

(1959) 10 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 123-D of 1957

Goverdhan Sohan and Others

APPELLANT

Vs

Deputy Custodian General of Evacuee Property and Another

RESPONDENT

Date of Decision : 14-10-1959

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 7
Constitution of India, 1950 — Article 226

Citation : AIR 1960 P&H 223

Hon'ble Judges : G.L. Chopra, J;D. Falshaw, J

Bench : Division Bench

Judgement

Falshaw, J.

(1) This is a petition under Art. 226 of the Constitution which has been referred to a Division Bench by Grover J.

(2) The five petitioner, Goverdhan etc., are residents of village Kair, where prior to the partition seven families of Telies, who were Muslims, occupied houses and it appears that the present petitioners have occupied and built some parts of the sites of those houses.

(2a) It seems that somebody reported to the Custodian's Department that the petitioners had wrongly taken possession of the houses abandoned by the Telies and also seized their moveable property, and a notice was accordingly issued to them under S. 7 of the Administration of Evacuee Property Act in 1955 relating both to the moveable and immovable properties of the Telies who had become evacuees at the time of the disturbances. The Assistant Custodian by this order dated 16-11-1955 discharged the notice so far as it concerned the movable property, but held that the petitioners were in unlawful occupation of part of the sites of the Telies' houses which were evacuee property. He accordingly ordered that they should pay rent at the rate of Rs. 3/- per mensem per house but could continue residing in the houses until they were allotted to displaced persons.

(3) The petitioners filed an appeal which was dismissed by the Authorized Deputy Custodian on 1-8-1956. They went in revision against this order and their revision petition was dismissed by the Deputy Custodian General with the modification that since it appeared that the petitioners had constructed pucca houses on the sites which were evacuee property they should not be ejected, but instead should be allowed to remain in occupation on paying the value of the sites as assessed by the Survey Department. This order was passed on 1-3-1957 and the present petition was filed soon after that.

(4) Although in proceedings before the officers of the Custodian's Department the petitioners had even denied that the land in dispute formed the sites of the houses of the Telies and alleged that in fact there were only two and not seven families of Telies in the village the finding of fact by the Custodian's Department has now been accepted and the main case of the petitioners is that the sites of the Telies' houses are not evacuee property on the ground that the Telies were non-proprietors, and according to general agricultural custom, on their abandoning their houses, the sites reverted automatically to the proprietary body of that village. The Customary Law on this point is stated in Rattigan's Digest:

"236. In the absence of a well-established custom a non-proprietary resident in a village cannot dispose of the site on which his house is built, or a right of residence in the house, without the consent of the proprietors of the village, but he is ordinarily entitled to sell the materials, and the purchaser must remove the same within a reasonable period.

237. A non-proprietary resident who obtains a site for building purposes must build upon it within a reasonable time, or surrender it to the proprietors.

238. If a non-proprietor abandons his house the site reverts to the proprietors, and he cannot reclaim it afterwards upon his return to the village".

(5) On the other hand the Deputy Custodian General relied on the decision of a Division Bench of this Court by Khosla and Soni JJ. in *Gorkha Ram v. Custodian-General of India* 1953 55 Pun LR 9 (SN). This unfortunately is to a full report but it is clear that it was held by the learned judges that the definition of "property" given in S. 2(i) of the Administration of Evacuee Property Act is very wide and means "property of any kind and includes any right of interest in such property", and the right of a non-proprietor to occupy a village site is clearly a right in property though it may not be an interest in the property though it may not be an interest in the property, and is "property" within the meaning of the Act. It was further held that although under ordinary law the right of a non-proprietor in a village site extinguishes on his leaving the village permanently, but under S. 18 of the Administration of Evacuee Property Act, this right remains alive and vests in the Custodian if the non-proprietor leaves the country and becomes an evacuee. This decision appears to have been given on the basis of the provisions of S. 18 of the Act as it stood before it was amended in 1953. The section then read:

"18. OCCUPANCY OR TENANCY RIGHT NOT TO BE EXTINGUISHED:--Nothing contained in any other law for the time being in force shall be deemed to extinguish the right of occupancy in any land or the site of any house or other building of any evacuee which has vested in the Custodian and, notwithstanding anything contained in any such law neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a fixed term of any land or the site of any house or other building, shall be liable to be ejected or deemed to have become so liable on any ground whatsoever for any default of the Custodian".

