RAGHU NATH

v.

COMPETENT OFFICER, DELHI & ORS.

August 20, 1970

[J. M. SHELAT AND C. A. VAIDIALINGAM, JJ.]

Administration of Evacuee Property Act (31 *of* 1950), *s.*12 *and Administration of Evacuee Property* (*Central*) *Rules* 1950, *r.* 14—*Power of Custodian to lease and cancel leases—Evacuee Interest* (*Separation*) *Act* (64 *of* 1951), *s.* 10 *and Evacuee Interest* (*Separation*) *Rules, r.* 11B—*Competent Officer—When he can direct Custodian to deliver vacant possession of mortgagel property.*

The appellant executed a usufructuary mortgage of his house and continued to reside in it as a tenant under a lease obtained from the mortgagee. In 1949, the mortgagee left for Pakistan. He was declared an evacuee and his mortgagee interest in the mortgaged property vested in the Custodian under s. 8 of the Administration of Evacuee Property Act, 1950. Under s. 12, the Custodian evicted the appellant and allotted it to others as tenants. In spite of demands by the appellant and the appellant tendering the mortgage amount, the Custodian refused to hand over vacant possession of the house to the appellant. The appellant applied to the Competent Officer under the Evacuee Interest (Separation) Act, 1951. The Officer determined the mortgage debt due from the appellant and the appellant claimed vacant possession against tender of payment by him of the amount. The Officer rejected the claim and ordered the sale of the property under s.10(b)(ii) of the Separation Act, for satisfaction of the mortgage debt. Thereafter, the appellant paid the entire mortgage debt and the Competent Officer accepted the amount.

On the question whether the appellant was entitled to vacant possession and have the order of sale set aside,

HELD: (1) Section 4 of the Administration of Evacuee Property Act gives to that Act an overriding effect in relation to any other law for the time being in force, and hence the law under the Transfer of Property set, is not applicable. Though s.12 of the Act empowers the Custodian to cancel an allotment or a tenancy, created by him, under r.14(2) of the Administration of Evacuee Property (Central) Rules, 1950, the Custodian can evict a person only on a ground justifying eviction of a tenant under a law relating to rent control or for any violation of the conditions of the lease or allotment. The Custodian could not, therefore, give vacant possession of the property to the appellant on his tender of payment of the mortgage amount. [855 H; 856 A-B, D-F]

(2) The Evacuee Interest (Separation) Act, 1951, was passed on account of the difficulty of administering evacuee properties in which there were both evacuee and non-evacuee interests and to resolve the hardship felt by non-evacuees, who, by reason of such properties being in the possession of the Custodian were unable to obtain satisfaction of their claims in view of the prohibitive provisions of that Act. But there is no provision by which the Custodian is made subject to the power or control of the Competent Officer or which enables the Competent Officer

to pass an order which would curtail or otherwise affect the powers of the Custodian. Though under s.10(b)(i) of the Separation Act, the Competent Officer can pay to the Custodian the mortgage debt and redeem the mortgaged property, his power is subject to the rules made under that Act. [856 F-G; 858 B-C, G-H]

(3) Reading the relevant provisions namely, s. 12 of the Administration of Evacuee Property Act and r. 14 of the Rules made thereunder, and s. 10 of the Separation Act and r. 11B of the rules made thereunder, together, the position is : (i) that though the Competent Officer must accept the mortgage amount when tendered by a mortgagor and the mortgage debt is thereupon satisfied, he cannot exercise the power to redeem the mortgaged property and order the Custodian to deliver up its vacant possession to the mortgagor *in the absence of any agreement between the mortgagor and the Custodian;* (ii) that the Competent Officer can order sale only for satisfaction of the mortgage debt and for distribution of the sale proceeds between the mortgagor and mortgagee. Since in the present case, the mortgage amount had been paid by the appellant and accepted by the Competent Officer, the order directing sale is untenable and should be set aside; and (iii) that in exercising his jurisdiction under s. 10, the Competent Officer cannot direct the Custodian to cancel or vary the terms of the leases or allotments made or granted by him. Therefore the Competent Officer can direct only *symbolical possession* of the mortgaged property to be given to the appellant, however, harsh and unfair it may apparently be. [860 D-G; 861 B, E-H; 862 A-C]

The All India Film Corporation v. *Raja Gyan Nath*, [1970] 2 S.C.R. 581 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 36 of 1967.

Appeal by special leave from the judgment and order dated August 25, 1966 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeal No. 36-D of 1966.

