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**(1955) 09 AP CK 0008**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 18/5 of 1955**

Begum Noor Banoo and Others

APPELLANT

Vs

Custodian, Evacuee Property

RESPONDENT

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**Date of Decision : 15-09-1955**

**Acts Referred:**

Administration of Evacuee Property (Amendment) Act, 1954 — Section 1, 10, 16, 2, 3  
Administration of Evacuee Property Act, 1950 — Section 12, 16, 2, 27, 4  
General Clauses Act, 1897 — Section 5(1)  
Partnership Act, 1932 — Section 69  
Penal Code, 1860 (IPC) — Section 203

**Citation : (1955) 09 AP CK 0008**

**Hon'ble Judges :** Mohd. Ahmed Ansari, J;Jaganmohan Reddy, J

**Bench :** Division Bench

**Advocate :** Ramaswamy Iyengar, for the Appellant; Narahari Sastry, Government Advocate, for the Respondent

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## **Judgement**

Jaganmohan Reddy, J.—This is an application for the issue of a writ of prohibition against the Assistant Custodian (Legal) from continuing the proceedings and holding any further enquiry upon a notice issued by him to the Petitioners u/s 7, Administration of Evacuee Property Act, 21 of 1950 and for quashing the said proceedings by the issue of a Writ of Certiorari.

2. The facts in so far as they are necessary to dispose of this Writ Petition are that the first Petitioner is the widow and the second and third Petitioners, Dost Mohamed Allauddin and Noor Mohammed Allauddin, are the sons of late Nawab Ahmed Nawaz Jung who died on 21-12-1954 at Hyderabad. It is alleged that after the death of the said Nawab Ahmed Nawaz Jung, the second and third Petitioners are the surviving partners of the firm of Messrs. Khan Bahadur Ahmed Allauddin and Sons.

Apart from these Petitioners, the late Nawab Ahmed Nawaz Jung left surviving him a daughter Begum Zerena Banoo, wife of Calcuttawallah, who had migrated to Pakistan sometime in 1950. The Petitioners alleged that after the death of late

Nawab Ahmed Nawaz Jung they received a notice dated 17-2-1955 from the Senior Assistant Custodian (Legal) Evacuee Property declaring the share of Zerena Banoo in the properties described in the said notice as Evacuee Property and also issued a letter dated 6-1-1955 addressed to the Collector, Land Acquisition, Hyderabad, to withhold payment of Rs. 1, 07,255-9-0 payable to Messrs. Khan Bahadur Ahmed Allauddin and Sons.

The Petitioners filed a counter to the notice before the said Assistant Custodian (Legal) challenging the validity of the notice and also, submitted that the said Custodian acted without any legal authority and prayed that that objection should first be decided as a preliminary question of law, as it affected the very foundation of his jurisdiction. After hearing the parties on 3-(sic)-1955 the Senior Assistant. Custodian, passed orders rejecting the legal objection raised and posted the case for enquiry to 10-3-1955 for evidence.

The Petitioners thereafter filed a writ petition before the High Court on 10-3-1955 which was dismissed on the ground that the Petitioners had a remedy under the Act by way of an appeal to the Custodian. Accordingly an appeal was filed before the Custodian who by his order dated 4-4-1955 dismissed the appeal.

The appellate order of the Custodian discloses that the daughter of the late Ahmed Nawaz Jung, Zerena Banoo, migrated to Pakistan immediately after the Police Action, consequently her properties were declared as Evacuee 1 Property by Notification No. 34 of 1950 and that after the death of her father, notices were issued to the Petitioners to show cause why; Zerena Banoo's share in her father's estate should not be declared as evacuee property.

The objection taken before the Assistant. Custodian (Legal) as well as before the Custodian was that by virtue of Section 10, Administration of Evacuee Property (Amendment) Act, 1954 retrospective effect had been given to Section 4; of that Act whereby Section 7A was added to the Administration of Evacuee Property Act, 1950 from 7-5-1954 and therefore the six months' period mentioned in the Second proviso to Section 7A, should be counted from 7-5-1954 and not from the commencement of the Act.

