
(1954) 09 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 312 of 1953

J.M. Messey

APPELLANT

Vs

Custodian Evacuee Property, Punjab, Simla and Another

RESPONDENT

Date of Decision : 23-09-1954

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 10, 48

Citation : AIR 1956 P&H 40

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : H.L. Sarin, for the Appellant; D.K. Mahajan and D.N. Awasthy, for the Respondent

Final Decision : Allowed

Judgement

Kapur, J.—This is a petition under Article 226 of the Constitution of India for a writ of mandamus directing the opposite party to forbear from realizing a sum of Rs. 1,200/- from the petitioner.

2. The petitioner WAS a District Liaison Officer under the East Punjab Government and was sent to Lahore and his salary was Rs. 500/- and he worked as such officer from September 1947 to December 1948. While he was away his family lived from January 1948 to December 1948 in two sets of rooms of the Central Hotel, Simla, which had been leased out to one M. L. Kochhar who was running it as a hotel. The petitioner claims that during the time that he was away his family was entitled to free accommodation at Government expense; at any rate he is not liable for anything more than 10 per cent. of his salary as rent. Although the claim against the petitioner was at one time Rs. 200/- per mensem, it is admitted by the opposite party that it was reduced to Rs. 100/- per mensem.

The petitioner resigned from his office in May 1949. Annexure "A" which has been placed on the record by the petitioner shows that the Punjab Government decided that a sum of Rs. 1,200/- be recovered from the petitioner for the period

of occupation of the two sets of rooms and that instead of Rs. 2,200/- which is being claimed by Mr. Kochhar he should be given credit for Rupees 1,200/-. A copy of this order dated 20-8-1953 was sent to Messey by an endorsement dated 2-9-1953 in which it was stated:--

"He should furnish a surety immediately that the instalments as directed in the said orders will be taken by him regularly. At the same time he should remit the first instalment at once.""

3. The petitioner alleges that he was neither a tenant nor an allottee of the Custodian, that he never accepted the claim put forward, by the District Rent Controller and that even if it was rent due from him it is barred by time.

4. In his reply the opposite party admits that there was no formal allotment of the two sets of rooms Nos. 7 and 8 to the petitioner and that though he was not "strictly speaking an allottee" he had kept the sets with the leave and license of the respondents on terms and conditions which have been given above in that he was to pay hundred rupees a month. They also plead that the sets were reserved for the petitioner for the residence of his family and the lessee of the hotel was informed about it and he was instructed not to disturb the possession of the petitioner's family and that they had given credit to the lessee of the hotel of a sum of Rs. 1,200/-.

5. The correspondence put on the file by the opposite party bears out that the petitioner was living in the Central Hotel which was leased out to M. L. Kochhar and that the manager was demanding Rs. 100/- per mensem per set. Exhibit C filed by the Custodian shows that the salaries due to the petitioner for the months of November and December 1948 and January to March 1949 were not paid to the petitioner and were "held up by the Punjab Government towards rentals etc."

Exhibit D of the opposite party shows that a complaint was made to the Deputy Commissioner that the petitioner had not paid rent to M L. Kochhar and if the rent was not paid the District Magistrate would turn the petitioner and his family out. There is an earlier letter of the Punjab Government dated 12-11-1948 in which Messey was directed to pay the rent to the manager of the hotel direct.

6. From this correspondence it is clear that the petitioner was not an allottee of any evacuee property nor was there any contract of lease between the petitioner and the Custodian of evacuee property.

7. The Custodian relied for his powers of realisation on Section 48, Evacuee Property Act which provides :

"48. Recovery of arrears -- 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."

Thus if there is any sum due to the State or the Custodian under the provisions

of this Act it can be recovered as if it was arrears of land revenue. The only section of the Act which deals with the power to recover monies is Section 10 and under Sub-section (2) (i) the Custodian can take such action as may be necessary for the recovery of any debt due to the evacuee.

Besides in the present case, as I have held above, the petitioner is neither a tenant nor an allottee of the Custodian. He may or may not be indebted to M. L. Kochhar, but there is nothing to show that he owed any money to the Custodian and even if there was any money due it is not shown to be within limitation.

In two Division Bench judgments of this Court -- Firm Sahib Dayal Bakshi Ram v. Asst. Custodian of Evacuees Property, Amritsar AIR 1952 Pun. 389 (A) and Firm Pariteshah Sadhashiv v. Asst. Custodian of Evacuee Property, Amritsar AIR 1953 Pun 21 (B) -- it was held that; the Custodian has no power to decide the question whether a debt which was due to an evacuee is Or is not barred by time, or order its recovery as an arrear of land revenue.

A case very much more in point is Harnam Singh v. Custodian General Evacuee Property Govt. of India, Civil Writ Appln. No. 296 of 1952 decided by Khosla. J., on 21-8-1953 (Punj.) (C). There, a writ of demand was made by the Assistant "Collector, Ambala," at the instance of the Custodian u/s 48 of the Evacuee Property Act and the sum was alleged to be due as lease money for mills which were alleged to have been leased out to the petitioner in that case. Khosla J., there held:

"I have no doubt whatsoever that there is nothing in the Evacuee Property Act which modified Section 9, Civil P.C. In the present case there is a dispute between the Custodian's Department and the petitioner with regard to the liability of the petitioner to pay a sum of money. The liability is denied by the petitioner and the only way in which it can be determined is by a civil suit."

8. I have not been able to discover any provision in the Act by which the Custodian can recover rents of properties situated as the property in dispute is, and in my opinion the machinery provided by Section 48 is not available to the Custodian. I would therefore allow this petition and issue a mandamus directing the Custodian to for bear from recovering his claim, if any, by using the machinery u/s 48 of the Act. If he has any other remedy it will be open to him to employ it. The petitioner will have his costs against the opposite party. Counsels tee Rs. 50/-.