(1970) 09 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2807 of 1968

Assistant Custodian Evacuee Property APPELLANT

Vs

Mata Prasad and Others RESPONDENT

Date of Decision : 30-09-1970

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 4
Uttar Pradesh Encumbered Estates Act, 1934 — Section 19, 50
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 70
Administration of Evacuee Property Act, 1950 — Section 4
Uttar Pradesh Encumbered Estates Act, 1934 — Section 19, 50
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 70
Administration of Evacuee Property Act, 1950 — Section 4
Uttar Pradesh Encumbered Estates Act, 1934 — Section 19, 50
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 70

Citation : (1970) 40 AWR 843

Hon'ble Judges : C.D. Parekh, J

Bench : Single Bench

Advocate : N.D. Pant, for the Appellant; Lalta Prasad and S.C. for Opp. Parties, for the Respondent

Final Decision : Dismissed

Judgement

C.D. Parekh, J.—The Petitioner Assistant. Custodian, Evacuee Property, Agra Zone, ?Agra, has filed this petition Under Article 226 of the Constitution and has prayed that the order of the Board of Revenue, Respondent No. 2, Annexure 5 to the writ petition, dated 1-5-1968 and the order of the Additional Commissioner, Jhansi Division, Jhansi, dated 26-2-1964, Annexure 4 to the writ petition, be quashed and Respondents 1 to 4 be restrained from proceeding with, the attachment and ''sale of the zamindari compensation bonds in respect of the zamindari interest of the evacuees in execution of the decree obtained by Mata Prasad, Respondent No. 1.

2. The Additional Commissioner by the impugned order allowed the appeal of Respondent No. 1 against the order dated 28-9-1962 passed by Shri D.S. Mathur,

reviewing the order of his predecessor dated 28-4-1961 and restoring the order dated 28-4-1961 and the Board of Revenue by the impugned order held that the Additional Commissioner took a correct view in the matter and refused to interfere in revision.

3. The facts of the case may briefly be stated thus:

One Mohd. Hanif Gul Khan took some loan in the year 1924 from Mata Prasad and mortgaged his whole share of village Gulhara Mohat Abdul Jhakaur Khan, Tehsil Moth, district Jhansi. Mata Prasad on the basis of the mortgage brought a suit in 1936 in the court of Sub-Judge, Jhansi and obtained a decree on 1-8-1936 against the mortgagor. Mohd. Hanif Gul Khan, as it appears, filed an application u/s 4 of the UP Encumbered Estates Act and the only creditor arrayed in the application was Mata Prasad. After due completion of the formalities, the Collector sent the application to the Special Judge, Jhansi and after completion of the proceedings before that court the decree passed by the Special Judge was transmitted to the Collector, Jhansi, for liquidation or the debt out of the properties reported by the Judge. From the averments in the counter-affidavit it appears that the liquidation proceedings before the Collector could not proceed as they were stayed under the orders of the Board of Revenue till 1954 whereafter some amendments were made in the UP Encumbered Estates Act. During the course of these proceedings against Mohammad Hanif Gul Khan under the aforesaid Act, sometimes in the year 1947 his sons and daughters migrated to Pakistan. Mohammad Hanif Gul Khan remained an Indian national and his property which included proprietary rights in land was being proceeded against for the liquidation of his debts under the UP Encumbered Estates Act. Sometimes in the year 1949 Mohammad Hanif Gul Khan died and his heirs were brought on the record of the proceedings. From the facts as available on this record it is not clear when they were brought on the record. Whether they were brought on the record after the transmission of the decrees to the Collector or before that date. However, it may safely be presumed that the proceedings for the amendment of the decree or for bringing the heirs on record prior to the passing of decree must have been taken before the Special Judge. The liquidation of the debt out of the property reported by the Special Judge continued. The claim of the Petitioner is that after the death of Mohammad Hanif Gul Khan his heirs obtained the property by operation of law being heirs to the deceased and since they were evacuee the property vested in the Custodian under the ordinance and thereafter under the provisions of Section 4 of the Evacuee Property Act (Act No. XXXI of 1950). In the year 1952 the proprietory right in land which was the zamindari property was acquired under the UP ZA and LR Act and vested in the State of UP. The claim of the Petitioner is that the compensation and rehabilitation grants which were payable under that Act vested in him as a evacuee property and the Collector could net proceed with the liquidation of debt and utilise those bonds in liquidation thereof under the Encumbered Estates Act. An application was filed before the Sub Divisional Officer, Jhansi, making such a claim and it was prayed that the bonds need not be requisitioned from the Compensation Officer by the

