Learned counsel for the respondents invited us to hold that the said observations of Bhagwati J., were in the nature of obiter dicta. It is true that the question which raises in the cases before us did not directly arise in the case before the Supreme Court; but we find it impossible to get over the fact that the Supreme Court approved the decisions of the Allahabad, Nagpur and Pepsu High Courts cited above, and laid down a proposition which is of general application.

We are bound to apply the law as enunciated by the Supreme Court. It is, therefore, unnecessary to discuss the question as if it were *res integra*.'

The learned Judge, however, found it difficult to apply the principle universally and, therefore, recognised an exception to the doctrine of merger. The following passage in this connection deserves to be quoted:

'The proceeding of the Collector was, therefore, void ab initio. When an order of the inferior tribunal is a nullity, the order on appeal, therefore, cannot be of greater validity.'

After referring to an English case, *Barnard v. National Dock Labour Board*, 1953-2 QB 18, the learned Chief Justice expressed his agreement with the following observations of Raj Gopal Aiyangar J. :

'If the order of the Collector was one passed with jurisdiction then there might be some basis for the argument that it got merged in the appellate order. But if that order was a nullity in that procedure dictated by natural justice was not followed, there was no order which could be the subject (of) (sic) and confirmation by the appellate authority.'

In such cases the High Court's jurisdiction to issue writ was not doubted.

18. In *Surajmal Arjundas v. State of Madhya Pradesh*, AIR 1958 Madh Pra 103 (FB), the Chief Justice Hidayatullah treated the Supreme Court's observation as obiter dicta. However, after referring to a change in the approach to the problem of the binding nature of the precedents, he concluded as follows:

'This will show that where the law is laid down progressively one must not go by the strict rule of ratio decidendi and confine the decision only to the material facts in the case but must, if the decision is correct, use it even in spite of its broad statement of the law as a guide to future cases, and in dealing with a case which is to be utilized one must look not only to what was decided in the case but was decided in previous and subsequent cases'

and then referring to the earlier cases and the facts and circumstances of the case, he concluded that the case is covered by the rule laid down in *Thangal Kunju's case*, (S) AIR 1956 SC 246. The decision in *Collector of Customs' case*, (S) AIR 1957 Mad 496, recognising the exceptions to the doctrine of merger, was cited before his Lordship but he considered that the reference was limited and that he was not required to examine the issue whether the order of the State Government was a nullity or otherwise. We do not consider it necessary to notice other cases cited in this connection as they all assume that the Supreme Court had approved of the decisions in the *Nagpur*, *Allahabad* and *Pepsu* cases and the applicability of the doctrine of merger even to proceedings of administrative tribunals.

For reasons stated earlier, we very much doubt that the observations of the Supreme Court in *Thangal Kunju's case* were intended to convey their Lordships' final approbation of the application of the doctrine of merger to all such cases. Our doubt is not resolved by a perusal of these cases; rather it gains strength by the recognition of exceptions to the doctrine. The *Madras case* which recognised an exception to the rule was also noted in the *Nagpur case*, (S) AIR 1955 Nag 148 and was not dissented from. On a parity of reasoning the doctrine of merger must be subject to another exception, namely, that when the superior tribunal had no jurisdiction to entertain an appeal or revision against an order of the inferior authority and its order was a nullity for all purposes, it could not be said that the

order of the original authority merged in the order of the appellate authority as there could be no merger into nothing.

On the above principle there is no hesitation in holding that it is open to a High Court to look at the order of the appellate authority for the purpose of ascertaining whether it was with or without jurisdiction and if it comes to the conclusion that under the law, which constituted the appellate authority, it had no jurisdiction to entertain an appeal or revision, in order to pass the order which it did, the High Court can ignore that order and issue an appropriate writ to the authority within its jurisdiction prohibiting its activities under cover of that order so as to prevent the infringement of the rights of the citizens and the commission of any mischief thereunder. The preliminary objection in these circumstances, as stated, cannot be accepted.

19. We now propose to examine the contention of Mr. Beri, whether the order of respondent No. 2 is without jurisdiction and therefore a nullity and should be ignored. It will be useful in this connection to refer to the relevant provisions of the Displaced Persons (Compensation and Rehabilitation) Act of 1954. Section 7(1) of the Act deals with the determination of the amount of compensation payable to an applicant. Sub-section (2) authorises the Settlement Commissioner to make certain deductions from the amount of compensation. Section 8 provides for the form and manner of payment of compensation and one of the modes recognised is sale to the displaced person of any property from the compensation pool, setting off the purchase money against the compensation payable to him. Section 10 lays down a special procedure for payment of compensation in cases where the property has been leased or allotted to the displaced person by the Custodian before the property vested in the Government under the Act.

It has been specially provided that so long as the property remains vested in the Central Government the displaced person who had obtained a lease or allotment shall continue in possession of such property on the same conditions on which he had the property immediately before the date of the acquisition; and the Central Government may, for the purpose of payment of compensation to such displaced person, transfer to him such property on such terms and conditions as may be

prescribed. The petitioner in the present case had obtained the lease prior to the acquisition of the property by the Central Government and, therefore, the transfer to him was under Section 10 of the Act, and the transfer could be made only by the Central Government. The initiative for transfer may have been taken by the Managing Officer, but the deed of transfer was executed on behalf of the President of India.

We may in this connection refer to rule 33, which provides that where any property is transferred to any person under this Chapter, a deed of transfer shall be executed in form specified in Appendices 24 and 25 as the case may be, with necessary modification. These forms are forms of transfer on behalf of the President. In our opinion, it is inconceivable on the very face of it that a transfer of property by the Central Government under Section 10 read with rule 33, should be challenged in an appeal to the Chief Settlement Commissioner. We may also in this connection refer to Section 20 which empowers the Managing Officer or Corporation to transfer the property. These powers are distinct from the powers of the Central Government under Section 10 of the Act. Even these powers are to be exercised subject to rules.