Further it was contended that the only property which could be treated as evacuee property was that which was actually owned on, 7-5-1954 and not that, to which the evacuee became entitled after that date. Both these contentions have been strenuously urged before us in this petition by Sri Ramaswamy Iyengar, learned advocate for the Petitioners.

3. Before we deal with these contentions, the learned advocate for the Government raises a preliminary objection viz., that no writ of prohibition or certiorari can be entertained as the matter was not finally settled by the Custodian and particularly when the applicant had statutory remedy open to him under the Administration of Evacuee Property Act by way of an appeal or revision to the Custodian General.

In our view this contention has no force. It is true that a writ of certiorari will not ordinarily be entertained or issued where the applicant has a remedy under the law and could easily pursue it, but where proceedings are taken by an inferior tribunal without jurisdiction a writ of prohibition will lie. As their Lordships of the Supreme Court in the recent case of - Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, (A) had pointed at p. 241 in dealing with the distinction between the two writs i.e., writ of prohibition and writ of certiorari that

both writs of prohibition and certiorari have for their object the restraining of inferior Courts from exceeding their jurisdiction and they could be issued not merely to Courts but to all authorities exercising judicial or quasi-judicial functions. But there is one fundamental distinction between the two writs.... They are issued at different stages of the proceedings. When an inferior Court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior Court for a writ of prohibition and on that, an order will issue forbidding the inferior Court from continuing the proceedings.

On the other hand if the Court hears that, cause or matter and gives a decision, the party aggrieved would have to move the superior Court for a writ of certiorari and on that an order will be made quashing the decision on the ground of want of jurisdiction.

For this reason we think this application can be entertained.

4. Now coming to the main question, in order to appreciate the contentions of the learned advocate for the Petitioner, it is necessary to briefly examine the provisions of the Administration of Evacuee Property (Amendment) Act, 1954, the long title of which states that it is

an Act to abrogate the evacuee property law in respect of persons who have done or do any action on or after 7-5-1954, which if done before that date would have rendered them subject to that law and to amend the Administration of Evacuee Property Act, 1950 for that, purpose and certain other purposes.

Section 1 deals with the short title and Sections 2, 3 and 5 to 9 respectively amend Sections 4, 7, 12, 16, 27, 40 and 48 of the principal Act to which Section 4 adds a new Section 7A. Section 10 of the amendment Act gives Sections 4 and 8 retrospective operation from 7-5-1954. The new Section 7A which was added by Section 4 of the Amendment Act as we have already stated and given retrospective operation, from 7-5-1954, is as follows:

7A. Property not to be declared evacuee property on or after 7th May, 1954, Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954;

Provided that nothing contained in this section shall apply to-

(a) any property in respect of which proceedings are pending on the 7th day of

May, 1954, for declaring such property to be evacuee property; and,

(b) the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbance or the fear of such disturbances had: left on or after the 1st day of March, 1947 - any place now forming part of India, and who on the 7th day of May, 1954, was resident of Pakistan.

Provided further that no notice u/s 7 for declaring any property to be evacuee property with reference to Clause (b) of the proceeding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

#### EXPLANATION I:

A person shall be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of clause (b) of the first proviso, if he was ordinarily residing in Pakistan before that date, notwithstanding that he was temporarily absent from Pakistan on that date.

#### EXPLANATION II:

A person who had left India for Pakistan, before the 7th day of May, 1954, on the authority of a passport or any other valid travel document issued by any competent authority in India, and who was temporarily residing in Pakistan on that date, shall not be deemed to have been resident in Pakistan on that date within the meaning of Clause (b) of the first proviso.

#### EXPLANATION III:

A person who had left Pakistan for India on or after the 18th day of July, 1948, and who was in India on the 7th day of May, 1954, shall, unless he came to India under a valid permit for permanent return or for permanent resettlement issued under the Influx from Pakistan (Control) Act, 1949 (23 of 1949), be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of Clause (b), of the first proviso.

