
(1987) 09 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 2148 of 1983

Baldev Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-09-1987

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 11, 46, 7A, 8(2), 9(2)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 19(2)
Limitation Act, 1963 — Article 148

Citation : AIR 1988 P&H 251

Hon'ble Judges : S.S. Sodhi, J;D.S. Tewatia, J

Bench : Division Bench

Judgement

D.S. Tewatia, J.—This appeal was admitted to Division Bench by, the learned Motion Judge, who took the view that the decision in Mohd. Saddiq Barry Vs. Mohd. Ashfaq and Others, did not appear to lay down the correct law and required reconsideration and that is how this appeal is before us.

2. In Mohd. Saddiq Barry's case (supra), Harnam Singh, J. (as he then was) took the view that where one of the questions, requiring determination in the suit along with other questions, is as to whether the property or any interest therein is an evacuee, then instead of dismissing the suit on the ground of lack of jurisdiction, the civil court must refer the question as to whether the property in dispute or any interest therein is an evacuee to the Custodian for determination and stay further proceedings in the suit and resume the hearing after the referred question has been finally determined by the statutory authorities in question.

3. A Division Bench in S. Pooran Singh Chhatwal Vs. East Punjab State, Simla and Others, following the ratio of this judgment has also taken the same view.

4. There is, however, contrary view expressed by Kaushal, J. (as the then was) in Chothu Ram Vs. Budhu Ram and Another, . The contention raised before him was

that the civil court in the given contingency where it did not have jurisdiction to entertain or adjudicate upon the question whether any property or any right to or interest in any property is or is not evacuee property, then instead of dismissing the suit, it should return the plaint to the party concerned for its presentation to the proper court. Kaushal, J. (as he then was) repelled the contention and it was held that-

"The matter of allotment cannot be agitated in a Civil Court. In a suit for possession of land which was allotted to the defendant by the Custodian of Evacuee Property, Civil Court cannot decide question of title without setting aside allotment which is a matter within the exclusive jurisdiction of the Custodian and therefore the suit has to be dismissed as no Court is competent to try it. Under Order 7, Rule 10, C.P.C., the question of return of plaint will arise only if there is a Court which has jurisdiction to try the suit."

5. In this appeal, we do not think. we are required to take a stand in regard to the correctness of the view expressed in Mohd. Saddiq Barry Vs. Mohd. Ashfaq and Others, and the Division Bench case in S. Pooran Singh Chhatwal Vs. East Punjab State, Simla and Others, because in the present case whether the property is evacuee or not is the sole question that arises for determination. In a case like the present one, the civil court has no option but to dismiss the suit on that account. It is for the concerned party to decide as to what to do next, whether to approach the Custodian to have that question decided or not.

6. For the purpose of disposing this appeal, we need examine only one submission of the learned counsel for the plaintiff-appellant that jurisdiction of the civil court was not barred by S. 46 of the Administration of Evacuee Property Act, 1950, and in support of his submission he placed reliance on the two single Benches' decisions of this Court in Darshan Lal Vs. R.L. Aggarwal and Others, and Dial Dass v. Joint Hindu Family Firm Niadar Mal Piara Lal (1968) 70 PLR 731 and a Supreme Court decision in Dr. Rajendra Prakash Sharma v. Gyan Chandra : AIR 1980 SC 1206.

7. Counsel for the respondents, on the other hand, placed reliance on the Supreme Court decision in Haji Siddik Haji Umar and Others Vs. Union of India (UOI), .

8. Before discussing the relevancy of the ratio of the judicial precedents cited on behalf of the parties, it would be in the fitness of things to make a brief mention of the facts of the case, which can be stated thus :

The predecessor-in-interest of the plaintiff-appellant had purchased the suit land from one Hakirn Mohd. Abdul Rehman Beg for a sum of Rs. 5000/- on 3rd Sept. 1943, through a registered sale-deed. Hasin Begum and Hasin Khan, two relations of the vendor, preempted the said sale. The suit for pre-emption was decreed on 8th May, 1946. The pre-emption amount was deposited by the pre-emptors and the same withdrawn by the vendees on, 5th Aug. 1946. The pre-emptors filed an application for delivering of possession of the pre-emption land,

i.e., the suit land. This application was dismissed in default on 7th Nov. 1947. The parties differed in regard to the reasons for dismissal in default, which it is not necessary to state and examine as it has no bearing on the question that we would be examining. The suit land thereafter continued to be in possession of the vendees and their successor-in-interest.