Bishan Narain, R. Mahalingier and *Ganpat Rai,* for the appellant.

R. H. Dhebar and *S. P. Nayar,* for respondent Nos. 1 and 3.

The Judgment of the Court was delivered by

Shelat, J. In 1933 the appellant built a bungalow situate at 27, Curzon Road, New Delhi on a plot acquired by him under a permanent lease from the Secretary of State for India. In 1943 he mortgaged the said property with possession in favour of one K. B. Bunyad Hussain but obtained a lease thereof at the same time from the mortgagee and continued to reside therein as a tenant. In November 1949, the mortgagee left for Pakistan whereupon the Custodian of Evacuee Property under the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Administration Act) declared him to be an evacuee and his interest in the said property as the mortgagee as evacuee property. The appellant alleged that sometime in November 1949 the

A Custodian forcibly dispossessed him and either allotted or let out, or allowed the said premises to be occupied by certain persons. In 1954, the appellant made an application to the Competent Officer under the Evacuee Interest (Separation) Act, 1951 (hereinafter referred to as the Separation Act) for separating his interest as the mortgagor and tenant in the said property. In B those proceedings a sum of Rs. 1,45,735/- was ultimately held to be due as the mortgage debt under the said mortgage. The appellant claimed that he was entitled to obtain vacant possession of the said property against payment by him of the mortgage debt. The claim was rejected on the ground that there was no agreement between the appellant and the Custodian for getting the vacant possession and also on the ground that the Competent C Officer, under the Separation Act, had no power to direct the Custodian to hand over to the appellant vacant possession. From that time onwards the appellant made diverse applications to the Competent Officer and the Appellate Officer under the Separation Act for obtaining vacant possession against payment of the mortgage debt. In one such application made in 1958 he alleged D that a compromise had been arrived at between him and the Custodian under which he would pay the mortgage debt and the Custodian thereupon would simultaneously hand over to him vacant possession. By his order dated March 23, 1959, the Appellate Officer, however, held that no such compromise had been entered into by the Custodian and that the correspondence E between the appellant and that authority merely indicated that what was agreed to was that upon the appellant lodging certain verified claims an open portion shown as A, B, C and D in the plan of the property would be handed over to him. On this finding the Appellate Officer dismissed the appellant's application as he had neither paid the mortgage money nor put in the verified claims as suggested in the said correspondence and confirmed the F order of the Competent Officer under which the property had been ordered to be sold in the absence of any agreement with the Custodian or the payment of the mortgage debt.

The appellant then filed a writ petition in the High Court of G Punjab (in the Circuit Bench at Delhi) for quashing the said order of sale and for a direction to the Competent Officer to hand over vacant possession against payment by him of the mortgage debt. A learned Single Judge dismissed the petition holding that the Competent Officer had no jurisdiction to order such vacant possession against the Custodian or against the tenants or allottees H inducted on the property by the Custodian. The Letters Patent appeal against that judgment and order was also dismissed. The appellant then filed the present appeal after obtaining special leave from this Court.

It is not disputed that until the time when the Competent Officer passed his order for sale of the property and the Appellate Officer confirmed it the appellant had not paid the mortgage amount, nor was there any agreement between him and the Custodian whereunder the latter would hand over vacant possession of the property against payment of the mortgage debt. However, it is conceded by counsel for respondents 1 and 3 that the appellant has since then paid the entire mortgage debt and the Competent Officer has under s. 10 of the Separation Act accepted that amount. Two questions on these facts, therefore, arise for determination: (1) whether the order for sale passed by the Competent Officer and confirmed by the Appellate Officer was rightly passed although the appellant had repeatedly offered to pay the mortgage debt on condition, however, that he would be given vacant possession at the same time, and (2) assuming that the Competent Officer had no power to direct the Custodian to hand over vacant possession, what was the effect of the repayment of the mortgage debt by the appellant since then and the acceptance thereof by the Competent Officer.

