

(2025) 12 DEL CK 1772

In the Delhi High Court

Case No : Writ Petition (C) No.18182 Of2025 & Civil Miscellaneous Application
No. 75197 Of 2025

Ashan Ur Rab And Ors

APPELLANT

Vs

CIPi And Anr

RESPONDENT

Date of Decision : 10-12-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Enemy Property Act, 1968 — Section 5, 6, 12, 18, 24
Defence of India Rules, 1962 — Rule 133 (I)(I), 133(R), 133V(1)
Defence of India Rules, 1971 — Rule 130, 147

Citation : (2025) 12 DEL CK 1772

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ;Tushar Rao Gedela, J

Bench : Division Bench

Advocate : Dr. Hilaluddin, Akshit Mohan, Aman Naqvi

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, CJ

-: CHALLENGE :-

1. This petition filed under Article 226 of the Constitution of India seeks to challenge the order dated 04.09.2025 passed by the Government of India, Ministry of Home Affairs, under Section 18 of the Enemy Property Act, 1968, whereby, the representation made by the petitioners against vesting of the property bearing no. 481 situated at Chatta Haji Mohd. Yusuf, Chitla Gate, Churiwalan, Delhi – 110006 (hereinafter referred to as the "subject property") in the Custodian of Enemy Property for India (hereinafter referred to as the "Custodian"), has been rejected.

The petitioner also challenges the order dated 22.10.2010 passed by the Custodian under Section 5 read with Section 24 of the Enemy Property Act, 1968, whereby the subject property was held to have been vested in the

Custodian with a further observation that the subject property shall remain vested in the Custodian till it is divested by the Central Government under Section 18 of the Enemy Property Act, 1968. By the said order, a certificate under Section 5 read with Section 12 of the Enemy Property Act, 1968 was also issued on the same date, i.e. 22.10.2010, which is also under challenge herein.

The petitioners have also laid challenge to Rules 133(I)(1) and 133(R) of the Defence of India Rules, 1962 and Rules 130 and 147 of the Defence of India Rules, 1971, seeking a declaration that the said rules are ultra vires the Constitution of India.

A prayer has also been made seeking a declaration that affidavit dated 29.05.1999 allegedly filed by a Pakistani national in the proceedings before Custodian which had culminated in the order dated 22.10.2010, as nullity.

-: FACTS :-

2. Facts of the case in brief, which can be culled out from the proceedings available on record and on the basis of the submissions made by the learned counsel for the petitioners, are as follows:-

3. The subject property was initially owned by one Mr. Sheikh Barkatullah, which was purchased by one Mr. Haji Mohd. Muslim through a registered Sale Deed executed on 13.12.1961. The petitioners claimed that they started residing in the subject property as tenants in the first floor since the early 1960s.

4. On 10.09.1965, the Government of India issued a gazette notification under Rule 133-V(1) of the Defence of India Rules, 1962, thereby all immovable properties in India belonging to or held by or managed on behalf of all Pakistani nationals stood vested in the Custodian with immediate effect.

5. As per the respondents, Mr. Haji Mohd. Muslim left India in 1964 to Pakistan and became a Pakistani national. However, the claim put forth by the petitioners in the writ petition is that on 20.06.1968, Mr. Haji Mohd. Muslim executed a Sale Deed in respect of the subject property in favour of one Mrs. Kausar Jamal, who further sold the property by means of a Sale Deed dated 21.04.1994 to Mrs. Yasmeen Zia, Mrs. Shereen Zia, Miss Samar Begum and Mr. Mohd. Zubairul Arafeen.

6. As per the petitioners, the subject property is said to have been sold further vide Sale Deed dated 24.04.1995 in favour of one Mr. Salah Uddin. The petitioners have further claimed that all along these years, the petitioners and their families continued to live in the subject property as tenants on monthly rent basis. Thereafter, as stated by the petitioners, on 12.08.1995, an agreement was executed between Mr. Salah Uddin and the petitioners, whereby the absolute right for further construction above the second floor of the subject property, were transferred to the petitioners and to enjoy the occupancy thereof without paying any rent. It is also the case setup by the petitioners that pursuant to the said agreement, construction on the third floor of the subject property was raised by

the petitioner no.3, whereafter he shifted from the first floor to the newly constructed third floor.

