
(2018) 01 DEL CK 0574

In the Delhi High Court

Case No : Civil Writ Petition No. 2517, 2518 Of 2011, Civil Miscellaneous No. 8106 Of 2015

Kausar Iram

APPELLANT

Vs

Government Of India & Ors

RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

Enemy Property Act, 1968 — Section 5, 5A, 11, 24

Citation : (2018) 01 DEL CK 0574

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rajat Aneja, Chandrika Gupta, Vandna Aneja, Ritu Kumari, Naushad Ahmed Khan, Arun Bhardwaj

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioners have filed these petitions, inter alia, impugning a common order dated 05.07.2010 (hereafter "the impugned order") passed by the Custodian of Enemy Property (hereafter "the Custodian") under Section 5, 5A and 24 of the Enemy Property Act, 1968 (hereafter "the Act").

2. The issues involved in the present petitions are similar and, therefore, the present petitions were heard together.

3. The principal controversy involved in the present petitions relates to the question whether the properties in question (or any part thereof) belonging to Late Hazi Rehman Elahi, on his demise, vested with his legal heirs in Pakistan and consequently vested with the Custodian by virtue of the Act. It is stated that Hazi Rehman Elahi had, during his life time, executed a Will bequeathing his properties to three of his grandsons (who are Indian Nationals). After the demise of Hazi Rehman Elahi, his Will was accepted by five of his natural heirs who had migrated to Pakistan. These heirs had also executed a deed expressly accepting

the Will of Late Hazi Rehman Elahi. By the impugned order, the Custodian had held that the undivided share in the properties of Hazi Rehman Elahi falling to the share of his five heirs located in Pakistan would vest with the Custodian. This is disputed by the petitioners.

4. It is stated that Lt. Sheikh Hazi Rehman Elahi was the absolute owner of the following properties: (a) property bearing Municipal No. 10950 to 10953, Motia Khan, Ward XV, New Delhi (hereafter "the Motia Khan Property"); (b) property bearing no. 6386 and 6387 at Masjid Tahuwar Khan, Ward No. 6, Delhi; and (c) 25 shares of ₹ 1,000/- each of the Coca cola factory at Meerut. It is further stated that in addition to owning the above properties, Sheikh Hazi Rehman Elahi was also the owner of one half undivided shares in the following properties:-

"a) House bearing Municipal No. 2182, at Ahata Kaley Sahib, Gali Qasimjan, Ward No. 6, Delhi.

b) Property bearing Municipal Numbers 1073 to 1085 and 1088 at Kashmiri Gate, Ward No. 1, Delhi (hereafter Kashmere Gate Properties).

c) Property No. 14 and 14/1, Ratu Sarkar Lane, Calcutta."

W.P.(C) 2518 of 2011

5. The petitioners in W.P.(C) 2518 of 2011 claim to be owners of Kashmere Gate Properties. It is stated that the said properties were owned by Rai Bhadur, Sahu Bhogyal Dass and were acquired by Hazi Rehman Elahi and Hazi Rehmat Elahi - who were brothers - in the equal shares. A registered sale deed in respect of the Kashmere Gate Properties was executed in their favour on 29.08.1943.

6. It is stated that Shri Hazi Rehman Elahi bequeathed his one half share of the Kashmere Gate Properties to his grandson Sheikh Abdul Rehman in terms of a Will dated 07.06.1970. It is stated that the said Will was also accepted by other legal heirs of Late Hazi Rehman Elahi and five of the legal heirs of Late Rehman Elahi who were residents of Pakistan, executed a Release Deed dated 17.02.1977 expressly declaring that they had accepted the Will of Late Sheikh Hazi Rehman Elahi.

7. It is stated that certain differences and disputes had arisen between legal heirs of Hazi Rehman Elahi, which led to a suit - Suit No. 890/1977 titled Sheikh Aziz-ur-Rehman v. Mast. Mamiuana Bi and Ors - being filed in the Delhi High Court. The said disputes were referred to arbitration to one Sheikh Mohd. Harron. The said sole arbitrator rendered an award dated 24.10.1979, which was made the Rule of Court by a judgment dated 26.10.1979. In terms of the said award, Sh. Abdul Rehman became the sole and absolute owner of the Kashmere Gate Properties.

8. By a Will dated 04.04.1978, Hazi Rehmat Elahi, inter alia, bequeathed his half share of the Kashmere Gate properties to his daughter Mst. Shahida Bano.

9. Mr Abdul Rehman made an oral gift of his share of the Kashmere Gate

Properties to Sh. Sohail Yusuf on 01.01.1982. Thereafter, he executed a release deed dated 07.06.1982 to the aforesaid effect.

