

(2013) 01 DEL CK 0248

In the Delhi High Court

Case No : Rev. Petition 198 of 2011, C.M. Application 4734 of 2011, 4735 of 2011 and 4736 of 2011 in Writ Petition (C) 2385 of 1982 and Rev. Petition 436 of 2011, C.M. Application 11823 of 2011, 11824 of 2011, 11825 of 2011 and 11826 of 2011 in Writ Petition (C) 23

Din Mohd. (Deceased) and Others

APPELLANT

Vs

The Dy. Custodian General Of Evacuee Property and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0248

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sanjeev Narula and Sh. Ekram Ali, for the Appellant; Sanjeev Sahay, Advocate, for Dy. Custodian and Sh. N.S. Vashisht, Advocate, for Review Petitioners, for the Appearing Parties

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. This common judgment will dispose of two Review Petitions, i.e. Rev. Pet. 198/2011, preferred by the third-party/petitioner-Ms. Neelam Arya (hereafter referred to by her name) and R.P.A. 436/2011, filed by the Deputy Custodian General, who was the respondent in the original writ petition. Both the petitions seek review of a judgment and order of this Court dated 26.02.2009. The original writ petitioner, Din Mohd. died during the proceedings and was succeeded by his legal representatives, who claimed that they were the children of one Safed Khan, son of Ghisa, who died in India in 1955. They approached the Court, being aggrieved by the proceedings initiated by the respondent under "the Administration of Evacuee Property Act, 1950" ("the Evacuee Act") and "the Displaced Persons (Compensation and Rehabilitation) Act, 1954" ("the Displaced Persons Act"). The writ petitioners had approached the first respondent (Deputy Custodian General) u/s 27 of the Evacuee Act, claiming that the property, i.e. 8

bighas and 40 biswa of land in Village Chandan Hola was never notified or declared as an "evacuee property"; and, therefore, was not an evacuee property. They contended that it could not have been so declared by virtue of Section 7A of the Act. The writ petitioners had relied on Section 12 of the Displaced Persons' Act read with Rule 93 of the rules framed therein. The first respondent-Deputy Custodian General had rejected the revision inter alia, unpersuaded by the submission that Safed Khan had stayed back in India and, therefore, was not an evacuee. The Deputy Custodian General rejected the death certificate in respect of the said Safed Khan, son of Ghisa and stated that even otherwise "there is no proof on record that Sh. Safed Khan did not migrate to Pakistan and he died in India as Indian national..... even if, for argument's sake, it is presumed that this document is genuine and it relates to Safed Khan, S/o Ghisa but he died as evacuee".

2. Apparently, proceeding on the footing that the suit land had vested with the respondents, it was granted to one Sh. Gur Buksh Buksh Singh; he was arrayed as the fourth respondent. Ms. Neelam Arya, petitioner in Rev. Pet. No. 198/2011 claims to have purchased the suit lands from the legal representatives of the said Gur Buksh Singh. These legal representatives were impleaded when the writ petition was pending, by an order dated 14.01.1997. This Court, by the judgment and order dated 26.02.2009-review of which is sought by both the review petitioners, was of the opinion that there was no material on record to show that the suit property was declared as evacuee or that any enquiry in a manner known to law was held to determine whether it belonged to an evacuee.

3. Both review petitioners relied upon Section 4 of the Administration of Evacuee Property (Chief Commissioners' Province) Ordinance No. XII of 1949 and stated that it is sufficient if the property falls within the description of "evacuee property" which in turn would vest u/s 4 of that Act. It was stated that the law did not, at the relevant time when the vesting took place, require any notice or hearing. The Deputy Custodian General, in Review Petition No. 436/2011 relied upon a notification issued u/s 6(1) of the Administration of Evacuee Property (Chief Commissioner's Province) Ordinance No. XII of 1949, published in the Official Gazette on 06.07.1949 and stated that the father of the original writ petitioner, i.e. Safed Khan, was not mentioned in the list of muslims whose properties were excluded. Consequently, all the properties of the muslim residents of Chandan Hola, by virtue of notification read with Section 4, vested in the Custodian. It was argued besides, by both review petitioners that neither the original writ petitioner-Din Mohd. nor his legal heirs were in possession of the property at any relevant point of time. It is argued in this regard that despite a direction dated 29.10.2004 in an order made during the pendency of writ proceedings, the relevant Khasra Girdawari and other revenue records, to show continuous possession of the writ petitioners, had not been filed. Learned counsel relied upon the extracts of Khasra Girdawari and their translated copies filed along with the review petition to say that the occupation was never with the writ petitioner.