5. The above provision is designed to prohibit any property from being declared as evacuee property on or after 7-5-1954, subject to the several exceptions contained in the provisos, namely, that the provisions of the section do not apply to cases where (a) proceedings are pending with respect to any property on the 7th May, or (b) in respect of property of a person who due to the setting up of the Dominions of India and Pakistan or on account of civil disturbances or due to fear migrated to Pakistan on or after 1-3-1947, from any place in India and who on the 7th May was resident in Pakistan subject, however, to the further exception that no notice can be issued with respect to any property specified in (b) after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

It may be well to remember that u/s 2(f) of the principal Act evacuee property

has been defined as any property of an evacuee whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity including 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 provisions contained in Section 40. "Evacuee" under Clause (d) of Section 2 is one-

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbance leaves or has on or after the 1st day of March, 1947, left, any place in a State for any place outside the territories now forming part of India, or

(ii) who is resident, in any place now forming part of Pakistan and who for that reason is unable to occupy, supervise or manage in; person his property in any part of the territories to which this Act extends, or whose property in any part of the said territories has ceased to be occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 14th day of August, 1947, obtained, otherwise than by way of purchase or exchange, any right to, interest in or benefit from any property which is treated as, evacuee or abandoned property under any law for the time being in force in Pakistan; or

(iv) who has, after the 18th day of October 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(v) who has, after the 18th day of October, 1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or If the acquisition has been made by or through a member of his family, in any manner whatsoever, any right to, Interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan.

Ignoring the explanations to the aforesaid definition of an evacuee it is clear that certain specified acts done by a person constitute him an evacuee and his property becomes evacuee property. The purpose of adding Section 7A appears to be to terminate the power to declare any property as evacuee property under the Act save as already pointed out, in pending cases and with respect to persons who have migrated to Pakistan after 1-3-1947, and who were residents of Pakistan on 7th day of May, 1954, provided that no notice can issue after six months of the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

In other words, properties of persons specified in Sub-clauses (iii), (iv) and (v) of Section 2(f) cannot be declared as evacuee property as these are not saved by the provisos to Section 7A, nor could the transfer of any property notified to be evacuee property be deemed to be ineffective by virtue of the amendment of

Section 40 which only brings, within the ambit of that Section, evacuee property transferred after 14-8-1947 but before 7-5-1954.

A reference to the Administration of Evacuee Property (Amendment) Bill, 1954, being Bill No. 27 of 1954, as introduced in the Lok Sabha, would show that proviso (b) to Section 7A as contemplated in that Bill by Clause 3 intended to retain the power to declare the property of a person who has done any of the acts specified in Sub-clauses (i), (iii), (iv) and (v) of Clause (d) of Section 2 before 7-5-1954. This in effect would have taken away the power to declare any property as evacuee property on or after 7-5-1954, but the Act, however, as passed, has made various; changes resulting in the aforesaid limitations.

6. The learned advocate for the Petitioners submits that the power to declare a property evacuee property" after 7-5-1954, only subsist for a period of six months after 7-5-1954, as this is the date on which the Administration of Evacuee Property (Amendment) Act of 1954 is deemed to have come into force for the purposes of Section 4 of the amendment Act which added Section 7A from 7-5-1954.

He contends that if this were not so, a person who has migrated to Pakistan after 1-3-1947 and is a resident of Pakistan on 7-5-1954, though he can validly transfer his property on or after 7-5-1954, he will still be liable to be declared an evacuee, a position which is both anomalous and untenable.

This argument even on a cursory examination does not carry conviction to our mind for the reason that even if the proposition of the learned advocate is accepted, namely, that the power to declare the property of a person specified in Clause (b) of the first proviso to be evacuee property, is saved for six months after 7-5-1954, even then a transfer made on or after 7-5-1954 by a person who is declared an evacuee, cannot be declared to be ineffective and the so-called anomaly still remains and is not removed.

We must, therefore, gather the legislative intent of the amended Section 40 independent of Section 7A, to be that transfers by evacuees on or after 7-5-1954 could not be made ineffective nor would permission of the Custodian be necessary to validate such transfers. Whatever may have been the policy of the Legislature in enacting these provisions, the aforesaid intention appears to be clear. The validity of the transfer by an evacuee after 7-5-1954 cannot in any view of the matter determine the date upon which the Administration of Evacuee Property (Amendment) Act of 1954 is deemed to have commenced for the purposes of the second proviso to Section 7A.

