
(1961) 09 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 136 of 1959

Amar Nath

APPELLANT

Vs

Deputy Custodian General Punjab and Others

RESPONDENT

Date of Decision : 18-09-1961

Acts Referred:

Administration of Evacuee Property (Amendment) Act, 1956 — Section 10(2), 10(3)
Administration of Evacuee Property Act, 1950 — Section 48, 48(1)
Evidence Act, 1872 — Section 115

Citation : AIR 1963 P&H 225 : (1962) 1 ILR (P&H) 524

Hon'ble Judges : G.D. Khosla, C.J;A.N. Grover, J

Bench : Division Bench

Advocate : H.R. Sodhi and U.S. Sahni, for the Appellant; H.S. Doabia, A.A.G.,
for the Respondent

Final Decision : Dismissed

Judgement

Grover, J.—This is an appeal under Clause 10 of the Letters Patent against a judgment of a learned Single Judge of this Court dismissing a petition which had been filed under Article 226 of the Constitution.

2. The appellant, Amar Nath, had dealings with certain Muslims prior to the partition of the country. It appears that he owed Rs. 5,900/- to those persons. Recording to the petitioner, a sum of Rs. 7400/- Was due to him from the Muslim evacuees. On 11th November 1950 a demand was made from him by the Assistant Custodian of Jullundur in respect of the sum of Rs. 5,900/-. He sought to adjust the debt due from him against the sum of Rs. 7,400/- but that was disallowed. When this Court held in *Firm Sahib Dayal Bakshi Ram Vs. Assistant Custodian of Evacuees' Property, Amritsar and Another*, and *Firm Pariteshah Sadashiv Vs. Asst. Custodian of Evacuee Property, Amritsar and Another*, that the Custodian could not make recovery of time-barred debts u/s 48 of the Administration of Evacuee Property Act, 1950 (as it stood before its amendment by Act No. 91 of 1956), the Custodian Department deleted this demand holding

that it was not enforceable. This happened in 1953.

3. After the amendment of Section 48 in 1956, the Custodian Department renewed the demand in respect of Rs. 5,900/- which was contested by the petitioner, but on 21st March 1957 the Assistant Custodian decided against him. Having failed before the Custodian-General in revision, the appellant approached this Court in December 1958 with a petition under Article 226 of the Constitution challenging the legality and validity of The demand which was sought to be enforced against him u/s 48 of the Act.

4. The short question is whether the amended Section 48 of the Act would be applicable to the present case. Before its amendment, the aforesaid section provided that any sum due to the State Government or to the Custodian under the provisions of the Act could be recovered as if it were an arrear of land revenue. By Section 48 of Act No. 91 of 1956 the following section was substituted place of the old section

"48. (1) Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is payable to the Government or to the Custodian within the meaning of Sub-section (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question, and the decision of the Custodian shall, subject to any appeal or revision under this Act, be final and shall not be called in question by any court or other authority.

(3) For the purposes of this section, a sum shall be deemed to be payable to the Custodian notwithstanding that its recovery is barred by the Indian Limitation Act, 1908, or any other law for the time being in force relating to limitation of actions."

The previous pronouncements related to the ambit and scope of the old section. The reasoning, which prevailed in the first decision *Firm Sahib Dayal Bakshi Ram Vs. Assistant Custodian of Evacuees' Property, Amritsar and Another*, is contained succinctly in the judgment of Weston C.J. in these words:-

"I accept that an order u/s 7 of the fact declaring a debt to be evacuee property is within the competence of the Custodian, whether the debt be time-barred or not. There is nothing in this, however, which requires either that the Custodian has jurisdiction to determine a disputed question whether a debt is time barred or not, or that, as has been urged, the Custodian can recover a debt admittedly time-barred and is an authority entirely outside the law of limitation. Clauses (i) and (i) of Section 10(2) of the Act show sufficiently that the scheme of the Act is not that the Custodian should have powers above all laws, and Section 4 of the

Act in no way requires such a conclusion. Section 48 no doubt gives a summary remedy for recovery of sums due to the State Government or to the Custodian, but I have no hesitation in accepting that the powers given by this section must be restricted to sums otherwise legally recoverable."