7. An affidavit dated 29.05.1999 was sent to the Custodian, which was affirmed by one Mr. Mohd. Manzar claiming to be the son of Mr. Haji Mohd. Muslim. The said affidavit was affirmed before the Oath Commissioner at Karachi, Pakistan and stated that Mr. Mohd. Manzar has been staying in Pakistan since 1958 and that his father Mr. Haji Mohd. Muslim came to Pakistan in 1964 and continued to live there till his death in the year 1991. It was also stated in the said affidavit that Mr. Haji Mohd. Muslim never visited India since he came to Pakistan and that subject property was owned by Mr. Haji Mohd. Muslim. Mr. Mohd. Manzar further stated in the said affidavit that he is the only legal heir of Mr. Haji Mohd. Muslim and accordingly informed the Custodian that the subject property should be taken over by the Custodian.

8. The Custodian, thereafter, received a complaint from one Mr. Jameel Ahmed on 24.06.1999 stating therein that Mr. Haji Mohd. Muslim was a Pakistani national and therefore properties belonging to him stood vested in the Custodian. Accordingly, the subject property along with other properties which earlier belonged to Mr. Haji Mohd. Muslim were declared as enemy properties and were vested with the Custodian vide Vesting Order dated 01.07.1999 passed under Section 5 of the Enemy Property Act, 1968.

9. On 21.07.1999, a notice was served upon Mr. Salah Uddin and others, whereby they were required to show cause as to why sale of the subject property during inquiry by the Custodian may not be prohibited. Pursuant to the said Show Cause Notice, reply was furnished by Mr. Salah Uddin.

10. The petitioners have further submitted that Mr. Salah Uddin sold the subject property to one Mr. Mohd. Rafi vide Sale Deed dated 08.09.2005. However, as per the petitioners, even Mr. Mohd. Rafi never claimed any rent from the petitioners.

11. Taking into account the aforesaid facts, an order was passed on 22.10.2010 by the Custodian under Section 5 read with Section 24 of the Enemy Property Act, 1968, holding that the subject property stood vested in the Custodian and shall remain vested till it is divested by the Central Government in terms of Section 18 of the Enemy Property Act, 1968. The Custodian further held in the said order that there was nothing on record to establish that Mr. Haji Mohd. Muslim was issued any Indian passport by the Regional Passport Officer, New Delhi and since Mr. Haji Mohd. Muslim was a Pakistani national as on 10.09.1965, therefore by virtue of the notification dated 10.09.1965, the subject property stood vested in the Custodian.

12. It is this order dated 22.10.2010, which has been sought to be challenged by the petitioners by instituting the proceedings of the instant writ petition after 15 years, without any plausible explanation for such inordinate delay and latches.

13. Based on the said order dated 22.10.2010, a certificate under Section 5 and 12 of the Enemy Property Act, 1968 was issued by the Custodian on 22.10.2010 itself, certifying therein that the subject property is enemy property vested in the Custodian and shall continue to so vest under the provisions of the Enemy Property Act, 1968. The petitioners have challenged the certificate dated 22.10.2010 as well.

14. The petitioners have submitted that they came to know that the subject property was declared as enemy property and stands vested in the Custodian under Section 5 of the Enemy Property Act, 1968 through their Counsel, who was contesting a Civil Suit and accordingly, the petitioners made a representation under Section 18 of the Enemy Property Act, 1968 before the Custodian, challenging vesting of the subject property in the Custodian. The said representation is said to have been filed by the petitioners on 30.01.2005. The said representation preferred by the petitioners was rejected by the Ministry of Home Affairs, Government of India by the order dated 04.09.2025. Apart from challenging the order dated 22.10.2010 passed by the Custodian, the petitioners have also laid challenge to this order dated 04.09.2025 passed by the Ministry of Home Affairs, Government of India whereby, the representation preferred by the petitioners under Section 18 of the Enemy Property Act, 1968, has been rejected.