The learned advocate for the Petitioner contends that since Sections 4 and 8 of the amending Act are deemed to have come into force from 7-5-1954, the Administration of Evacuee Property (Amendment) Act of 1954 must also be deemed to have come, into force on the said date for the purposes of the said sections and in support of this contention he gives the analogy of the Indian Partnership Act which, except for Section 69, came into force on 1-10-1932,

while Section 69 came into force on 1-10-1933.

In other words, he submits that where an Act is composed of different provisions which come into force on different dates, the Act of which they are part is deemed to come into force on the respective dates on which the parts came into force even though the assent to the amendment Act may have been given on a different date. In our view this is a very ingenious argument which we are unable to accept either on principle or on any authority.

By virtue of Sub-section (1) of Section 5, General Clauses Act, where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent. It may be observed that in both the principal Acts, viz., the Administration of Evacuee Property Act of 1950 as well as the amending Act of 1954, the date on which they were to come into force, has not been specified, as such they must be deemed to have come into force on the respective dates on which they received the assent of the President, viz., 7-4-1950, and 8-10-1954.

The proposition that an Act will not have any operation until the day of its commencement is well established even though the Section of the Act may have been framed as if it would come into operation immediately it receives the assent. It is equally clear that different Sections of an Act may come into operation at different dates, namely, some part, of the Act may be put into force at different dates while the rest of the Act comes into force on the day it receives the assent or on the date upon which it is specified to come into force.

There are two well-known dates for an Act, either of the Lok Sabha or of the Legislature of a State to come into force, that is, the date on which the Act received the assent or the date on which it is specified to come into operation. If, therefore, the Act is silent as to the date of its coming into operation, it comes into operation on the date when the President assents. That the Administration of Evacuee Property (Amendment) Act, 1954, came into force on the date when the President gave his assent, namely, 8-10-1954, can admit of no doubt and this is the date which is referred to in the 2nd proviso to Section 7A as also in the 2nd proviso to the amended Section 16 effected by Section 6 of the amending Act.

When the Legislature uses the words "commencement of the Administration of Evacuee Property (Amendment) Act, 1954", in two different Sections as aforesaid, it is not permissible to assign two different dates to the commencement of the amendment Act. It is a well settled rule of drafting that the same word or term is used in the same meaning throughout and where in a particular Place it is necessary to use the same term in a different sense from that which it bears in the rest of the Act, a special definition is added such as in the explanation to Section 203, Indian Penal Code.

Bearing this in mind it is difficult to understand that the draftsman had used the term commencement of the Administration of Evacuee Property (Amendment) Act, 1954. in a different sense in the 2nd proviso to Section 7A to that in the 2nd

proviso to Section 16. If it was intended to preserve the power to give a notice u/s 7 for six months after 7-5-1954, there was nothing more easy than to have Said so, but the learned Advocate submits that if the intention was to retain the power of giving notice u/s 7 till six months after 8-10-1954, the draftsman could have said "the commencement of this Act" meaning thereby the amendment Act.

In our view the use of such an expression, as is suggested, would have made the whole thing meaningless for the simple reason that the words; "commencement of this Act" in Section 7A would not refer to the amending Act but to the principal Act which came into operation on 7-4-1950. It may further be observed that the draftsman himself has used the words "this Act" in the first para of Section 7A to mean the principal Act as against the use of the words "Administration of Evacuee Property (Amendment) Act, 1954" to mean the amendment Act.

We are clear in our minds for the reasons stated above that the commencement of the Administration of Evacuee Property (Amendment) Act, 1954, can only refer to the date on which the President assented, as such the power to give notice to declare a person an evacuee is preserved till 8-4-1955, and that being so the notice given to the Respondents has been validly given in the proper exercise of the jurisdiction vested in the Custodian by law.

7. A further point was raised on behalf of the Petitioners, namely, that when the property in question did not fall to the share of the Evacuee at the time of the passing of the Act or on 7-5-1954, it cannot be treated as evacuee property. This contention is equally untenable for the reason that the right to declare any property to be evacuee property with reference to an evacuee mentioned in Clause (b) of the 1st proviso, is specially given thereunder though limited by the 2nd proviso to six months from the date of the commencement of the Amendment Act. For the aforesaid reasons, we see no force in this Writ petition which is dismissed with costs to the State which we fix at Rs. 100/-.