9. On 16th Aug. 1978, the Managing Officer issued notice under S. 19(2)(b) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, calling upon vendees to show cause as to why they should not be dispossessed. The plaintiff-appellant impugned this notice in the civil court through a civil suit from which the present second appeal has arisen.

10. Coming now to the authorities cited by the appellant, it may be observed that so far as Darshan Lal Vs. R.L. Aggarwal and Others, is concerned in this case, the question of jurisdiction of the civil court did not come up for consideration. The petitioner received a notice under the Evacuee Interest (Separation) Act (LXIV of 1951) from the Competent Officer requiring him to submit his claim in the prescribed form as information had been received that he had an interest in the composite property described in the Schedule ;and the evacuee interest had to be separated from other interests. The petitioner filed his claim petition and appeared before the Competent Officer. The petitioner took the stand before the Competent Officer that since the evacuee-mortgagors never got the property redeemed within the period prescribed for redemption under Art. 148 of the Limitation Act, so their right to redeem had become extinct under S. 2 of the Act, with the result that the petitioner had become the owner of the property, and, therefore, the property was no longer composite property and no question of separation of alleged evacuee interest arose. The Competent Officer held that the mortgage being over 20 years old, the provisions contained in S. 9(2) of the Evacuee Interest (Separation) Act, 1951, applied and it stood extinguished and that thereafter henceforth the property was to vest in the Custodian free from all encumbrances and. liabilities. The petitioner filed an appeal under the provisions of the Act which was dismissed by the Appellate Officer in view of some judgment given by him in some other case and the following observations were made :--

"It was argued by the learned counsel for the appellants that if the Custodian holds that as the property has vested in him under S. 11 of the Evacuee Interest (Separation) Act, 1951, he cannot reopen the question, the claimants will have no remedy left. I have specifically provided in my judgment in appeal No. 690/56 Custodian v. Mst. Gendo that the question must be determined whether the evacuees had any interest in the properties or not. If the Custodian dismisses the application of the claimants only on the ground that the vesting order under S. 11 of the Evacuee Interest (Separation) Act, 1951, bars his jurisdiction to determine the rights of the claimants, they may move this Court again, when I will consider whether I should review my order."

This led the petitioner in that case to move the High Court on the writ side.

11. From the above fact, it is clear that the Competent Officer or the Appellate Officer under the Evacuee Interest (Separation) Act, 1951 did not determine as to whether the property was evacuee or not and by virtue of S. 11 of the Evacuee Interest (Separation) Act, the Custodian was not competent to go beyond the order of the Competent Officer, with the result that the petitioner was deprived of the opportunity of showing that the property was not evacuee property.

12. The counsel for the appellant, however, drew our pointed attention to the following observation in support of his submission that there could be no automatic vesting in law unless some overt act had been done by the Custodian department in regard to the property, which is alleged to be evacuee property. He submitted that there is no evidence of any overt act having been done by the Custodian department regarding property in dispute; so this property cannot be deemed to be evacuee property by virtue of the provision of S. 8(2) of the Act of 1950 nor it can be declared to be an evacuee property under S. 7 of the Act of 1950 in view of the embargo placed by S. 7A of the said Act:

"It seems to me that under S. 8(2) (of the Administration of Evacuee Property Act, 1950) it has to be seen whether any property in a State had vested as evacuee property in the Custodian under any law" repealed by the Act of 1950. If it has so vested that property shall on the commencement of the aforesaid Act, be deemed to be evacuee property declared as such. For the purpose of vesting, there must be something tangible and objective which the Custodian Department should have done, e.g. assumption of physical control, specification of a particular property as evacuee property, assumption of control by express notification and the like. A mere general notification or proclamation of the nature issued in May, 1948 in which. no particular property or properties were specified could not have the effect of vesting the particular property in dispute in Custodian. It could never be intended that the claimants to a particular property or other parties interested in that property should have absolutely no notice or opportunity of substantiating their claims or establishing their interest before the Custodian Department and unless a notification or notice with regard to particular property or properties was issued the parties interested shall not be in a position to know whether their properties were being affected. There can be little doubt that S. 8(2) could have retrospective effect only in such cases in which some positive action had been taken under the relevant provisions or some effective decision had been given otherwise the provisions of the Act were to apply and there would be no vesting unless a notice under S. 7 has been issued and a declaration has been made.