A B C D

The rights in the property in question which vested in the Custodian were those of the mortgagee on his being declared an evacuee and his rights as such mortgagee in the property in question as evacuee property. Under the Transfer of Property Act, 1882 the interest which the Custodian could claim was the interest in the property transferred to the mortgagee for securing repayment of the money advanced by him. Since the mortgage was usufructuary, the mortgagee, and after his having been declared an evacuee, the Custodian, could claim and retain possession till the mortgage debt was paid and the mortgage was discharged. If the property is let out in the meantime, the mortgagee and those claiming his interest therein are entitled to receive the rents and profits accruing from the property in lieu of interest or towards part payment of the mortgage debt. Under s. 60 of that Act, the mortgagor has a right at any time after the principal amount has become due to require the mortgagee on payment or tender of the mortgage debt (a) to deliver to him the mortgage deed and all other documents relating to the mortgaged property which are in the mortgagee's possession or power, (b) to deliver possession where the mortgagee is in possession of the mortgaged property and (c) to retransfer the mortgaged property to him or to such third person as he may direct at his cost. Under s. 76, the mortgagee in possession has to manage the property as a person of ordinary prudence would manage it if it were his own. Under s. 83, the mortgagor, provided his right of redemption is not barred, may deposit in the court where he might have instituted a suit for redemption to the account of the mortgagee the mortgage debt then due. The court thereupon has to issue a notice to the mort-

E F G H

A gagee and on the mortgagee stating the amount due to him and his willingness to accept the money so deposited in full discharge of the mortgage debt, pay the amount to the mortgagee on his depositing the mortgage deed and all other documents relating to the mortgaged property. Where the mortgagee is in possession of the property, the court before paying the amount has to ask him B to deliver possession thereof to the mortgagor. When the mortgagor has tendered or deposited in court the mortgage debt together with interest thereon and has done all that is to be done by him to enable the mortgagee to take such amount out of court, and a notice, as aforesaid, has been served on the mortgagee under s. 83 interest ceases to run. If the mortgagee thereafter refuses to accept the amount so deposited or to deliver the mortgage deed C and other documents or possession of the property where it is in his possession, the remedy of the mortgagor is to file a suit for redemption. The position, therefore, is that upon the mortgage being paid off, the mortgagor is entitled to have the property restored to him free from the mortgagee's security. The repayment of the debt would be made against delivery of possession D and of the mortgage deed and other documents, and these have to be simultaneous transactions. A tender of the mortgage deed or a deposit thereof in court conditional upon the mortgagee than and there delivering possession or executing reconveyance, if required, and handing over the deeds would be a good tender so that if it were to be refused interest would cease running. It E follows that a mortgagee is not permitted to deal with the property in such a way that upon discharge of the debt the property cannot be restored. [*see* Fisher & Lightwood's *Law of Mortgage* (8th ed.) p. 482].

Is the position of a mortgagor any the different than under the Transfer of Property Act by reason of the evacuee property legis- F lation ? In other words, could not the appellant have tendered to the Competent Officer the mortgage amount due by him on condition that he should be given physical and not merely symbolical possession of the mortgaged property.

Upon the mortgagee being declared an evacuee and his interest as such mortgagee in the premises in question an evacuee property, G his interest in the mortgaged property vested under s. 8 of the Administration Act in the Custodian from the date of the notice issued under s. 7 of the Act. Under s. 8(4) any person in possession of the mortgaged property would be deemed thenceforth to be holding the property on behalf of the Custodian and would be bound on demand by him to surrender possession to him. The H Act having under s. 4 an overriding effect on any other law for the time being in force or any instrument having effect by virtue of any such Act, the Custodian, under the powers conferred on him by s. 10, could take all such measures he might consider necessary

for securing, administering, preserving and managing any evacuee property including transferring "in any manner whatsoever" the evacuee property "notwithstanding to the contrary contained in any law or agreement relating thereto". Under s. 12, the Custodian is empowered, notwithstanding anything contained in any other law for the time being in force, to cancel any allotment, terminate any lease or amend the terms of such lease or agreement under which any evacuee property is held or occupied by a person whether such allotment, lease or agreement was granted or entered into before or after the commencement of the Act. Under sub-s. 3, he is authorised to eject such person and take possession, if such person fails to surrender possession on demand made by him in the manner provided by s. 9 *i.e.*, by even using such force as would be necessary for taking possession. It is conceded by the respondents that under these powers the Custodian had taken over possession of the mortgaged property and the property has since then been in possession of persons who were either allotted portions of it or who were inducted therein as tenants by the Custodian. It is also conceded that the Custodian has refused, notwithstanding demands made by the appellant, to evict these persons from the property and hand over vacant possession to the appellant even on the appellant tendering the mortgage amount. This was presumably done by reason of the fact that though s. 12 empowers him to cancel an allotment or a tenancy made or created by him, r. 14(2) of the Administration of Evacuee Property (Central) Rules, 1950 lays down that in the case of a lease or an allotment granted by the Custodian he may evict a person on a ground justifying eviction of a tenant under a law relating to the Rent Control or for any violation of the conditions of the lease or allotment. From the provisions dealing with the vesting of the evacuee property, the powers of the Custodian, appeals and revisions from his order and the overriding nature of the provisions of the Act it is clear that the Administration Act is a self-contained code.