4. In addition to these submissions, learned counsel on behalf of Ms. Neelam Arya, the third party review petitioner submitted that Gur Buksh Singh had sold his lands in 1992 and she was in continuous physical possession. Learned counsel stressed upon the fact that the writ petitioners were conscious of these circumstances and had filed an application, i.e. C.M. No. 5929/1996, seeking interim order restraining dispossession. Learned counsel pointed to para 8 of the said application to say that Neelam Arya's possession was within the knowledge of the original writ petitioners and consequently this Court fell into error in accepting the submission that they were in continuous possession of the suit lands. Learned counsel also relied upon the averments in Suit No. 2568/2012, said to have been filed by learned counsel for the writ petitioner in which she levelled allegations against him, i.e. the writ petitioner and Neelam Arya since they threatened to sell the property.

5. It is evident from the above discussion that the Deputy Custodian General and the third party review petitioner claimed to be aggrieved by the order dated 26.02.2009, disposing of the writ petition. Both these parties had initially approached the Division Bench which permitted the withdrawal of their appeals to facilitate filing of the present review petition. The common contention on behalf of both the review petitioners is that the findings in the said judgment-of which review is sought, are erroneous on two counts. The first is that factually, by virtue of combined operation of Section 4 of the Chief Commissioner's Ordinance 1949 and the Notification dated 16th June, 1949 made u/s 6 of the said Ordinance, all manner of evacuee properties had vested in the Custodian, who in turn, acted within his rights to allot it to Gur Buksh Singh. Being the successors in title, Neelam Arya had a legitimate right and is also in physical possession. It is contended in this context that the scheme of the said Ordinance of 1949 did not envision an enquiry and that by virtue of operation of law, i.e. Section 4, every evacuee property vested with the Custodian. The second submission was that factually, the Court overlooked the material aspect, i.e. that the writ petitioner did not comply with previous orders and produce the revenue records, including Khasra Girdawari to reveal his continuous possession. The last submission was that the transaction between Gur Buksh Singh's heirs (arrayed as respondent no. 4) and Neelam Arya was within the knowledge of the writ petitioner, who deliberately chose to withhold it from the Court.

6. So far as the contention with regard to automatic vesting, made on the strength of notification published in the Official Gazette of 06.07.1949, is concerned, and reading of Section 4, the Court notices that the same notification clearly lists one Safed Khan at Item No. 29 in the Schedule. The notification lists-out names of individuals whose properties are in fact excluded from vesting, on account of their not being evacuee; the relevant part of the notification reads as follows:

Office of the Additional Custodian of Evacuees' property New Delhi, the 16th June 1949

No. I(35)-In pursuance of the power vested in me under subsection (I) of Section 6 of the Administration of Evacuee Property (Chief Commissioners' Provinces) Ordinance XII of 1949, as applicable to the Province of Delhi, I hereby assume possession and control over all rights and interests in the land and houses in the rural area of the province of Delhi belonging to all the Muslims except those mentioned in the schedule annexed hereto.

SCHEDULE

7. Sections 2(c) (f), 5 and 6 of the Administration of Evacuee Property (Chief Commissioner's Province) Ordinance, No. XII of 1949 reads as under:

2. Definitions.-In this Ordinance, unless there is anything repugnant in the subject or context.-(c) "evacuee" means any person-

(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 disturbances, leaves or has, on or after the 1st day of March, 1947, left any place in the Province 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 the Provinces or whose property in the Provinces has ceased to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 1st day of March, 1947, acquired in any manner whatsoever any right to, interest in or benefit from any property which is treated as evacuee property under any law for the time being in force in Pakistan;"

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(f) "property" means property of any kind, and includes any right or interest in such property, but does not include a mere right to sue or a cash deposit in a bank;

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5. Vesting of evacuee property in the Custodian. -

(1) Subject to the provisions of this Ordinance, all evacuee properties situate in a Province shall vest in the Custodian for that Province.

(2) Where immediately before the commencement of this Ordinance any evacuee property in a Province had vested in any person exercising the powers of a Custodian under any corresponding law in force in that Province immediately before such commencement, the evacuee property shall, on the commencement of this Ordinance, be deemed to have vested in the Custodian appointed for the Province under this Ordinance.

