

(1951) 01 MAD CK 0029

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 5067 of 1950

Hooson Kasam Dada (India) Ltd.

APPELLANT

Vs

Custodian of Evacuee Property and Others

RESPONDENT

Date of Decision : 22-01-1951

Acts Referred:

Administration of Evacuee Property Ordinance, 1949 — Section 2

Citation : AIR 1951 Mad 876 : (1951) 21 CompCas 274 : (1951) 64 LW 454 : (1951) 1 MLJ 704

Hon'ble Judges : Rajamannar, C.J;Somasundaram, J

Bench : Division Bench

Advocate : S. Azizuddin, for the Appellant; The State Counsel, for the Respondent

Judgement

Rajamannar, C.J.—Hooson Kasam Dada (India) Ltd. is admittedly a public ltd. com. regd. in Calcutta. It has got a branch functioning at

Madras. The Asst. Custodian of Evacuee Property passed an order on 22-2-1950 which concludes thus :

Hence considering the above circumstances I declare the firm of Hooson Kasam Dada (India) Ltd., in Madras as evacuee property u/s 2(f) of the

Ordinance & will be notified accordingly.

There is some obvious confusion here. It is only property that can be declared to be evacuee property & a firm as such is not property. It must be

again pointed out that there is a very important difference between a ltd. co. & a firm. The circumstances which, in the opinion of the Asst.

Custodian, justified the order which he passed, were that 96 out of 121 shareholders of the co. were in Pakistan & they were evacuees u/s 2(d)(i)

of the Administration of Evacuee Property Ordinance, 1949.

2. Assuming that the majority of the shareholders of the co. could be held to be evacuees within the meaning of Section 2(d)(i) of the Ordinance,

the question is: whether the Ordinance itself inapplicable to this case. Admittedly these 96 shareholders were not residents of Madras before they

migrated to Pakistan, which fact is denied by the counsel for the petnrs. The co. was regd. in Calcutta & it is the H. C. at Calcutta that would be

the Ct. having jurisdiction over that co. Now, neither the Ordinance nor Act XXXI [31] of 1950 which replaced the Ordinance extends to West

Bengal. It follows, therefore, that the co. itself could not be declared to be an evacuee under either the Ordinance or the Act, though we entertain

considerable doubt whether a co. incorporated under the Companies Act would fall within the definition of "an evacuee." The fact that there is a

branch of a public ltd. co. situate in Madras cannot empower the Asst. Custodian of Evacuee Property at Madras to take proceedings under the

Ordinance or the Act in respect of a co. situated in West Bengal. Obviously, the dividends, if any, would be distributed only from the regd. office

at Calcutta & presumably the transactions of the Branch offices, if there are many, would also be taken into account before arriving at the net profit

or loss. We are, therefore, constrained to hold that the Asst. Custodian of Evacuee Property had no jurisdiction to pass the order that he did.

3. There was an appeal from his order to the Custodian who confirmed the order of the Asst. Custodian. He held that since the vast majority of the

share-holders of the "firm" were in Pakistan, the order of the Asst. Custodian "declaring the firm to be an evacuee firm & taking over its properties

is correct. This is obviously wrong. The Asst. Custodian at Madras cannot take over properties belonging to a co. regd. in Calcutta, i.e., in West

Bengal, to which neither the Ordinance nor the Act extends. Then the Custodian went on to make a curious order, namely, that

the share of the 25 non-evacuee share holders in the net assets of the firm will be refunded to them, but they cannot do any business in the name

of the firm in this district.

Evidently, the Custodian did not realise that in effect he was ordering the winding up of the co. He had no jurisdiction to pass any such order & any

proceeding for having the co. wound up must be taken only in the H. C. at Calcutta. His order also must be, & is hereby, quashed. There will be

no order as to costs.