In 1951, Parliament passed the Evacuee Interest (Separation) Act, LXIV of 1951 (hereinafter referred to as the Separation Act). The statement of objects and reasons shows that it was passed on account of the difficulty of administering evacuee properties in which there were both evacuee and non-evacuee interests and to solve the hardship felt by non-evacuees, who by reason of such properties being in possession of the Custodian, were unable to obtain satisfaction of their claims in view of the prohibitive provisions of the Administration Act and in particular its s. 17. The Act, as its long title declares, was passed for the separation of interests of evacuees from those of non-evacuee persons in composite properties. Sections 4 and 5 of the Act provide for the appointment of Competent Officers and their jurisdiction. Sec. 7 provides for submission of claims by a person claiming interest in

A a composite property. Cl. (e) of sub-s. 2 requires that where a claim is made by a mortgagor the total amount due on the mortgage debt and the particulars necessary to determine the same should be set out in such a claim. Sec. 8 provides for an inquiry to be made by the Competent Officer and provides that the order to be made by him shall contain, amongst other things, the amount
B due to the evacuee in a case where the claim is made by a mortgagor. Sub-s. 2 of s. 8, however, provides that where the Custodian has determined that the property in question or any interest therein is evacuee property, such determination is binding on the competent officer. The proviso to that sub-section lays down that nothing contained in sub-s. 2 shall debar the competent officer from determining the mortgage debt in respect of such property
C or any interest therein or from separating the interest of the evacuee from that of the claimant under s. 10. Sec. 10 provides that notwithstanding anything to the contrary in any law or contract or any decree or order of the civil court or other authority, the competent officer may, *subject to any rules* that may be made in this behalf, take all such measures as he may consider necessary for
D the purpose of separating the interest of the evacuee from those of the claimant in any composite property and in particular may :

> "(b) in the case of any claim of a mortgagor or a mortgagee,—
>
> (i) pay to the Custodian or the claimant the amount
E payable under the mortgage debt and redeem the mortgaged property; or
>
> (ii) sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof; or
>
> (iii) partition the property between the mortgagor
F and the mortgagee having regard to the share to which the mortgagee would be entitled in lieu of his claim;"

Cl. (c) empowers him to adopt a combination of all or some of these measures. The proviso to the section provides that in any case where the claimant is a mortgagor and tenders the amount
G due, the competent officer *shall accept* the same in full satisfaction of the mortgage debt. The competent officer, by virtue of the proviso, is thus under an obligation, where the claimant is a mortgagor and tenders the mortgage amount due, to accept such amount in full satisfaction of the mortgage debt and thereupon interest on the mortgage amount would cease to run. Under cl. (b), he is
H also empowered in such a case to redeem the mortgaged property.

The argument was that where the mortgage amount is tendered by the mortgagor and the competent officer accepts it in satis-

faction of the debt due under the mortgage, the mortgage debt is satisfied, interest thereon ceases to run and the mortgage is discharged. Consequently, there would be no question of the competent officer adopting any of the measures provided in sub-cls. (ii) and (iii) of cl. (b) of the section, that is to say, there could be no occasion for him either to sell the property for satisfaction of the mortgage debt or to partition the property between the mortgagor and the mortgagee, as, on satisfaction of the mortgage debt the mortgage is discharged and the mortgagee's interest in the mortgaged property ceases or comes to an end. The only measure which in that event he can adopt would be that under cl. (b)(i), *i.e*, to pay to the Custodian the mortgage debt and redeem the mortgaged property. It was said that that being the position under s. 10, the appellant was entitled to tender the mortgage amount in satisfaction of the debt due under the mortgage on condition that the mortgage should be redeemed and possession of the property given to him. The Competent Officer in the proceedings before him under s. 7 was bound to accept the mortgage amount and redeem the mortgaged property. The argument would be valid if s. 10 had been untrammelled and the powers given therein to the Competent Officer were not made subject to the rules which may be made under the Act. The Legislature, it seems had a purpose in making the powers contained in s. 10 and their exercise by the Competent Officer subject to the rules. It must have been aware of (i) that the Administration Act is, as aforesaid, a self-contained code, (ii) that the Custodian appointed thereunder is not an authority subject to the power or control of the Competent Officer, and (iii) that the Administration Act, by ss. 10 and 12 thereof, confers several powers on the Custodian including the power to transfer the property vested in him. He can therefore, create a lease or grant allotment and thus induct on the property tenants or allottees. Under s. 12 of that Act the Custodian has been empowered to cancel or terminate a lease or allotment. But no such power is conferred on the Competent Officer either under s. 10 or under any other section of the Separation Act, nor have the powers of the Custodian been made subject to the powers of the Competent Officer or his orders. On the other hand, it would appear from a reading of the provisions of the Separation Act that the object of enacting it was to enable non-evacuees to have their interests separated in composite properties and to grant power to the competent officer to achieve that object. But we do not find anywhere in either of the two Acts any provision by which the Custodian is made subject to the power or control of the Competent Officer or enabling the Competent Officer to pass any order which would curtail or otherwise affect the powers of the Custodian. It would seem that the two Acts have different objects and schemes and the authorities established under them are independent of each other. The powers conferred