-: SUBMISSION ON BEHALF OF THE PETITIONERS :-

15. The submission made on behalf of the petitioners is that admittedly the subject property was initially owned by one Mr. Sheikh Barkatullah, who sold the subject property on 13.12.1961 to Mr. Haji Mohd. Muslim, whereafter the subject property was sold by Mr. Haji Mohd. Muslim to Mrs. Kausar Jamal and thereafter the subject property has though changed hands through successive Sale Deeds, however, the petitioners and their family members have been residing in the subject property since the early 1960s and therefore, they have perfected the right and title over the same.

16. It has further been contended on behalf of the petitioners that the factum of execution of the Sale Deed by Mr. Haji Mohd. Muslim on 20.06.1968 in favour of Mrs. Kausar Jamal has not been accepted by the Custodian as also by the Government of India solely on the basis of an affidavit sworn in allegedly by one Mr. Mohd. Manzar, who is said to be the son of Mr. Haji Mohd. Muslim and had executed the affidavit before the Oath Commissioner at Karachi, Pakistan. It is, thus, the submission of learned counsel for the petitioners that the contents of affidavit affirmed before the Oath Commissioner at Karachi, Pakistan is inadmissible and therefore, in absence of any material to the contrary, the Sale Deed executed by Mr. Haji Mohd. Muslim on 20.06.1968 in favour of Mrs. Kausar Jamal and successive Sale Deeds thereafter, have wrongly been ignored by the Custodian as also by the Government of India while rejecting the claim that the subject property never stood vested in the Custodian even by virtue of the notification issued on 10.09.1965 under Rule 133-(V)(1) of the Defence of India Rules, 1962.

17. On the aforesaid counts, it has been urged on behalf of the petitioners that the orders dated 22.10.2010 as also 04.09.2025 passed by the Custodian and the Government of India respectively, are liable to be set aside.

-: SUBMISSION ON BEHALF OF THE RESPONDENTS :-

18. Learned counsel for the respondents, however, has opposed the prayers made in the writ petition stating that vide notification dated 10.09.1965 issued by the Government of India, the subject property was vested in the Custodian and thereafter, on the information received by the Custodian in the year 1999, the Custodian considered the matter again by issuing the notice to the alleged predecessors-in-interest of the petitioners, Mr. Salah Uddin and passed an order on 22.10.2010 declaring that the subject property stood vested in the Custodian. It has been, thus, argued that neither the petitioners nor their alleged predecessors-in-interest ever challenged the said order dated 22.10.2010 passed by the Custodian, which is now being sought to be challenged after a gap of 15 years and therefore, this petition ought not to be entertained as the same suffers from the vice of unexplained delay and laches.

19. Even on merits, the respondents have argued that there is no infirmity in the order dated 22.10.2010 passed by the Custodian, which is based on the material available on record and the Custodian has returned an unambiguous finding that the owner of the property, Mr. Haji Mohd. Muslim, had migrated to Pakistan in the year 1964 and became a Pakistani national. As a result of which, by operation of the notification dated 10.09.1965, the subject property stood vested in the Custodian.

20. Further submission made on behalf of the respondents is that the petitioners have completely failed to establish that Mr. Haji Mohd. Muslim ever visited India to execute the alleged Sale Deed dated 20.06.1968 in favour of Mrs. Kausar Jamal, who is said to be one of the persons in the line of vendees in respect of the subject property regarding which, successively four Sale Deeds were executed.

21. The respondents have also argued that the petitioners had utterly failed before the Government of India, while contesting the representation made under Section 18 of the Enemy Property Act, 1968 against the vesting of the subject property in the Custodian, that Mr. Haji Mohd. Muslim held an Indian Passport duly issued by the Regional Passport Officer, New Delhi.