Rule 33 will operate in such cases also and, therefore, the transfer in such cases will also be on behalf of the President. Further, rule 34 inter alia provides that when a property is transferred to any person under Chapter 3 of the Rules, the property shall be deemed to have been transferred to him where such person had made an application for payment of compensation before 31-10-1953 from the first day of November, 1953. Section 20 read in the light of these rules, contemplates an act of sale and not an order liable to be challenged in appeal or revision. In these circumstances, the respondent's contention that the actual transfer should pre-suppose an order of transfer and that order of transfer could be challenged by means of appeal or revision under Sections 23 and 24 of the Act, cannot be accepted. We are supported in this context by the fact that after the execution of the deed of conveyance, the rights of the parties stand determined by the terms of the deed. Condition No. 1 of the deed says that it shall be lawful for the vendor to resume the whole or any part of the said property if the Central Government is at any time satisfied and records a decision in writing to the effect that -

'the decision of the Central Government being final, the transferee or his predecessors-in-interest had obtained this transfer of the said property or has obtained or obtains any other compensation in any form whatsoever under the said Act by fraud or misrepresentation.'

A specific power of resumption and the manner of exercising that power by the Government has been indicated in the conveyance deed and in our opinion it is not possible for the respondent No. 2 to ignore these specific conditions and to direct resumption in the so-called exercise of powers of appeal or revision.

20. We must also point out that respondent No. 3 cannot be considered a person aggrieved to file an appeal under Section 23 of the Displaced Persons Act, or to invoke the revisional jurisdiction under Section 34. The application by the petitioner for allotment and the appeal by him in connection with allotment were made, as he says, with his own connivance, and, therefore, he cannot consider himself aggrieved by the orders passed by the competent authorities. We may at this stage refer to the rules for the allotment of the property. Rule 22 defines what is allotable property and rule 25 provides that an acquired evacuee property is an allotable property to a person in occupation thereof, who holds a verified claim. There are no materials on record to show whether the respondent had any verified claim or not.

He is a close relation of the petitioner and on that account may have been also occupying the property, but subsequently on a suit having been brought by the petitioner against him, a decree for ejectment had been passed in favour of the petitioner on the basis of a compromise. He cannot therefore be considered as a person in occupation of the property. He had thus no right to obtain the allotment of the property. Respondent No. 2 also did not recognise his right to the allotment of the property in his appellate order. In these circumstances, he cannot be considered a person aggrieved to file an appeal under Section 23 even if an appeal did lie. The respondent's advocate suggested that he may be a prospective bidder or buyer at the auction sale and in view of that chance, he may be considered a person aggrieved under Section 23. We are unable to accept this suggestion. Such a wide interpretation of the term 'person aggrieved' will mean a

right of appeal practically for all and sundry which could never have been intended. Therefore, the Deputy Chief Settlement Commissioner had no jurisdiction to entertain an appeal of the respondent against the transfer of the property to the petitioner under Section 10 or Section 20 of the Act in lieu of compensation and his order cancelling transfer is wholly without jurisdiction and illegal.

21. It was, however, contended by the respondent that the Deputy Chief Settlement Commissioner was competent to cancel the allotment and that with the cancellation of the allotment, the sale should stand ipso facto cancelled. We are unable to accept this contention. In the first instance, the allotment of the property in this case was made by the Chief Settlement Commissioner himself, vide his order dated 15-6-56 passed on an appeal by the petitioner. The petitioner in the appeal had claimed the allotment of the property and prayed that on the basis of the allotment, rent should not have been charged from him after 1-11-1953. This appeal was accepted and it was directed that the said portion of the rent should not have been treated as due from the petitioner to be deducted from the amount of compensation.

This order read with rule 34 clearly amounts to an allotment. It was after this order that the Regional Settlement Commissioner and the Assistant Custodian took further proceedings in execution of the order of the Chief Settlement Commissioner. The Deputy Chief Settlement Commissioner in these circumstances had no jurisdiction at all to entertain an appeal or revision in effect against the order of his superior, the Chief Settlement Commissioner and cancel such order directly or indirectly. Further the allotment was not challenged in time, as provided by the rule. Even the order of allotment does not appear to have been produced along with the appeal filed by the respondent. In our opinion, the order of allotment in these circumstances was not challengeable at all by the respondents. We are also of the opinion that even if the allotment was liable to be cancelled, it could not be cancelled after the property had been transferred by a formal deed of conveyance, except under the condition mentioned in the deed to which reference has been already made.

On the above facts, we are definitely of the opinion that respondent No. 2 had no jurisdiction to cancel the transfer made in favour of the petitioner and his order is wholly without jurisdiction. It has thus to be treated as a nullity and has to be ignored. The Regional Settlement Commissioner in Rajasthan is, therefore not authorised to enforce that order cancelling the transfer and to encroach upon the rights of the petitioner who had already acquired a vested right in the property and is entitled to the protection of this Court. The present case falls under the principle laid down by the Supreme Court that an agent could be prohibited from obeying the unlawful directions of his principal and even if the principal could not be reached by reason of his being outside the territories, the arm of law could certainly reach the agent who is guilty of having committed the wrong and the High Court would be justified in issuing a writ against him.

22. We accordingly allow the petitioner's application, and direct that respondent No. 1 shall not enforce the order of respondent No. 2 and infringe the petitioner's right in respect of the property under the deed of conveyance. We further direct that the petitioner's costs be borne by respondent No. 3; hearing fee Rs. 100/-.