Collector and the Petitioner would collect them. As it appears from the averments in the writ petition and the counter affidavit the SDO was not certain about the legal position but ultimately he ordered after reviewing his previous order dated 28-4-1961 that he is not compete to pass orders of attachment on the application of Mata Prasad and refused to requisition the bonds. This order was passed on 29th of September, 1962, which is Annexure 3 to the writ petition. Against this order Mata Prasad preferred appeal; to the Commissioner and the Additional Commissioner, who decided the appeal, held (by the impugned order Annexure 4) that the compensation bonds Were held to be moveable property by the Competent Officer and as such were excluded from the term "evacuee property", they should be utilised for the purpose of liquidation of the debt an should be requisitioned for that purpose. He set aside the order and restored the order dated 28-4-1961 which was reviewed by the SDO and thus he allowed the appeal. In revision the Board of Revenue concurred with the finding of the Additional Commissioner and dismissed the revision filed by the Petitioner. The Petitioner has thus preferred this writ petition against both the aforesaid orders Annexures 4 and 5 to the writ petition.

4. It has been contended before me by the learned Counsel for the petition or that the compensation and rehabilitation bonds were evacuee properties within the meaning of Administration of Evacuee Property Act and the Collector or the SDO had no jurisdiction to direct the requisition of the bonds from the Compensation Officer for the purposes of liquidation of the decretal amount under the Encumbered Estates Act. It has further been contended that if Mata Prasad wanted to realise his decretal amount he should have preferred a claim before the Custodian under the provision of the Evacuee Property Act and should not have applied for the requisition of bonds from the Compensation Officer to SDO who had no jurisdiction to proceed with the matter of attachment and sale of the bonds.

5. Both these contentions, in my opinion, have no force and the writ petition must fail.

6. On the facts it is admitted that Mohammad Hanif Gul Khan applied under the Encumbered Estates Act and the proprietary right in land was liable for the purpose of liquidation of the debt under that Act. For that purpose Section 19 of the UP Encumbered Estates Act may be relevant and is quoted below:

(1) the Special Judge shall sent the decrees granted Under Sub-section (7) of Section 14 to the Collector for execution in accordance with the provisions of the next chapter. The Special Judge shall also inform the Collector of the order in which he has ranked the debts for proprity.

(2) The Special Judge shall inform the Collector--

(a) of the amount of the secured debt which is not legally recoverable otherwise than out of the compensation and rehabilitation grant payable to the landlord in respect of the mortgaged estate; and

(b) of the nature and extent of the prop arty mentioned in the notice u/s 11 which he has found to be liable to attachment or sale in satisfaction of the debts of the Applicant.

On the death of the proprietor or the landlord during the pendency of the proceedings the proceedings will Continue as if the landlord was still living. Section 50 of that Act has contemplated such a contingency. Section 50 is quoted below:

If a landlord with regard to whom a notice has been published u/s 9 dies before a declaration has been made in respect of u/s 44:

(a) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the landlord were still living; and

(b) any person succeeding to the whole or any portion of the landlord''s property shall become subject in respect of that property to the disabilities imposed by Sub-section (2) of Section 7 and shall continue so subject until a declaration has been made in respect of him u/s 44.

The case of the Petitioner in that the sons and daughters of Mohammad Hanif Gul Khan (who was a disabled parson under the provisions of the Encumbered Estates Act and whose properties were liable for the liquidation of the debt under that Act) migrated to Pakistan long before his death. On the date when they migrated to Pakistan they were evacuee within the meaning of the word as contained in the Administration of the Evictee Property Act, 1950, but as long as the father was alive the property held by the father could not be said to be an evacuee property within the meaning of that word as contained in Sub-section (f) of Section 2. The father died in the year 1949 and the argument is that as soon as the father died the heirs became entitled to property by operation of law and since they were evacuees already the properties that they got by operation of law will also be deemed to be property of an evacuee. Words "evacuee property" have been defined thus:

"evacuee property" means any property of any evacuee whether held by him as owner or as trustee or as a beneficiary or as a tenant or in any other capacity and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provision contained in Section 40, but does not include:

(i) any ornament and any wearing apparel, cooking vessels, or other household effect in the immediate possession of an evacuee;