xx xx xx xx xx" and urged that if Grocer. J. is understood to have taken the view that there could be no vesting of the evacuee property in the Custodian under the statutory provisions of the Act or the Ordinances which preceded the Administration of Evacuee Property Act, 1950, unless the Custodian Department had taken some overt action for example assumption of physical control.

specification of a particular property as evacuee property, assumption of control by express notification and the like. there would be no vesting of the evacuee property in the Custodian and the deeming provision of S. 8(2) or for that matter, sub-section (2A) of the said Act would be of no avail, then, with respect, the proposition has been stated too widely.

13. The Scheme of the East Punjab Evacuees (Administration of Property) Act, 1947 and the Ordinance. which it had repealed and replaced, was such that before a person allegedly in possession of the evacuee property could be dispossessed by the Competent Officer, said person had to be provided due opportunity of raising objection thereto and proving that the property was not evacuee. If on an enquiry, it was found that the property was not evacuee, the said property obviously would not be deemed to have been vested in Custodian by virtue of provision of S. 4 of the East Punjab Evacuees (Administration of Property) Act, which had provided that all evacuee property situated within the Province shall vest in the Custodian for the purposes of this Act and shall continue to be so vested until the Provincial Government by notification otherwise directs. For the purpose of automatic vesting of evacuee property no overt act on the part of the Custodian Department was either envisaged by any provision of the relevant Ordinance or the Act nor was it necessary for the simple reason that law envisaged vesting in the Custodian only of evacuee property. A provision like that of S. 4 of the East Punjab Evacuees (Administration of Property) Act, 1947, or for that matter S. 8 of the Administration of Evacuee Property Act, 1950. was enacted to fix the point of time from which evacuee property would vest in the Custodian. As to whether a given property was evacuee property or not was always to be gone into and determined whenever a person raising claim to it and disputed the factum of property being an evacuee property. either when he was sought to be dispossessed therefrom or otherwise.

14. Grover. J. for his view appears to seek support firstly from Custodian, Evacuee Property, Punjab Vs. Gujar Singh and Others, and secondly from Ebrahim Aboobaker and Another Vs. Tek Chand Dolwani and Others, .

15. Weston. C.J. in Gujar Singh's case (supra) dealt with a case in which the facts were that on 6th of Oct. 1949 the Assistant Custodian, Ferozepur, filed an application under S. 15 of Ordinance No. IX of 1949, asserting that the engine was evacuee property and asking that the decree. sale and subsequent transfers set out be set aside and possession be given to the Custodian The stand taken was that Jodhi was an evacuee; that the award of the 14th Oct. 1947. was collusive and that the decree made thereon and subsequent transfers were ineffective against the Custodian. The learned Sub Judge held that the Assistant Custodian had failed to prove that he was an evacuee and dismissed the petition. The Custodian against that judgment filed a Civil Revision Petition in the High Court and claimed there that the learned Subordinate Judge had no jurisdiction to decide the question whether or not Jodhi was an evacuee and therefore whether or not the property was evacuee property.

