
(1973) 07 CAL CK 0004
In the Calcutta High Court
Case No : C.R. No. 1181 (W) of 1969

Asadulla Chowdhury and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-07-1973

Acts Referred:

Enemy Property Act, 1968 — Section 5

Citation : 79 CWN 153

Hon'ble Judges : D. Pal, J

Bench : Single Bench

Advocate : P.N. Mitra and A.M. Mitra, for the Appellant; J.M. Bakshi and Bimal Banerji, for the Respondent

Final Decision : Allowed

Judgement

Dabiprosad Pal, J.—The petitioners are stated to be the citizens of India and permanent residents of village Ratua in the district of Malda within the Indian Union. By a Notice dated 30th March, 1968, the petitioners were called upon by the Junior Land Reforms Officer, Mathurapur Circle, P.S. Mathurapur, Dist. Malda to show cause why all the immovable properties in India belonging to or held by or managed on behalf of Pakistani nationals, mentioned in the Schedule to the said notice will not vest in the Custodian of Enemy Property by reason of the Government of India Ministry of Commerce notification No. 12/2/65 E. Pty, dated the 1st September, 1965. The petitioners allege that the Pakistani Nationals named in the said show cause notice and the petitioners are Mohammedans of the Hanafi Sect. The said Pakistani Nationals were alleged to be formerly Indian Citizens and when they intended to go over to Pakistan during the disturbed period of 1950, they gifted away their respective properties in the later part of 1955 by verbal Hebas to the petitioners and delivered possession of their lands in the respective donees. It is not necessary for me to examine the correctness or otherwise of the said allegation in this application. It may however be pointed out that although the suit properties were alleged to be gifted in favour of the

petitioners, their names were not mutated in the records of rights finally published under the West Bengal Estates Acquisition Act, 1954. It is also stated in paragraph 9 of the affidavit of Sri Gouranga Chandra Pal filed on behalf of the respondents that the petitioners never applied for correction of the records of rights to the settlement department or for mutation of their names before the Junior Land Reforms Officer. Be that as it may, after the show cause notice was issued, and after cause was shown and the petitioners were heard by Sri Dinesh Gopal Misra, predecessor-in-office of Sir Gouranga Chandra Pal being respondent No. 2 an order was made by the Junior Land Reforms Officer, Mathurapur, on 7.1.1969 that the said immovable properties set out in the said show cause notice left by the Pakistani Nationals (1) Fowzi Islam, (2) Bibi Atiakhatur, (3) Aktar Jahan Khatun, (4), Airab Jahan Khatun have been vested in the Custodian of the Enemy Properties under the Government of India Ministry of Commerce] notification No. 12/2/65 E. Pty. dated 1st (September, 1965. The petitioners have challenged the said order in this rule. The Learned Counsel appearing for the petitioners has contended that the said notification having been issued under Rule, 133V of the Defence of India Rules, 1962 (hereinafter referred to as the Rules) framed under the Defence of India Act, 1962 (hereinafter referred as the Act) the order of vesting dated 7.1.1969 was without Jurisdiction in view of the fact that the Act being as emergency legislation expired on 10th July, 1968. It is not disputed by the parties that the notification No. 12/2/65 E. Pty. dated 1st September, 1965 has been issued in exercise of the power conferred by Sub-rule (1) of Rule 133V of the Rules framed under the Act. The said Notification was produced before me at the time of the hearing of this Rule. A copy of the said Notification has been kept on record with the consent of the parties. The said Notification runs thus :

New Delhi, the 10th September, 1965, No. 12/2/65 E. Pty. In the exercise of the powers conferred by sub-rule 1 of Rule 133-V of the Defence of India Rules, 1962, the Central Government hereby orders that all immovable property in India, belonging to or held by or managed on behalf of all Pakistan National, shall vest in the Custodian of Enemy Property for India with immediate effect.

Nothing in this notification shall apply to any such property belonging to or held by or managed on behalf of such of the Pakistani National, as are employed in the different missions of the Government of Pakistan in India.

2. In my opinion, in view of the fact that the Act had expired on 10th July, 1968 the purported order dated 8th January, 1969 declaring the said properties to have been vested in the Custodian of the Enemy Property is without any jurisdiction and authority of law. Learned Counsel for the respondents sought to rely upon Section 5 of the Enemy Properties Act, 1968 which states that notwithstanding that the expiration of the Defence of India Act, 1962 and the Defence of India Rules, 1962 all enemy properties vested before such expiration in the Custodian of Enemy Property will continue to vest in him immediately under the Enemy Properties Act. 1968. In order to attract the operation of the

said Sec. 5 it is necessary to establish that the enemy properties had vested in the Custodian of Enemy properties under the Act and continue to vest in him before the commencement of the Enemy Properties Act, 1968. As I have already pointed out that there was no order by which such properties were declared to be enemy properties and necessarily there was no order by which such properties vested in the Custodian of Enemy Properties before the Act expired. Such order was made only on 7th January 1969 i.e. after the expiration of the Act. In these circumstances the respondents are not entitled to take recourse to the said Section 5 of the Enemy Properties Act, 1968 for the continuance of the vesting of such properties in the Custodian of the enemy properties.

3. The second contention urged by the Learned Counsel on behalf of the petitioners was that in any event under the Mohammedan Law, when there was a delivery of prosession and a valid heba, the properties belonged to the petitioners. In my opinion this question involves investigation into facts and I am unable to decide such disputed question of fact in this application. Mr. Mitra, Learned Counsel for the petitioners in his fairness has admitted that such question cannot be gone into in a proceeding under Art. 226 of the Constitution. He however prayed that if the first point urged by him does not prevail, his client may be allowed time to file a suit against the respondents. It is not necessary for me to consider this prayer as the first point raised by him succeeds and this application is allowed on the first point, i.e. the order made is without jurisdiction and authority of law. The result is that this rule succeeds. The order dated 7th January, 1969 passed by the Junior Land Reforms Officer, Mathurapur being annexure "D" to the petition is quashed by a Writ of Certiorari. There will be a Writ in the nature of Mandamus commanding the respondents to forbear from giving effect to the said order. There will be no order as to costs.