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A on the Competent Officer had, therefore, to be so provided that they could be exercised in harmony and consistently with the provisions of the Administration Act and the duties and functions of the Custodian thereunder. It was for that reason that the Legislature laid down in s. 10 of the Separation Act that the powers conferred thereunder on the Competent Officer were to be subject to
B the rules made under that Act. Had it not been so, there would have resulted a conflict in the exercise of the respective powers given to the Custodian and the Competent Officer by the two Acts, and consequently, a failure in the smooth working out of the provisions of the two Acts.

C Rule 11B of the Rules made under the Separation Act provides that a Competent Officer "having regard to the provisions of the proviso to s. 10 of the Act" shall, for the purpose of separating the evacuee interest from other interests in a composite property, adopt any of the measures in the order of preference set out therein. Cl. (b) of that rule provides that in the case of a claim by a mortgagor or a mortgagee (1) where both the Custodian and
D claimant agree, the Competent Officer can exercise the powers conferred on him under sub-cl. (i) or sub-cl. (iii) of cl. (b) of s. 10 of the Act and (ii) where there is no such agreement, he can sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof. The effect of this rule read in conjunction with s. 10 of the Act, however harsh it may
E apparently seem to be, is that though the Competent Officer has to accept the mortgage amount tendered by a mortgagor and thus discharge the mortgage debt and interest thereupon ceases to run on the principal amount and though he can adopt any one of the measures set out in s. 10, including redemption of the mortgage, he cannot order such redemption and direct the Custodian to
F deliver vacant possession of the property in the absence of an agreement between the Custodian and the mortgagor claimant. It follows that in the absence of such agreement the mortgagor-claimant cannot demand from the Competent Officer that the latter should accept the mortgage amount tendered by him and direct simultaneous delivery of possession of the mortgaged property. The power to redeem the mortgaged property being subject to
G rule 11B(b), the only thing that the Competent Officer can at the most do is to order symbolical possession, but he cannot direct the Custodian to give vacant possession. The reason is clear, for, such an order would in effect be an order directing the Custodian to cancel the leases or allotments granted by him and eject the tenants or allottees from the property. Such an order would at
H once be in conflict with r. 14 of the Administration of Evacuee Property (Central) Rules, 1950. That rule provides that while exercising his power under s. 12 of that Act, namely, the power to cancel or vary the terms of a lease or allotment, the Custodian,

in the case of a lease or allotment granted by him, can evict a person only on any of the grounds justifying eviction of a tenant under any rent control law for the time being in force in the State concerned or for any violation of the conditions of the lease or the allotment. Cl. 4 of that rule further lays down that before cancelling or varying the terms of the lease or before evicting any lesse the Custodian must serve a show cause notice on such lessee and afford him a reasonable opportunity of being heard. If the Custodian is satisfied on hearing the concerned lessee that he is not liable to eviction under a rent control Act in force in the State where the property is situate or has not contravened any of the provisions of the lease, he cannot cancel the lease nor can he evict the lessee except only as provided by cl. (5) of that rule on the ground that such eviction is necessary or expedient for the preservation or proper administration or management of such property or for carrying out any other object of the Act. He, therefore, cannot evict a tenant or an allottee on the ground that it is necessary to do so for the separation of an interest of a non-evacuee mortgagor as that would not be one of the purposes of the Administration Act.