16. Weston, C. J. held that the Subordinate Judge in the present instance had no jurisdiction to determine whether or not Jodhi was an evacuee and that he was in error in dismissing the Custodian's application on the ground. After having so pronounced upon the jurisdiction of the Subordinate Judge, the learned Chief Justice dealt with the aspect that there was no suggestion in the case before him that the particular property had been specified in any notification or order issued by the Custodian or any officer of his Department: that he was not able to accept that the general proclamation issued together with the provisions for the vesting of evacuee property in the Custodian made in the various sections of the various Acts and Ordinances can be taken as determination of the fact that any particular property which the Custodian now chooses to name is evacuee property. The several enactments provided that while there should be no inquiry by the civil courts, there was to be inquiry by the Custodian in the case of specific items of property said to be evacuee property. Where the Custodian assumed physical possession or assumed control by express notification the inquiry of course was contingent upon objection raised by claimants. In the cases of property of which no possession was taken, no control assumed by express notification or no inquiry made such as that contemplated by S. 7 of the Administration of Evacuee Property Act, 1950, or S. 7 of the Central Ordinance, clearly there had been no determination that the particular property was evacuee property. The application under S. 17 of the Administration of Evacuee Property Act or S. 15 of the Ordinance of 1949 was an application to require the Court to set aside orders affecting evacuee property, and it must be a condition precedent to such application that there has been determination that the particular property was evacuee property. As the Custodian himself maintained this determination could not be made by the Court and that determination, therefore, must have been made by the Custodian himself under S. 7 or similar provision of the earlier enactments. The Custodian in that case approached the Court with what was not more than pleading or assertion that the property was evacuee property. If did not base his application upon a considered finding arrived at by a competent officer of his Department; that in his opinion, in these circumstances the application must have been dismissed. The Court to allow such application, although debarred from making determination itself, must be satisfied that the property has been determined to be evacuee property. Thus the application of the Custodian did not establish and the application therefore was not competent. The learned Chief Justice discharged the rule and dismissed the application of the Custodian.

17. There can be no dispute with the proposition enunciated by Weston, C.J. The nature of the property at one stage or the other had to be determined. The Custodian Department cannot be permitted to take possession or assume control of a property from a person without first determining that it was an evacuee property nor it could claim to have set at naught the decree and orders of the Civil Court or any other competent Court or Authority, and seek possession of the property merely by asserting that it was an evacuee property, without some

Competent Authority having determined in accordance with law, that the property was an evacuee property.

18. Chief Justice Weston, however, did not say that there could be no deemed vesting in Law of the evacuee property, unless some overt act had been done by the Department.

19. Their Lordships in Ebrahim Aboobaker and Another Vs. Tek Chand Dolwani and Others, were not again dealing with the jurisdiction of the Civil Court to go into the question as to whether the property was an evacuee property or not. Their Lordships were dealing with the proposition as to whether a property in terms of S. 7 of the Administration of Evacuee Property Act, 1950, could be declared an evacuee property. if the evacuee had died before such a declaration was made and it was in that context that their Lordships made the following observation :--

"16. It is obvious that property must be declared to be evacuee property, under S. 7 before it can vest under S. 8. There is no doubt that when the property does so vest the vesting takes effect retrospectively, but where the man dies before any such declaration is made. the doctrine of relation back cannot be invoked so as to affect the vesting of such property in the legal heirs by operation of law. To take a simple illustration, if a person leaves India after 1-3-1947, the date given in S. 2(d), and dies in Pakistan before any notice is issued to him under S. 7 and before any inquiry is held in. pursuance thereof, it is obvious that the heirs, who have succeeded to his property, cannot be deprived of it by conducting an inquiry into the status of the deceased and investigating his right or interest in property which has already devolved on legal heirs. Section 8 in such a case will not come into play and there can be no vesting of the property retrospectively before such property is declared as evacuee property within the meaning of S. 2(f) of the Act"

"17. Reading Ss. 7 and 8 together. it appears that the Custodian gets dominion over the property only after the declaration is made. The declaration follows upon the inquiry made under S. 7. but until the proceeding is taken under S. 7, there can be no vesting of the property and consequently no right in the Custodian to take possession of it. Now if the alleged evacuee dies before the declaration, has the Custodian any right to take possession of the property. If he cannot take possession of the property of a living person before the declaration. by the same token he cannot take possession after the death of the alleged evacuee when the property had passed into the hands of the heirs. The inquiry under S. 7 is a condition precedent to the making of a declaration under S. 8 and the right of the Custodian to exercise dominion over the property does not arise until the declaration is made. There is no reason, therefore, why the heirs should be deprived of their property before the Custodian obtains dominion."

20. In Ebrahim Aboobaker's case (supra), their Lordships were considering the combined effect of Ss. 7 and 8 and were not dealing with the provisions of sub-section (2) of S. 8 as sub-section (2) of S. 8 was not attracted in that case at all.

There the vesting of property was claimed to be in the wake of declaration in terms of S. 7. Their Lordships held that no declaration could be made in terms of S. 7 if before the declaration, the evacuee died and that the doctrine of relation back could not be invoked so as to affect vesting of the property by a legal heir by operation of law.