In the second decision *Firm Pariteshah Sadashiv Vs. Asst. Custodian of Evacuee Property, Amritsar and Another*, emphasis was laid more on the word "due" as it appeared in the old Section 48, the question posed being whether that word meant "legally due". The ratio of the previous decision was, however, adopted and followed. In the amended section different language is employed and what has to be seen is whether any sum was payable to the Custodian in respect of any evacuee's property "under any agreement, express or implied, lease or other document or" "otherwise howsoever". The words underlined (here in single inverted commas) by me are of the widest amplitude. The word "due", which appeared in the previous section, has been omitted which would show that the Parliament intended effecting a change in the law alter the previous Judicial pronouncements in which it had been held that debts due to the evacuees which were barred by time did not fall within the ambit of Section 48 as it originally stood.

Sub-sections (2) and (3) of the amended section are quite new and thereby a machinery has been provided for deciding any question that arises as to whether a sum is payable to the Custodian within the meaning of Sub-section (1) of Section 48 or not and a deeming provision has been introduced to the effect that even time-barred sums would become payable within the meaning of that sub-section. The entire purpose, therefore, of amending this section appears to have been to get over the difficulties created by the judicial decisions in respect of the old section, the result of which -ass that the Custodian could not realise such sums as were due to Muslim evacuees but which had become barred by time.

One of the reasons, which prevailed with the Benches of this Court in the decisions referred to before, was that Section 10(2)(i) of the Act empowered the Custodian to take such action as might be necessary for the recovery of any debt due to the evacuee. Section 48 was considered to deal with the recovery of sums due to the State Government or the Custodian while Clauses (i) and (j) of Section 10(2) were regarded as dealing with debts due to the evacuees. As the question of limitation had to be decided by a competent authority which normally is the Civil Court, the absence of such a provision in the old section lent a long way in a decision being given that the Custodian had to go to a Civil Court for determination of such disputes.

As the amended section confers powers on the Custodian to give a decision with regard to such a matter, the intention of the Legislature is left in no doubt that whenever the question of the recovery of a time-barred debt is raised, it will be the Custodian who will decide it after making a proper enquiry and giving a hearing to the parties concerned. Once he determines that such a sum is payable to the Custodian within the meaning of Sub-section (1) of Section 48, then that

can be realised as an arrear of land revenue. The language being plain and admitting of no ambiguity, it is not possible to accede to the contention of the learned counsel for the appellant that even under the amended section it is not open to the Custodian to realise debts due to the evacuees which were time-barred. A good deal of emphasis has been laid by him on Clauses (1) and (j) of Section 10(2) of the Act which were noticed in the previous Bench decisions of this Court.

These provisions empower the Custodian to take such action as may be necessary (or the recovery of any debt due to the evacuee and to institute, defend or continue any legal proceeding in any Civil or Revenue Court on behalf of the evacuee. They do confer general powers on the Custodian but the amended. Section 43 gives particular powers and provides a special mode of recovery in respect of all sums payable of the nature specified in subsection (1), As the particular must prevail over the general, the powers conferred u/s 48 cannot be affected by the provisions embodied in Clauses (i) and (j) of Section 10(2) of the Act.

The effect of an amending Act was considered in *D. R. Fraser and Co., Ltd. v. Minister of National Revenue* 1949 AC 24, and it was observed at page 33 that when an amending Act altered the language of the principal statute, the alteration must be taken to have been made deliberately. That rule, which is firmly established in the Law of Interpretation of Statutes, is fully applicable to the present case and it must be held that after the amendment of Section 48, the Custodian Department was entitled to proceed under that section against the petitioner for the recovery of the amount in question.

5. The learned counsel for the appellant made a faint attempt to press another argument, which was repelled by the learned Single Judge, that the renewal of the demand by the Custodian Department was barred on the principle of estoppel or "res judicata". In the presence of the well-settled rule that there can be no estoppel against a statute nor can the principle of "res judicata" be invoked when there is a change of law, the contention raised is without substance.

6. In the result, the appeal fails and it is dismissed with costs.

G. D. Khosla, C. J.

7. I agree.