10. In 1983, Mst. Zohra Bi, wife of Late Sheikh Hazi Rehmat Elahi filed a suit for declaration (being Suit No. 1325 of 1983) challenging the validity of the Will of Late Sheikh Hazi Rehmat Elahi. During the pendency of the aforesaid proceedings, Mst. Shahida Bano, daughter of Late Sheikh Rehmat Elahi who is stated to have acquired his share of the Kashmere Gate Properties by the bequest made under his Will dated 04.04.1978, gifted her share of the Kashmere Gate Properties to Sh. Sohail Yusuf.

11. This Court by an order dated 25.07.1984 appointed one Zafar Ahmed as a sole arbitrator to determine certain disputes relating to the property bequeathed by Late Hazi Rehmat Elahi including the question whether the Will executed by Late Hazi Rehmat Elahi was valid. The said reference culminated into an arbitral award, inter alia, confirming that Mst. Shahida Bano had acquired the share of Late Hazi Rehmat Elahi in the Kashmere Gate Properties, which was subsequently gifted to Sheikh Sohail Yusuf.

12. In the aforesaid manner, Sh. Sohail Yusuf became the owner of the Kashmere Gate Properties as he had acquired Late Hazi Rehman Elahi's share through Sheikh Abdul Rehman and Sheikh Rehmat Elahi's share from Mst. Shahida Bano.

13. It is stated that Sohail Yusuf sold the Kashmere Gate Properties to the petitioner by three registered sale deeds: sale deed dated 30.06.2003 in favour of petitioner no.1; registered sale deed dated 22.03.2003 in favour of petitioner no.2; and sale deed dated 15.05.2003 in favour of petitioner no.3.

W.P.(C) 2517/2011

14. The petitioners in W.P.(C) 2517/2011 claim to be owners of the Motia Khan Property. The said property was acquired by Late Hazi Rehman Elahi by a registered sale deed dated 16.07.1934.

15. It is stated that Motia Khan Property was bequeathed by Late Hazi Rehman Elahi to his grandson Sheikh Azizur Rehman by a Will dated 07.06.1970. It is stated that the disputes relating to the said Will were subject matter of arbitration before one Sh. Mohd. Harron, which culminated in an arbitral award dated 26.04.1979. In terms of the said award, the bequest in favour of Azizur Rehman was upheld. The said award was made a Rule of Court on 24.10.1979.

16. The petitioner claims to have acquired the Motia Khan Property from Azizur Rehman by a registered sale deed dated 20.03.2002.

Proceeding under the Act

17. A notice under Section 11 of the Act was published on 12.08.2009, whereby objections were invited from any person claiming any interest in the properties specified in the said notice. Paragraphs 2 and 3 of the said notice are relevant

and are set out below:-

"2. WHEREAS it is alleged and I have reason to believe that Shri Rehman Elahi and his natural legal heirs & successors namely Mst. Memoona Bi (wife), Shri Sheikh Saleem Ahmed (son), Shri Sheikh Mehboob Elahi (son), Shri Sheikh Atur Rehman (son), Mst. Raisa Khatoon (daughter), Mst. Nafisa Khatoon (daughter), Mst. Shamim Parveen (daughter) and Shri Megbool Elahi and Mst. Swaleha Khatoon son and daughter of Shri Rehmat Elahi were Pakistan nationals during the aforesaid period held following properties in India:

- 1) Property no. 1511 and 1512 Pataudi House Darya Ganj, Delhi.
- 2) Property no. 1078 to 1085 and 1088, Kashmiri Gate, Delhi.
- 3) Property no. 2182, Ahata Kaley Saheb, Qasim Jan Street, Delhi
- 4) Property no. 1897 to 1899, Chandni Chowk, Delhi.
- 5) Property no. 14 and 14/1, Ratu Sarkar Lane, Calcutta.
- 6) Property no. 9 Radha Bazar Street, Calcutta.
- 7) Property no. 142/1, Radha Bazar Street, Calcutta.
- 8) Property no. 10950 to 10953, Multani Dhanda, Motia Khan, Sadar Bazar, Delhi.
- 9) Property no. 6386 to 6388, Masjid Tehwar Khan, Khari Baoli, Delhi.
- 10) Property no. 2161 and 2162, Ahata Kaley Sahib, Qasim Jan Street, Ballimaran, Delhi.
- 11) Property no. 2174, Ahata Kala Sahib Qasim, Jan, Ballimaran, Delhi.

3. Notice is hereby given under Section 11 of the Enemy Property Act, 1968 to seek following information in respect of the above said enemy nationals and their properties in India.

- i) Details and Nationality of the owners of above properties during 10.09.1965 to 26.09.1977.
- ii) Death Certificates of the owners during the above period as mentioned in i) above.
- iii) Natural legal heirs and successors (Family Tree) of the enemy nationals.
- iv) Present claimants and basis of their claim."