21. In Dial Dass's case 1968 PLR 731 (supra) the facts were that Niadar Mal Piara Lal obtained a decree for possession from the Court of the Subordinate Judge, Karnal, against Dial Dass in suit, which was decided on 9th Feb. 1960. The decree-holder took out execution proceedings on 28th Feb. 1963. Dial Dass, judgment-debtor raised objections that the aforesaid decree dt. 9th Feb. 1960, being a nullity was not executable as it was passed by a Court which had no jurisdiction in the matter. The objections were (i) that the jurisdiction of the civil court to pass the decree was barred under S. 46 of the Administration of Evacuee Property Act, 1950, and (ii) that the decree had been invalidated by the provisions of sub-section (2A) of S. 8 of the Act, which amendment was effected subsequently to the passing of the decree by the amending Act 1 of 1960. The executing Court dismissed these objections. His appeal met the same fate. This led to the filing of the Second Appeal in the High Court.

22. Sarkaria J. in Dial Dass's case (supra) held that the civil court was competent to decide whether its jurisdiction to try the suit or proceeding pending before it is barred by certain statute itself though it may turn out on investigation that it has no jurisdiction and in this regard relied on Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, . In the case before him the issue was as to whether the judgment-debtor could be permitted to raise the given objection in execution proceedings when the identical objection had been adjudicated upon in the suit and had been held to be untenable and that judgment had become final. More so. when the civil court while deciding the issue of jurisdiction had acted in accordance with the Full Bench decision of this Court in Mst. Jafran Begum Vs. Custodian Evacuee Property, Punjab and Others, The learned Judge observed that it was a different matter that subsequently, the Supreme Court in Custodian of Evacuee Property Punjab v. Jafran Begum reversed that judgment. Sarkaria. J. (as he then was) held that. the judgment of the civil court, would operate as res judicata between the parties and the matter could not be reopened by them even in a subsequent suit muchless in execution proceeding of the same decree. It was in the light of the peculiar facts of that case that Sarkaria, J. observed that sub-section (2-A).of S. 8 of the Administration of Evacuee Property Act, 1950, was of no avail of the appellant.

23. The facts of Dr. Rajendra Prakash Sharma's case : AIR 1980 SC 1206 (supra) were that Qazi Abdul Rashid remained in India continuously up to 1963. No question on automatic vesting under the U. P. Ordinance No. 1 of 1949 could arise. That Ordinance was not applicable to him at all. In the case before their Lordships, only Administration of Evacuee Property Act, 1950, and Displaced Persons (Compensation and Rehabilitation) Act. 1954 were relevant. Qazi Abdul

Rashid went away from India some time in 1963 or thereafter. Obviously, up to that time no action in terms of S. 7 of the Administration of Evacuee Property Act, 1950, to declare the suit property to be the evacuee property could have been taken before 7th day of May, 1954. nor any such proceedings were pending on May 7, 1954. and, therefore, the property of Qazi Abdu1 Rashid could not be declared to be an evacuee property. Their Lordships observed that if at the point of time when the question arises as to whether the property is evacuee property or not, power of the Authority constituted under the Act to adjudicate that question stands terminated and extinguished by the operation of S. 7A of the 1950 Act, none of the clauses of S. 46 of the 1950 Act, would bar the jurisdiction of the civil court to determine that question which had not been decided by the Custodian during the period he had the power to determine it. The ratio of this judgment is not attracted to the facts of the present case.

24. Their Lordships of the Supreme Court in Haji Siddik Haji Umar and Others Vs. Union of India (UOI), had an occasion to consider Dr. Rajendra Prakash's case and then distinguished it by observing that that was a case in which the evacuee concerned migrated to Pakistan in the year 1963 after the insertion of S. 7A of the 1950 Act.

25. For the reasons, aforementioned, we hold that the Courts below rightly held that the jurisdiction of the civil court was barred and dismissed the suit. We may, however, observe that both the courts below have given their Finding of fact that the property was evacuee property and the counsel for the appellant had confined himself and rightly so to the raising of only the questions of law pertaining to the jurisdiction of the civil court.

26. For the reasons, aforementioned the appeal is dismissed. hut. with no order as to costs.

27. Appeal dismissed.