22. For all these reasons, the petition has vehemently been opposed by the respondents.

-: DISCUSSION AND CONCLUSION :-

23. Having heard the learned counsel for the parties and perused the record available before us on this writ petition. We are unable to accord our agreement with the submission made by the learned counsel for the petitioners that the subject property never vested with the Custodian, rather it passed hands from

the owner of the property, namely Mr. Haji Mohd. Muslim, through successive Sale Deeds. The Custodian, while passing the order dated 22.10.2010, has considered all the relevant aspects of the matter and based on the material available on record has clearly held that the subject property stood vested in the Custodian on issuance of the notification by Government of India dated 10.09.1965.

24. The Custodian has clearly recorded a finding that there was no material on record to establish that Mr. Haji Mohd. Muslim, after migrating to Pakistan, ever held an Indian Passport. We may also note that one of the alleged predecessors-in-interest of the petitioners, Mr. Salah Uddin, was issued notice by the Custodian before passing the order dated 22.10.2010. However, despite various notices issued for adducing the evidence and for being present in the proceedings before the Custodian, no one appeared before him. The only evidence which was made available to the Custodian was a copy of the Passport bearing no. 658738 dated 18.04.1974. However, the genuineness of the said passport of Mr. Haji Mohd. Muslim was sought to be verified, whereupon the Superintendent (Policy), Regional Passport Office, Delhi intimated the Custodian vide reference dated 26.12.2003 that on checking of the records available in the office of Regional Passport Office, no such Passport was found to have been issued in favour of Mr. Haji Mohd. Muslim. Relying on the aforesaid reference letter dated 26.12.2003 and also the death certificate dated 10.09.1991 submitted by the son of Mr. Haji Mohd. Muslim, Mr. Mohd. Manzar, which was supported by an affidavit sworn by him and was notarized at Karachi, Pakistan, the Custodian while passing the order dated 22.10.2010 recorded a finding that Mr. Haji Mohd. Muslim had migrated to Pakistan and therefore, the subject property was rightly vested in Custodian.

25. The said order dated 22.10.2010 passed by the Custodian was never challenged by the petitioners nor their predecessors-in-interest as claimed by them, before any authority or Court including by invoking Section 18 of the Enemy Property Act, 1968, which provides a remedy to a person aggrieved by declaration of enemy property by way of making a representation to the Central Government. Section 18 of the Enemy Property Act, 1968 prescribes that on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of 30 days from the date of receipt of such order or from the date of its publication in the official gazette, may by order, direct the Custodian that such property may be transferred from the person from whom such property was acquired and vested in the Custodian. However, such order, as per Section 18 of the Enemy Property Act, 1968 can be passed by the Central Government only if the Central Government forms an opinion that the enemy property vested in the Custodian was not an enemy property.

26. Thus, the time period prescribed for invoking the remedy under Section 18 of the Enemy Property Act, 1968, is 30 days from the date of receipt of the order of

vesting, however, neither the petitioners nor their alleged predecessors-in-interest made any representation under Section 18 of the Enemy Property Act, 1968 against the order dated 22.10.2010 and it is only on 30.01.2025 that a representation under Section 18 of the Enemy Property Act, 1968 was made by the petitioners to the Central Government. This long and inordinate delay remains unexplained as no plausible reason comes forth for invoking the remedy under Section 18 of the Enemy Property Act, 1968 after such a long gap of 15 years, though the petitioners have stated that they and their family members have continued to be in possession of the subject property right from the years 1960s.

27. When we peruse the impugned order dated 04.09.2025, what we find is that even before the Government of India, no evidence could be led by the petitioners to establish that Mr. Haji Mohd. Muslim was holding an Indian Passport or was an Indian national when he is said to have executed the Sale Deed on 20.06.1968 in favour of Mrs. Kausar Jamal. It is also noticeable that though it has been alleged on behalf of the petitioners that after execution of the Sale Deed dated 20.06.1968 several other Sale Deeds have been executed, which also includes the one in favour of Mr. Salah Uddin, on 24.04.1995, with whom the petitioners are said to have entered into an agreement permitting the petitioners for raising constructions above the second floor of the subject property, however, no objection was ever raised by any of these alleged vendors against the order dated 22.10.2010. The petitioners, for the first time, filed the representation under Section 18 of the Enemy Property Act, 1968 only on 30.01.2025.