(3) Where any property in a Province belonging to a joint stock company had

vested in any person exercising the powers of a Custodian under and corresponding law in force in that Province immediately before the commencement of this Ordinance, then, nothing contained in clause (d) of Section 2 shall affect the operation of sub-section (2) but the Central Government may, by notification in the official Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

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6. Notification of evacuee property. -

(1) The Custodian may from time to time, notify, either by publication in the Gazette of India or in such other manner as may be prescribed, evacuee properties which have vested in him under this Ordinance.

(2) Where, after the vesting of any evacuee property in the Custodian, any person is in possession of any such property, 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 any other person duly authorized by him in this behalf.

8. A combined reading of the above provisions would show that according to the Ordinance an individual who left the territory of India and migrated to Pakistan at the time of partition was "deemed to be an evacuee". Although neither Section 5 nor Section 6 contemplated in any express terms any enquiry or procedure before an individual could be declared as "evacuee" and before his property could be "deemed to be evacuee property", the fact remains that a modicum of enquiry was warranted. In any event, the materials placed on record in the form of the Gazette Notification dated 06.07.1949, published in the Notification dated 16.06.1949 reveal that the method adopted by the Custodian was to notify all properties of all muslims in rural areas, except those mentioned in the Schedule. The review petitioners are not correct in contending that there is no mention of Safed Khan. Interestingly, this Notification-produced by the Deputy Custodian General in the review petition, had never seen the light of the day for over 27 years when the writ petition was pending. That, however, does not make any difference with regard to the nature of the order because the Deputy Custodian General's order itself recognizes the fact that Safed Khan had some rights. At one level, he doubted the identity of Safed Khan and his parentage. However, he nevertheless, went on to hold that Safed Khan was an evacuee. That determination, in the light of the Gazette Notification published on 06.07.1949, was clearly erroneous. This Court, therefore, holds that there is no substance in the argument of the review petitioners that the property stood notified under the provisions of the Administration of Evacuee Property (Chief Commissioner's Province) Ordinance No. XII of 1949. In fact, the notification expressly excluding named individuals' properties, has contrary effect; Safed Khan's properties were expressly excluded from vesting. This Court finds no infirmity or error in the judgment and order dated 20.09.2009, as calling for its review on this aspect.

9. So far as the second contention with regard to possession of the property goes, the material on record produced by the Deputy Custodian General in the Review Petition would reveal (at pages 567 to 615) that as recently as in 2006- during the pendency of the proceedings, Safed Khan's rights as owner/ mortgager is shown (at page 609 of R.P. 191/2011). Similarly, Jamabandi for 1977-1978 shows names of Din Mohd. and other sons of Safed Khan, as persons entitled to four plots in respect of an area of 8 bighas 18 biswas of land (page 581); for the periods 1977-81, 1981-85 and 1985-89, the names of Din Mohd. and other sons of Safed Khan are partly shown as "owners" and partly shown as "cultivators" in respect of lands and in respect of others shown as only "cultivators" when the owner is Central Government.

10. Having regard to these materials on record by the Review Petitioners and the Deputy Custodian General, the Court is of the opinion that the argument about withholding relevant materials known with regard to possession is meritless.

11. The last submission pertained to the plaintiff's alleged knowledge that Gur Buksh Singh had sold the suit lands. Now, the order sheet in this case reveals that finally, after repeated efforts, on 14.01.1997, the heirs of Gur Buksh Singh were impleaded. They did not choose to appear and contest in the proceedings. The third party review petitioner, Neelam Arya has sought to submit that she has been in continuous possession of the suit lands. However, during the hearing, much stress was laid on the fact that in interlocutory application where the writ petitioner had complained of threats of dispossession, there were averments which suggested their knowledge about the transfer. The averments in the application did not, however, indicate any such knowledge; nor can there be any constructive knowledge about the fact that documents were allegedly executed by late Gur Buksh Singh in favour of Neelam Arya.

12. As far as the averments in the suit filed by the writ petitioners' erstwhile counsel, claiming a share in the suit lands goes, this Court is of the opinion that same is irrelevant for the present purpose; the suit was filed as late as in 2012 and appears to have been founded on the plea by Sh. A.K. Srivastava that the writ petitioners had been promised to be given certain premises. The allegations contained in the averments of such individuals can hardly be inferred as the writ petitioner's knowledge. In fact, in those proceedings, the claim is that the writ petitioners are owner of their premise. Besides, the suit was filed at least three years after the judgment and has no bearing on the correctness of the reasoning contained in the judgment said to be reviewed. In view of the above discussion, this Court is of the opinion that both the Review Petitions are without merit; consequently, both the Review Petitions and their accompanying applications are dismissed, without any order as to costs.