
(2009) 11 AHC CK 0192
In the Allahabad High Court

Allahuddin and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 27

Citation : (2010) 1 AWC 628

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—The writ petitioners have prayed for quashing the order dated 4.8.1984, passed by the District Magistrate, Aligarh as Asstt. Custodian Enemy Property, declaring the disputed property, including a plot measuring 1400 sq. feet on which Shri Mangal Sen is running Novelty cinema of which a portion being used by Prem Chandra for doing business of coal; six houses in Saray Barambeg; seven shops in Sabji Mandi, Aligarh including a staircase; two shops in Bazar Gudari, Aligarh etc., the details of which are given in the order under challenge.

2. We have heard Shri M.K. Gupta, learned Counsel for the petitioners. Learned standing counsel appears for the District Magistrate, Aligarh as Asstt. Custodian Enemy Property, Aligarh-respondent No. 4 and Tehsildar of Tehsil Koil, Distt. Aligarh-respondent No. 5. The notices were served but no one appears for the Central Government. Shri A.K. Gupta appears for Shri Madhu Sudan Gopal-respondent No. 6, the tenant of the property.

3. The facts stated in the writ petition in brief are that the properties were initially owned by Shri Imamuddin. After his death the properties were partitioned by a registered arbitration award dated 19.11.1940 between Hanifa Begum, the widow of Imamuddin; Rafiuddin, the son of Imamuddin and the legal heirs of his three sons namely Naquiuddin, Taquiuddin and Aliuddin. The Asstt.

Custodian, Evacuee Property issued notice and declared Smt. Swaleha Begum as evacuee. The order was challenged by Azizuddin and Allauddin. The appeal was allowed by the Custodian, Evacuee Property, Lucknow on 7.2.1957. It was held that Swaleha Begum (the evacuee) had no interest in the properties and that said properties are not evacuee property. The order was not challenged by any person and attained finality.

4. After about six years on 7.2.1963 a show cause notice was issued by the Asstt. Custodian, Evacuee Property, again treating the property as evacuee property. This order was again challenged before the Custodian General. By order dated 2/5.12.1963 the Custodian General of India quashed the order dated 10.6.1963 and remanded the case. The question was decided again and it was held by Asstt. Custodian in order dated 31.1.1964 that only Smt. Amna Begum was an evacuee and that only Zamindari Compensation and Rehabilitation Bonds were declared evacuee property. The properties in dispute were not held to be evacuee property. It was held in this order that Smt. Swaleha Khatoon and Jannat Begum had no share in the properties. The order was challenged by Shri Madhu Sudan Gopal, the tenant of the property. The appeal was allowed on 9.4.1964 and that orders dated 31.1.1964 as well as the order dated 7.2.1957 were set aside. The petitioner filed a Writ Petition No. 2322 of 1964, which was allowed on 2.4.1970 and the order dated 9.4.1964 was quashed. The order of the High Court was not challenged by any one. The High Court after setting out the pedigree and considering the rights of the parties held that no order could be passed by Custodian General prejudicial to any person without giving him any opportunity of hearing. In this case no opportunity was given to the affected persons and that the records were not summoned by the Custodian General in hearing the matter u/s 27 of the Administration of Evacuee Property Act, 1950. The Custodian General exercised the powers arbitrarily and had illegally set aside the order on merits after 7 years without giving opportunity of hearing to the parties.

5. After the judgment of the High Court, the Asstt. Custodian, Evacuee Property challenged the order dated 7.2.1957 after a period of 13 years. The revision was allowed by Deputy Custodian General, Evacuee Property on 27.10.1971. Again the petitioner filed Writ Petition No. 586 of 1972, which was allowed on 6.1.1981. The order dated 27.10.1971 was quashed and has become final.

6. It appears that the respondent No. & as tenant of the property was not satisfied and that he pursued the matter further, this time with the District Magistrate as Asstt. Custodian of the Enemy Property. The District Magistrate without looking into the records and considering the scope of the provisions of the Enemy Property Act, 1968 by his order dated 4.8.1984 declared the properties as enemy properties giving rise to this writ petition. "

7. Shri M.K. Gupta, learned Counsel for the petitioner submits that the Enemy Property Act, 1968 was enacted for the purposes of continued vesting of enemy property, vested in the Custodian of Enemy Property in India under the Defence

of India Rules, 1962 and the Defence of India Rules, 1971. The provisions of the Act indicate that enemy subjects due to the vesting of his property in the Custodian were not divested of their rights, title and interest in the property. The vesting in the Custodian is limited to the extent of possession, management and control over the property temporarily. The object of the Enemy Property Act, 1968 is to prevent a subject of any enemy State from carrying on business and trading in the property situate in India. Where the orders passed by the Custodian General against which writ petitions were filed were dismissed have become final declaring that the property were not evacuee properties, the District Magistrate had no jurisdiction at all to declare the properties as enemy properties. He has relied upon recent judgment of the Supreme Court in Union of India (UOI) and Another Vs. Raja Mohammed Amir Mohammad Khan, and the judgments of this Court in Dr. Saeed Ahmad and Anr. v. Custodian of Enemy Property for India and Ors. 2007 ACJ 1671 : 2007 (6) AWC 6015 ; Shamim Ahmad Vs. Rashida Begum and others, and Rameshwar Dayal v. Custodian Enemy Property of India 1986 (2) ARC 376.

8. In Rameshwar Dayal v. Custodian Enemy Property of India (supra) this Court held as under:

The Act further empowers the Custodian to deal with the property vested in the manner laid down by sections. We however do not find any provision in the Act or the Defence of India Rules which empower the Custodian of enemy properties to, in a case where some one disputes that a particular property to be enemy property adjudicate or to give a determinative finding on the point in controversy. Likewise we do not find any provision in the Act or the rules which empowers the Custodian to take forcible possession of any property which he claims to have vested in him as enemy property. In our opinion whenever such controversy is raised it has to be resolved by raising the issue in appropriate civil proceedings.