(6) The learned Judge who dealt with this case based his doubt on the correctness of this decision partly on the fact that it apparently ignored the true position of a non-proprietor occupying the village site under the Customary Law and partly in consequences of a decision of Chagla C. J. and Shah J. in *Eruch J. Eruch J. Bapasola and Another Vs. B.D. Mirchandani*, In that case a Muslim was in occupation of a flat forming part of a property purchased by the petitioners in February, 1950 and on 22-9-1950 the petitioners gave a notice to the Muslim tenant terminating his tenancy as from 31-10-1950. Before this period expired the Muslim tenant was declared to be an evacuee on the 19th of October and on the 26th of October a notification was issued vesting his tenancy rights in the Custodian. In March 1952 the petitioners entered into possession of the flat and in April 1952 it was allotted by the Custodian to a displaced person. This order was challenged in a petition under Art. 226 of the Constitution. In these circumstances it was held:

(1) That the tenancy being a contractual tenancy liable to be terminated by a proper notice given by the landlord, what vested in the Custodian on 26-10-1950 was a tenancy which was to last up to 31-10-1950.

(2) That when the tenancy right vested in Custodian on 26-10-1950, it vested with the important incident that the tenancy was capable of being terminated by the landlord under the Transfer of Property Act, unless there was some provision in the Administration of Evacuee Property Act which permitted the Custodian to deprive the landlord of his right to put an end to the contractual tenancy as provided by law;

(3) That Ss. 4 and 18 of the Evacuee Property Act did not apply to the case so as to give the Custodian such right; and

(4) That though the definition of evacuee property in S. 2(f) was very wide and had to be liberally construed, even so in order to satisfy the definition what vested in the Custodian should either be property or it should be a right or interest in property. As the evacuee's personal right to be protected under the Rent Restriction Act was neither property nor a right or interest in property, such a personal right could not vest in the Custodian so as to make the Custodian a statutory tenant of the landlord and the Custodian had no right to be in possession of the flat after 31-10-1950.

This decision was delivered in February, 1953:

(7) As a matter of fact a more or less similar view had previously been expressed by Weston C. J. and myself in a case in which we held that where a Muslim tenant only remained in occupation by reason of the protection given to him by the Rent Restriction Act there was nothing left in the way of tenancy rights for the Custodian to assume as evacuee property when the Muslim tenant became an evacuee, and it would seem that it was in consequence of these decision that S. 18 of the Act was amended by Act 11 of 1953. Sub-s. (1) now reads:

"Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any Court, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of:

(a) the evacuee committed after he became an evacuee or within a period of one year immediately preceding the date of his becoming an evacuee; or

(b) the Custodian"

(8) It is contended on behalf of the petitioners that although the provisions of the amended S. 18 clearly override the decision of the Bombay High Court regarding the tenancy of a house, the section no longer mentions the right of occupancy in the site of a house, which seems at least partly to have been the basis of the decision of this Court relied on by the Deputy Custodian General. It is, however, clear that this was only partially the basis of the decision and there still remains the decision that the right of a non-proprietor to occupy a village site is clearly a right in property and so is property within the meaning of the Act and in my opinion this is perfectly a correct decision.

The object of the Act was to safeguard the property of Muslim evacuees principally for the purpose of rehabilitating and accommodating the displaced persons who came over to this side and were evacuees from what is now Pakistan. The non-proprietors such as Telies who performed various useful functions in the villages enjoyed the right of occupying the sites of their houses as long as they wanted to remain in occupation and it appears to me that there are good grounds for holding that the ordinary Customary Law relating to abandonment ought not to be allowed to come into play in the case of a forced

abandonment by Muslims in consequence of the disturbances.

It certainly seems to me that it would be within the object and scope of the law relating to evacuee property that the sites of houses thus involuntarily abandoned at the point of the sword by those performing these various functions in the villages should vest in the Custodian for the purpose of rehabilitating the refugees who performed similar functions in what is now Pakistan. I am therefore of the opinion that independently of the provisions of S. 18 the right to continue to occupy the sites of the houses which are abandoned by the Muslim Telies in the present case constituted evacuee property and I consider that the decision of the Deputy Custodian General permitting the present petitioners to continue in occupation of the sites which they now hold on payment of their value is quite fair and just. I see no reason to interfere and would dismiss the petition but leave the parties to bear their own costs.

Chopra, J.

(9) I agree.

(10) Petition dismissed.