The result which emerges from the discussion of the relevant provisions of the two Acts and the rules thereunder made is (i) that though the Competent Officer must accept the mortgage amount when tendered by a mortgagor and the mortgage debt thereupon would be satisfied, he cannot exercise the power to redeem the mortgaged property and order the Custodian to deliver up its vacant possession to the mortgagor in the absence of any agreement between the mortgagor and the Custodian, and (ii) that in exercising his jurisdiction under s. 10 the Competent Officer cannot direct the Custodian to cancel or vary the terms of the leases or allotments made or granted by him, firstly because he has no such power under s. 10 or any other provision of the Separation Act, and secondly, because such an order would amount to compelling the Custodian to act in a manner contrary to the provisions of the aforesaid r. 14. The exercise of the power to redeem being subject to the rules, it would not be competent for the Competent Officer, by reason of r. 11B(b), to order delivery of possession by the Custodian in the absence of an agreement between him and the mortgagor-claimant.

In view of this position, the appellant could not have insisted that he would tender or pay the mortgage debt only against delivery of vacant possession of the property in the absence of any agreement between him and the Custodian. The only thing which the Competent Officer could do in the circumstances was to accept the mortgage amount whereupon interest would cease to run. It is not in dispute that the appellant, insisting as he was

all throughout upon being given vacant and not merely symbolical possession, did not actually tender or make payment of the mortgage debt. The mortgage debt, therefore, remained outstanding. The mortgage also stood intact, and therefore, the only measure which the Competent Officer could adopt and which in fact he adopted was to order sale of the property and satisfy the mortgage debt from the sale proceeds thereof. The order which he passed and which was confirmed by the Appellate Officer was in the circumstances then prevailing validly and competently made. The appellant's grievance against it, therefore, could not be sustained. [*cf.* in this connection the position of an auction purchaser as decided in *Ek Nawas Khan* v. *The Competent Officer*(1)].

But it is conceded that since the passing of the said order the appellant has paid up the full mortgage amount and the Competent Officer has, as he was bound to do under s. 10, proviso, accepted that amount. Presumably that amount has been paid by him to the Custodian. Therefore, the mortgage debt is no longer outstanding. Though this event has happened after the impugned order was passed, we must in fairness take notice of the fact that the mortgage debt is no longer outstanding and the mortgaged property is now free from the mortgagee's security, and therefore, from the interest vested in the Custodian. It is true that the Competent Officer, as already stated, can adopt any of the three measures set out in s. 10(b) of the Separation Act or adopt a combination of all or some of them, but as emerging from the discussion above, he cannot redeem the property and order delivery of vacant possession in the absence of an agreement between the Custodian and the appellant. That is quite clear. But the order of sale passed by him and confirmed by the Appellate Officer also cannot stand, firstly, because the mortgage debt now stands satisfied, and secondly, because he can order sale only for satisfaction of the mortgage debt and for distribution of the sale proceeds thereof between the mortgagor and the mortgagee. There being now no question of the satisfaction of the mortgage debt since it now stands satisfied and the property being now freed from the mortgagee's security, the order for sale cannot stand and cannot be allowed to stand. At the same time the Competent Officer cannot order the Custodian to deliver vacant possession although the appellant has paid the mortgage amount and the Competent Officer has accepted it in satisfaction of the mortgage debt. In view of ss. 10 and 12 of the Administration Act, the powers and duties of the Custodian thereunder and under the rules made under that Act, the provisions of s. 10 of the Separation Act and r. 11B of the rules made thereunder, the only thing that could be offered and given to the appellant was symbolical possession of the property. Such a result, no doubt, would be inconvenient, and may even

(1) A.I.R. 1960 All. 626.

appear to be harsh and unfair as the appellant would be driven to file proceedings for eviction of tenants and allottees now in possession of the property. (see *The All India Film Corporation Ltd.* v. *Raja Gyan Nath*) (1). A

In view of the payment of the mortgage amount by the appellant and the acceptance of it by the Competent Officer, the order directing sale has now become untenable and has, therefore, to be set aside. The mortgage stands discharged and the Competent Officer is bound to direct symbolical possession of the mortgaged property to the appellant. To this extent the appeal succeeds. The order for costs of the appeal would ordinarily follow the result, but in view of the fact that the Competent Officer was entitled to pass the order of sale in the circumstances then prevailing it is fair and equitable, though his order is set aside, that the parties should bear their own costs. B C

V.P.S. *Appeal allowed in part.*

(1) [1970] 2 S C.R. 581.