9. Again in Buniyad Husain and others Vs. Zila Adhikari, Barabanki and another, , the Court held:

The law, as stated above, does not authorise a Custodian or his nominee to take forcible possession of any property which he considers belonging to a Pakistan National even though actually it may not belong to such a person as some one else may claim that property to be his and not of the Pakistan National by virtue of its belonging to who that person wants to take possession over it. The remedy of the Custodian in such circumstances is to proceed in accordance with law. The law vests the property in him and it is his duty to take effective steps for its preservation. If he is resisted in the taking possession of the property which he considers to be the property vesting in him, belonging to a Pakistan National, he cannot resort to force in taking possession over it. He has to proceed in accordance with law such as by filing a suit against the person who claims that it is not such a property which vests in the Custodian, and it is in that suit that it will be decided whether it is such a property which belongs to a Pakistan National

and which has vested in the Custodian by virtue of the notification under Sub-rule (1) of Rule 133V of the Defence of India Rules, 1962.

10. Shri A.K. Gupta, learned Counsel for respondent No. 6 submits that Enemy Property Act operates in a different area and that orders under the Administration of Evacuee Property Act, 1950 even if they have become final, will not come in the way, if property is enemy property. It is stated that subjects having left for Pakistan after the hostilities broke out between the two countries, leaving the properties in India would render the properties to be declared as enemy property subject to the management of the Custodian under the Act.

11. The object of the Enemy Property Act, 1968 as it is held in Union of India (UOI) and Another Vs. Raja Mohammed Amir Mohammad Khan, , is to prevent a subject of a enemy State from carrying on business and dealing in the property situate in India. It is, therefore, contemplated that temporary vesting of the property takes place in the Custodian, so that the property, till such time as it is enemy property, cannot be used for any purpose. The Defence of India Rules, 1962 came into force on 5.11.1962 and authorised the Central Government to appoint a Custodian of enemy property in India to preserve enemy property. The Defence of India Act was enacted in 1962. The Rules, however, were deemed to be the Rules under the Act. Thereafter the Government of India in exercise of powers under Sub-rule (1) of Rule 133 (v), issued the Enemy Property (Custody and Registration) Order, 1962. In the year 1965 the hostilities broke out between India and Pakistan on which Enemy Property (Custody and Registration) Order, 1965 was issued by the Government of India. All immovable property in India belonging to or held by or managed on behalf of the Pakistani nationals stood vested in the custody of enemy property in India. The Enemy Property Ordinance, 1968 which later on became Enemy Property Act on 6.7.1968 vested the enemy properties in the Custodian under the Defence of India Rules, 1962. The enemy or enemy subject or enemy firm is defined u/s 2(b) of the Act. The enemy property is defined u/s 2(c) of the Act. If the individual enemy subject under the proviso to Section 2(c), dies in the territories to which the Act extends, the property shall be continued to be regarded as enemy property. The properties were transferred to Custodian for management u/s 6 giving powers u/s 8 to the Custodian for its management. The Central Government could u/s 18 divest the enemy property vested in the Custodian by general or special order and to be returned to the owner thereof or such other person as may be specified in the discretion and consequently the property shall cease to vest in the Custodian and shall be re-vested in such owner or other person.

12. In this case even if the allegations with regard to migration of some of the persons of the family to Pakistan (which was not accepted by the Custodian General) are taken into consideration, there was no case of vesting of the properties in the Custodian as enemy properties. The object and purpose of the Administration of Evacuee Property Act, 1950, Evacuee Interest (Separation) Act, 1951 and the Displaced Persons (Compensation and Rehabilitation) Act, 1954

was entirely different. After partition of India and declaration of Pakistan and India as independent nations on 14th and 15th August, 1947 respectively the citizens of India, in millions either voluntarily or involuntarily by brute force were required to leave their homeland. They were victims of a historical event. They sacrificed their homes for giving freedom to the country. They were not the enemies of the country. The scheme under the Administration of Evacuee Property Act, Ordinance, 1949, which was later made into an Act in 1950, Evacuee Interest (Separation) Act, 1951 and Displaced Persons (Compensation and Rehabilitation) Act, 1954 was to declare the properties left by the migrants and to allot them to the displaced persons, who needed rehabilitation. The hostilities between India and Pakistan in the year 1947 were not treated as war. The first war broke out with China in 1961 and that first hostilities between India and Pakistan broke out in 1965. India and Pakistan were not inimical to each other and will never be so as the people of both the countries have common heritage, culture and traditions. The breaking out of hostilities and consequent management of the properties under the Enemy Property Act, 1968 was a temporary arrangement only to manage the properties of the persons, firms and companies, who were doing business and trading in India. The Enemy Property Act, 1968 was never intended to manage the evacuee property of the persons, who had to decide to be either in Pakistan or in India after the unfortunate partition of the country in 1947.

13. In this case, the order of the High Court dated 2.4.1970 and thereafter the judgment dated 6.1.1981 had become final. The family members were neither doing business or trading, nor left for Pakistan. The District Magistrate had no jurisdiction under the Enemy Properties Act, 1968, to make any orders to declare or to manage the properties.

14. The writ petition is allowed. The order dated 4.8.1984, passed by the District Magistrate acting as Asstt. Custodian, Enemy Property, Aligarh is declared to be wholly without jurisdiction and inconsequential and is accordingly quashed. The petitioner will be entitled with the cost of this petition.