(ii) any property belonging to joint stock company the registered office of which was situated before the 15th day of August, 1947, in any place now forming part of Pakistan and continues to be so situated after the said date;

It means any property of an evacuee. ''Property'' has been defined in Sub-clause

(i) of Section 2. It means property of any kind and includes any right or interest in such a property. Thus the argument is that these migrated persons acquired interest in the property after the death of the father and thus it became an evacuee property and vested in the Custodian u/s 4 of the Act. Section 4 of the Act reads thus:

4. Act to over-ride other laws.--

(1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) For the removal of doubts it is hereby declared that nothing in any other law controlling the rents of or eviction from, any properly shall apply, or be deemed ever to have applied, to evacuee property.

On the basis of this definition learned Counsel for the Petitioner stated that the Custodian was the person in whom the property of the evacuee vested and therefore, it was the Custodian who could deal with, the property and no other person or authority could deal with the same. This argument, in my opinion is fallacious. As I have just pointed out above that u/s 50 as the Encumbered Estates Act the proceedings under that. Act shall continue as nearly as may be possible in all respects as if the landlord was still living. So on the date on which it is stated that the property vested in the Custodian could not vet in him as the landlord will be deemed to be still living on that date and since he was not an evacuee no interest will pass on to the Custodian to either administer or manage the property. Admittedly the alleged vesting, took place in the year 1949 when by operation of law the heirs of the landlord were brought on the record for the purpose of continuation of the proceedings.

7. Even assuming that some interest vested in the Custodian in the year 1949 nothing remained with the Custodian after the abolition of the zamindari, i.e. of the proprietary right, in the land, in July 1952. The compensation bonds may be compensation in respect of the interest of the intermediary but it cannot be said that the heirs of Mohammad Hanif Gul Khan were at any the intermediaries. They, for very limited purpose were substituted in the proceedings under the Encumbered Estates Act but for all intent and purpose of that Act Mohammad Hanif Gul Khan, the landlord, would be deemed to be living and the compensation bonds which may have been prepared in the name of the heirs could well be available for the liquidation of the debt under the UP Encumbered Estates Act. The Custodian, therefore, in my opinion, could neither acquire any interest in the property of a living person who was not an evacuee (although by fiction of law) but that could not divest the landlord of all his interest as a holder of proprietory right in land or as an intermediary. The fiction of law would continue and all interest for that purpose will be deemed to have been preserved for (the purposes of UP Encumbered Estates Act. Therefore, in my opinion the

property was not that of the evacuee nor was that of the person who had migiated to Pakistan nor any interest could vest in them in view of Section 50 of the UP Encumbered Estates Act. If for completing the procedural formality the heirs were brought on the record that will not give any right to the Custodian to claim the property as having vested, in him. The properties according to Section 19 of the UP Encumbered Estates Act whatever remained would be available for the liquidation of the debt under that Act. The right of the Custodian if any after the ZA and LR Act came to an end. The Custodian at best had a right to administer the property or manage the same. There remained nothing after the abolition of the zamindari and vesting of the property in the State of UP for the administration and management by the Custodian. Custodian could not be placed in the place of the proprietor he could acquire any proprietary right. All that what vested in the Custodian was for the purpose of administration and management and in exercise of those powers, in my opinion the Custodian could not claim the compensation and rehabilitation bonds. The Collector under the provisions of the UP Renumbered Estates Act could attach these bonds or make a requisition from the Compensation Officer to place the bonds at his disposal. Section 70 of the UP ZA and LR Act may be quoted for the purpose. It runs thus:

70 (1) After the amount of compensation payable to an intermediary has been finally determined, arid entries made in the registers in ZA Form Nos. 38 and 38-A, the Compensation Officer shall have an indent for bonds in ZA Form 34 prepared in quadruplicate showing the form denomination and number of bonds payable to each intermediary. The Compensation Officer shall fill in columns 1 to 14 only and sign and seal each copy after satisfying himself that the entries have been correctly shown therein and shall enter in words in his own handwriting to total value of bonds indented, both in the original and copies thereof. He shall dispatch three copies to the Public Debt Office, Lucknow for compliance and retain the original which shall be maintained in the form of a bound register supplied to him, each page whereof shall be numbered. The copies shall be prepared oh spare sheets of forms supplied separately and each such copy shall bear the page number of the original from which it has been prepared.

