

(1959) 02 PAT CK 0010

In the Patna High Court

Case No : Misc. Judicial Case No. 529 of 1957

Bansidhar Lal

APPELLANT

Vs

Asst. Custodian, Evacuee Property and Others

RESPONDENT

Date of Decision : 19-02-1959

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 48(3)

Citation : AIR 1960 Patna 306

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : A.B.N. Sinha and C.B. Sahay, for the Appellant; K.P. Verma, for the Respondent

Final Decision : Allowed

Judgement

1. In this case opposite party No. 1, that is, the Assistant Custodian of Evacuee Property of Sasaram, made a requisition u/s 5 of the Bihar and Orissa Public Demands Recovery Act to the Certificate Officer, Sasaram, against the petitioner Bansidhar Lal in regard to arrears of house rent from the 1st of July, 1947, to the 21st of May, 1953, due to the evacuee u/s 10(2)(i) of the Administration of Evacuee Property Act, The petitioner filed an objection petition before the Certificate Officer denying his liability. The objection was dismissed by the Certificate Officer and the order of dismissal was affirmed by the Collector of Shahabad in appeal. The petitioner took the matter in revision to the Commissioner of Patna Division, and on the 24th October, 1955. the Commissioner held that the Certificate Officer was entitled only to recover rent payable within three years preceding the date of requisition, and recovery of the balance of the amount was barred by limitation under Article 110 of the Indian Limitation Act,

Against this order opposite party No. 1 applied in revision before the Board of Revenue, but the application was dismissed summarily by the Board of Revenue, on 26-6-1956. On the 12th February, 1957, opposite party No. 1 applied for

review of the order before the Board of Revenue, and on the 13th of August, 1957, the Board of Revenue allowed the review application, set aside the order of the Commissioner and directed that the certificate be executed for the full amount of the rent from the 1st of July, 1947, to the 21st of May, 1953.

2. Against this order of the Board of Revenue, dated the 13th August, 1957, the petitioner has applied to the High Court for grant of a writ under Article 226 of the Constitution.

3. The argument put forward on behalf of the petitioner is that the Board of Revenue was erroneous in law in holding that Section 12 of the Amending Act (Act 91 of 1956) applied to the case and the provisions of the Indian Limitation Act are not applicable to the recovery of the debt due to the Custodian. In our opinion, the argument put forward on behalf of the petitioner is well founded and must be accepted as correct. Section 48 of the Administration of Evacuee Property Act, as it stood before the amendment, stated as follows:

"48. Recovery of arrears. (i) Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrear of land revenue.

(ii) For the purpose of Sub-section (i), the decision of the Custodian as to the sum due to the State Government or to the Custodian shall be final."

Section 12 of the Amending Act (Act 91 of 1956) is in the following terms:

"12. Substitution of new Section for Section 48.

For Section 48 of the principal Act, the following section shall be substituted, namely:

Recovery of certain sums as arrears of land revenue.

"48. 1. Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.

2. If any question arises whether a sum is payable to the Government or to the Custodian within the meaning of Sub-section (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Custodian shall, subject to any appeal or revision under this Act, be final and shall not be called in question by any court or other authority.

3. For the purposes of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by the Indian Limitation Act, 1908 or any other law for the time being in force relating to limitation of actions."

Section 1 (2) of the Amending Act is also important and it is necessary to reproduce that section:

1. Short title and commencement, (i) This Act may be called the Administration of Evacuee Property (Amendment) Act, 1956.

2. It shall be deemed to have come into force on 22-10-1956."

It is, therefore, manifest that the Amending Act has been made expressly retrospective with effect from 22-10-1956. In the present case it is the admitted position that the Commissioner's order was passed on the 24th October, 1955, and that order became final when the Board of Revenue rejected the revision application summarily on the 26th June, 1956. Thereafter Section 48 of the Administration of Evacuee Property Act was amended by Central Act 91 of 1956, and, as stated in Section 1 of the Amending Act, the amendment was made expressly retrospective with effect from 22-10-1956.

It is clear, therefore, that on the date the Amending Act came into force the right of the Certificate authorities to proceed against the petitioner for recovery of the arrears of rent beyond three years of the date of the requisition was barred. In other words, the petitioner had acquired a vested right on the date of the coming into force of the Amending Act to treat the claim against him by the Custodian as already barred.

In these circumstances it is well established by authorities that the amended section cannot apply retrospectively to the present case and it follows, therefore, that the Board of Revenue was erroneous in allowing the application for review and setting aside the order of the Commissioner made on 24-10-1955. As observed by this High Court in *A.K. Raha Engineers Ltd. v. State of Bihar* 1959 BLJR 39, a statute of limitation may be retrospectively construed so as to shorten or lengthen the period of limitation of an unbarred cause of action accruing before the statute comes into operation, but the statute cannot be retrospectively construed (in the absence of a clear indication to the contrary) so as to deprive the plaintiff of a vested right of action or deprive a defendant of the right to treat a claim against him as already barred.

Applying this principle to the present case we hold that the amendment made by Section 12 of Central Act 91 of 1956 with regard to Section 48 of the Administration of Evacuee Property Act does not apply to the present case and the Board of Revenue was erroneous in law in allowing the review application by its order dated 13-8-1957.

4. For these reasons, in exercise of our authority under Article 227 of the Constitution, we set aside the order of the Board of Revenue dated 13-8-1957, and restore the order of the Commissioner of Patna Division dated 24-10-1955.

5. We accordingly allow this application, but there will be no order as to costs.