

(1960) 08 AHC CK 0032
In the Allahabad High Court
Case No : Sp. A. No. 298 of 1956

Assistant Custodian of Evacuee Property, Agra and another	APPELLANT
Vs	
Sharfuddin and another	RESPONDENT

Date of Decision : 04-08-1960

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 10, 8(4)
Administration of Evacuee Property Act, 1950 — Section 10, 8(4)
Administration of Evacuee Property Act, 1950 — Section 10, 8(4)

Citation : (1961) 31 AWR 173

Hon'ble Judges : Srivastava, J; Beg, J

Bench : Division Bench

Advocate : T.N. Sapru and S.C.s, for the Appellant; S.N. Misra for respondents, for the Respondent

Final Decision : Dismissed

Judgement

Beg, J.—This appeal has been filed by the Assistant Custodian of Evacuee Property, Agra, and the Assistant Custodian (Judicial) Agra Circle, Agra. Respondent No. 1 in this appeal is one Sharf Uddin.

2. The dispute between the parties relates to house No. 2429 called Firdos Manzil situate in Sabon Katra in the district of Agra. This house was purchased by one Srimati Sarfarazi Begum for consideration of Rs. 6700 in the year 1945 from one. Rahim Bux, the father-in-law of Sharf Uddin Respondent No. 1. The writ Petition was filed in this Court by Sharf Uddin Respondent No. 1 on the allegation that he was the real owner of the house and exercised all rights of ownership on the date of the purchase. He further alleged that his wife Smt. Sarfarazi Begum had gone away to Pakistan in July 1948 for the treatment of her daughter, and that she could not come back to India thereafter. His case was that since the date of purchase, he had throughout been in possession of the property in dispute. The Petitioner further alleged that on 18-4-51 he had received a notice from the Assistant Custodian asking him to pay rent. On 4-5-51 he had filed objections to

this notice denying his liability to pay rent on the ground that he was the exclusive owner of the property in question that he was throughout in possession of the same in his own rights and that the sale deed in the name of his wife was merely benami. After the aforesaid objections by him in 1951, the proceedings for recovery of rent against him were dropped. Five years after that, however, he again received a notice dated 13-10-55 from the Assistant Custodian Evacuee Property, Agra, calling upon him to appear before him and to pay a sum of Rs, 2047 80, failing which the said amount was to be realised as arrears of land revenue. The amount was claimed at the rate of Rs. 21 per month on account of rent for the period beginning from 15-8-47 and ending on 30-9-55. The Petitioner further alleged that he was called upon to appear before the Assistant Custodian Evacuee Property, Agra on 10-11-55 to pay the aforesaid amount as the rent of house No. 2429 and as he did not pay the aforesaid amount on the said date, the said amount was being realised from him as arrears of land revenue u/s 48 of the Administration of Evacuee Property Act, 1950. The Petitioner's case was that the Asstt. Custodian had no power whatsoever to realise the aforesaid sum from him as an arrear of land revenue.

3. The petition came up for hearing before a learned Judge of this Court. The learned Judge allowed the petition, quashed the notice dated 13-10-55, and issued a writ of mandamus directing the opposite party not to realise the amount mentioned in the notice as arrears of land revenue. This special appeal is directed against the said order of the learned Judge dated 5-10-1956.

4. Having heard the Learned Counsel for the Appellant we are of opinion that there is no substance in this appeal. The sole point that is involved in this appeal is whether in the circumstances of the case, there is any power vested in the Custodian under the Administration of Evacuee Property Act (XXXI of 1950) to assess rent on a person who has been from the very inception claiming to hold the property in his own right and adversely to the Custodian. Learned Counsel has in this connection tried to rely on a number of sections of the Administration of Evacuee Property Act (hereinafter called "the Act"). In the first place, he relied on Section 8 sub S. (4) of the Act. This provision of law runs as follows:-

8(4) Where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

Even assuming in favour of the Appellant that the property in question is evacuee property, we fail to understand how this provision of law can entitle the Custodian to assess rent on the said property. Under this section, he can only demand surrender of possession by the person holding possession of the same. In the present case, the Assistant Custodian has not demanded possession of the property in question by the notice issued by him. On the other hand, he has assessed an amount as rent, and demanded payment of the same. This provision of law, therefore, does not help the Appellant.

5. Next, the Learned Counsel strongly relied on the provisions of Section 10 of the Act, Under this provision of law, the Custodian is entitled to take such measures as he considers necessary or expedient for the purpose of administering, preserving and managing any evacuee property. Learned Counsel has argued that this section arms the Custodian with extensive powers of management, and it is open to him in course of management of the property to assess rent, to demand the same from any person in possession thereof, &, on his failure to pay, to realise the same as arrears of land revenue. We are unable to accept this contention. The powers vested under this provision of law appear no doubt to be extensive, but reading the section as a whole, it appears to us to be quite evident that they cover only such powers as are incidental to the administration, preservation and management of the property. It is difficult to hold that this provision would entitle the Assistant Custodian to assess rent on a person who claims to hold the disputed property in his own right, to demand the said amount as rent due from him, and further, to proceed to execute his order against such a person by the procedure provided for realisation of arrears of land revenue. In the present case, the act of Custodian cannot, be said to be an act merely of the management of property, but it is something more than that. It is tantamount to an imposition of liability on a third person, and its realisation by a coercive process directed against such person. We have no doubt that the Asstt. Custodian has in the present case trespassed the bounds of Section 10, and has overstepped its confines. Such an order, in our opinion, falls outside the ambit of Section 10 of the Act.

6. Learned Counsel also relied on Section 12 of the Act which enables the Custodian to cancel leases or allotments of the Evacuee Property. It is not the case of the Appellant that Respondent No. 1 was a lessee of the property or was holding the same under any lease from the Custodian. It is also not contended that the property in question was allotted to Respondent No. 1 by the Custodian. Under the circumstances, this section, in our opinion, has no application to the present case.

7. Learned Counsel then relied on Section 48 of the Act. This section lays down that any sum due to the Custodian under the provisions of the Act may be recovered as if it were an arrear of land revenue. If the amount demanded is found to be not a sum leviable or due under the provisions of the Act, as we have found the same to be, Section 48 of the Act would have no application to the case, and the amount could not be recoverable as an arrear of land revenue. Section 48 cannot, therefore, be set up as a shield in defence of the action taken by the authorities responsible for giving the present notice.

8. Learned Counsel has also argued that a notice was received by Respondent No. 1, that he should have appeared before the Custodian in response to it and contested the matter, yet he did not comply with the aforesaid requirement. The order conveyed by the notice itself having been found by us to be ultra vires and incompetent, we are of opinion that it was not incumbent on the Petitioner to put

in appearance or to comply with it. The notice itself being a nullity could be disregarded by him with impunity.

9. Lastly, Learned Counsel relied on the provisions of Section 10A of the Act which was introduced into the Act by the Administration of Evacuee Property Amendment Act (Act No. 1 of 196)). Learned Counsel argued that in view of the aforesaid amendment, the Custodian would have such a power. This amendment came into existence five years after the impugned notice. It is not necessary for us to go into the question of the interpretation of this section, as the Learned Counsel has been unable to satisfy us that this amendment had retrospective effect. Section 104 has therefore no application to the present case.

10. No other argument was advanced before us.

11. We, therefore, see no substance in this appeal. This appeals, accordingly dismissed with costs.