(2) The Compensation Officer shall also maintain an abstract register of indents for bonds in ZA Form 35.

A requisition of the bond by the Sub-Divisional Officer will be the necessary consequence for the liquidation of the debt of the landlord and those compensation bonds would not be available to the Custodian under any of the provisions of the Administration of Evacuee Property Act.

8. The learned Counsel for the Petitioner relied on Articles 251 and 254 of the Constitution of India and stated that if the provisions of, the UP Encumbered Estates Act are inconsistent with the provisions of the Evacuee Property Act the latter will prevail and thus the vesting of the property of the evacuee cannot in any manner be checked or be affected by the UP Encumbered Estates Act. The argument appsars to be fallacious. Nothing has been pointed out which may be

said to be inconsistent with the provisions of the Evacuee Property Act. Sections 4, 10, 17, 28 and 46(d) hive been, referred to by the learned Counsel for the Petitioner for strengthening his argument. As I have just pointed out that there is nothing inconsistent in the Encumbered Estates Act and if on the date of the'' alleged vesting of the evacuee property the landlord is emend to be living on that date nothing would vest in the Custodian or deemed to be vested in him. Sections 7 and 8 deal with the notification of the evacuee property and vesting of such property in the Custodian but if for any procedural purpose the names of the heirs of Mohammad Hanif Gul Khan have been brought on, the record that will not make that property an evacuee property because for all intent and purposes the deceased landlord will be deemed to be living and when once it is held by fiction of law that he was living on that date on which the Custodian claims that the property vested in him, he could not acquire that property. No property was there to be vested in him Section 17 of the Evacuee Property deals with exemption of the evacuee property from the process of the court. The process of court would not be attached by the provisions of Section 17 if the property was not that of the evacuee. In this connection reliance has been placed on a ruling Bhanu Pratap v. Asstt. Custodian Evacuee Property AIR (?) SC 245. The facts of that case are quite different and the case is distinguishable from the facts of the present case. In that case the property involved was not subject to the process of the Encumbered Estates Act and was not a property liable for liquidation of debt under that Act and therefore, this ruling does not help the Petitioner. Reliance has also been placed on the case Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum, . It deals with the jurisdiction of the civil court to decide the question whether a particular property, or right to or interest therein is or is not evacuee property but it has been held in that case that Sections 46 and 28 do not bar the jurisdiction of the High Court Under Article 226 of the Constitution. It may be another matter that the Evacuee Property Act may be a complete code in itself in the matter of dealing with the evacuee property but whether a property or right to or interest therein is or is not an evacuee property may well be decided by the High Court under its extraordinary jurisdiction Under Article 226 of the Constitution. I am, therefore, of the opinion that this ruling also does not help the Petitioner as the jurisdiction of the High Court remains unfettered with the provisions of the Evacuee Property Act. Section 28 of the Act deals with the finality of the orders under the Evacuee Property Act and Section 46 creates a bar on the jurisdiction of the civil court in certain matter. As I have indicated above these rulings do not help the Petitioner. Therefore, the reasoning that under these sections as quoted above it was the Custodian and the Custodian alone who could deal with the property is not well founded.

9. For the reasons stated above, I, therefore, bold that the UP Encumbered Estates Act and provisions quoted by me are not inconsistent with the provisions of the Evacuee Property Act. u/s 50 of the UP Encumbered Estates Act the landlord will be deemed to be living on the date of the purported vesting in the

Custodian. Therefore, property could not vest in the Custodian and all those properties having been reported for the purpose of liquidation of the debt u/s 19 of the Act should be available to the Collector for that purpose. I further hold that the jurisdiction of the High Court is not barred to consider the question whether a particular property or right to or interest therein alleged by the Custodian is or is not evacuee property. Assuming that the property vested in the Custodian after the abolition of the zamindari it (sic) for the purposes of that Act i.e. for administration and management only. By such vesting the Custodian does not become the owner of the property and after the abolition of the zamindari in the year 1952 there remained nothing for administration and management. The compensation bonds in any event were not such property which could be made available to the Custodian for administration and management. For the reasons aforesaid the Sub-Divisional Officer could u/s 70 of the UP ZA and LR Act requisition the bonds from the Compensation Officer for the purpose of liquidation of the debt under the UP Encumbered Estates Act.

10. For the reasons as I have just discussed above and the findings that I have given regarding the contention raised before me, this writ petition must fail.

11. The writ petition fails and is dismissed with costs.