28. The Government of India, while passing the impugned order dated 04.09.2025, has taken into consideration all the relevant aspects of the matter and has concluded that once a property stands vested in the Custodian under the Enemy Property Act, 1968, presumption of ownership vests with the Custodian and onus of proof lies on the claimant to dislodge such presumption by demonstrating that the property does not fall within the purview of Enemy Property Act, 1968 under the said Act. The Government of India has, thus, returned a finding that in absence of any evidence to the contrary, for the reason that the petitioners failed to discharge the burden of proving contrary to the presumption that the subject property shall remain vested in the Custodian, the representation made by the petitioners had no force. The Government of India has accordingly rejected the same.

29. We also do not find any material on record to dislodge the subject property from being vested in the Custodian in view of the narration of facts made herein above. The petitioners have utterly failed to discharge their burden of establishing that the subject property did not vest in the Custodian.

30. So far as the challenge to Rule 133 (I)(1) and 133 (R) of the Defence of India Rules, 1962, we may also note that Section 6 of the Enemy Property Act, 1968 contains a prohibition on transfer of any property vested in the Custodian by any enemy, enemy subject or enemy firm. Accordingly, once it is established

from the available records that Mr. Haji Mohd. Muslim had migrated to Pakistan in the year 1964 and became a Pakistani national, he could not have transferred the subject property in favour of Mrs. Kausar Jamal by allegedly executing the Sale Deed dated 20.06.1968, in view of the clear prohibition on transfer of such property as contained in Section 6 of the Enemy Property Act, 1968.

31. So far as the challenge to Rule 133 (I)(I) and 133 (R) of the Defence of India Rules, 1962 is concerned, we may note that Section 133 (I)(I) only defines "the enemy subject" to mean any individual who possess the nationality of a State which has committed external aggression against India, or having possessed any such nationality at any time has lost it without acquiring another nationality, or any body of persons constituted or incorporated in or under the law of such State.

32. From a perusal of the averments made in the writ petition, it is apparent that no serious challenge to Rule 133 (I)(1) of the Defence of India Rules, 1962 has been laid seeking its declaration to be ultra vires to the Constitution of India. Moreover, the impugned provision contained in Rule 133 (I)(1) of the Defence of India Rules, 1962 only defines the enemy subject and we do not, thus, see any unreasonableness or any other lacuna in the said definition so as to attract violation or infringement of any of the provisions of the Constitution of India.

33. Similarly, Rule 133 (R) of the Defence of India Rules, 1962 only permits the Central Government to pass an order declaring a transfer or any subsequent transfer or sub-transfer of a property, made by a person who becomes an enemy as defined in Rule 133 (A) of the Defence of India Rules, 1962, as void. We are of the opinion that challenge to Rule 133 (R) of the Defence of India Rules, 1962 appears to be completely irrelevant as in the facts of the case there has not been any such declaration that any transfer which is said to have taken place in respect of the subject property, was void under Rule 133 (R). The challenge to Rule 133 (R) of the Defence of India Rules, 1962, thus, fails.

34. As far as the challenge to Rule 130 and 147 of the Defence of India Rules, 1971 is concerned, we may note that Rule 130 of the Defence of India Rules, 1971 is a definition clause where certain expressions have been defined. No serious challenge appears to have been made to such definition, further the definition clause is not found to be in infringement of any of the Constitutional provisions.

35. In respect of Rule 147 of the Defence of India Rules, 1971, it is noticeable that the same is akin to Rule 133 (R) of the Defence of India Rules, 1962, which, as observed above, does not have any relevance to the facts of the instant case and as such, no adjudication on the said prayer is warranted. Even otherwise, the challenge for the reasons aforesaid is not sustainable.

36. For the reasons given and discussion made above, we do not find any force in the writ petition, which is hereby dismissed.

37. There will be no order as to costs.