18. Thereafter, an order dated 07.12.2009 was issued by the Custodian under Section 5 of the Act holding that Sh. Rehman Elahi was a Pakistani National and further vesting his properties (as listed in the above notice dated 12.08.2009) with the Custodian.

19. The aforesaid order was subject matter of challenge before this Court in W.P. (C) 137 of 2010 captioned Tasleem Mirza v. Union of India and Ors. The said

petition was disposed of by an order dated 01.02.2010, whereby it was directed that the order dated 07.12.2009 be treated as withdrawn.

20. In compliance with the orders passed by this Court in Tasleem Mirza (supra), the Custodian issued notices to various concerned parties including the petitioners herein and the impugned order was passed after hearing the concerned parties. The Custodian accepted the contention that Hazi Rehman Elahi was an Indian National and had been issued an Indian Passport on 16.07.1969 bearing no. H563416. He had travelled to Pakistan on a Visa granted by Government of Pakistan to visit some of his family members who had migrated to Pakistan. Hazi Rehman Elahi expired in a Hospital in Karachi on 25.06.1976. The Custodian held that since Late Hazi Rehman Elahi was an Indian National, he could not be considered as an enemy for the purposes of the Act.

21. Having held the above, the Custodian also noted that five of the legal heirs of Late Hazi Rehman Elahi - (i) Mst. Memoona Bi widow of Late Sheikh Hazi Rehman Elahi; (ii) Sheikh Ataur Rehman son of Late Hazi Rehman Elahi; (iii) Mst. Raisa Khatoon (daughter); (iv) Mst. Nafisa Khatoon (daughter); and (v) Mst. Shahin Parveen (daughter) - had migrated to Pakistan.

22. The Custodian held that since Late Hazi Rehman Elahi had expired during the vesting period - that is, from 10.09.1965 to 26.09.1977- the share of his heirs, who had migrated to Pakistan, in his properties would vest with the Custodian by virtue of the provisions of the Act. The Custodian held that Release Deed executed by the Late Rehman Elahi's heirs in Pakistan could not be accepted, as they had no right to relinquish their shares in favour of any other person as their respective shares in the properties of Hazi Rehman Elahi had vested with the Custodian.

Reasoning and Conclusion

23. At this stage, it is also relevant to state that the impugned order was recalled by an order dated 29.04.2016, whereby Late Hazi Rehman Elahi is also held to be the Pakistani National.

24. Before proceeding further, it would be necessary to clarify that the issues raised in the said order are not being examined in this petition and the scope of the present petition is limited to examining whether the Custodian was correct proceeding on the basis that the natural heirs of Late Rehman Elahi, who were located in Pakistan had any rights, title or interest in his properties and whether the Custodian's decision that such interest vested with him, is sustainable. This Court is considering the same on the basis that the other findings returned by the Custodian in the impugned order are correct.

25. By the Will dated 07.06.1970, Shri Hazi Rehman Elahi bequeathed all his properties as specified in the Will to his three grandsons: (i) Azizur Rehman, Son of his daughter Asifa Khatoon; (ii) Abdul Rehman, son of his daughter Asifa Khatoon; and (iii) Tahir Mumtaz son of Mumtaz Ahmed. The Motia Khan Property

was bequeathed to Azizur Rehman and half share in Kashmere Gate properties was bequeathed to Abdul Rehman as indicated above.

26. It is the petitioners' case that the said Will was accepted by other heirs of Late Rehman Elahi, who executed a deed dated 17.02.1977, inter alia, declaring as under:-

"NOW WE BY THS DEED do hereby declare that we have already accepted the will of late Sheikh Haji Rehman Elahi and that the legatees, Azizul Rehman, Abdul Rehman and Tahir Mumtaz described hereinabove are owners of the properties devised and bequeathed to them under the will as stated hereinabove and that we not got any right, title to or interest in the said Properties."

27. The Custodian has proceeded on the basis that five legal heirs of Late Rehman Elahi had transferred their shares in the property of Late Rehman Elahi. This assumption is fundamentally flawed as none of the natural legal heirs of late Rehman Elahi acquired any right, title or interest in the properties that were bequeathed by the Late Rehman Elahi to his three grandsons who were Indian Nationals.

28. The Release Deed dated 17.07.1977 records the consent of the other legal heirs accepting the Will of Late Rehman Elahi. The said deed cannot be considered as a deed transferring the properties in favour of beneficiaries under the Will of Late Hazi Rehman Elahi. The conclusion of the Custodian that "the properties cannot be released to others by them [the widow, son and three daughters of Late Shri Rehman Elahi residing in Pakistan] as they were enemy nationals on the crucial date" cannot be sustained, as the said persons had merely accepted Late Hazi Rehman Elahi's Will and his properties were transmitted directly to the beneficiaries under his Will. There was no hiatus in transmission of the said properties of late Hazi Rehman Elahi to the beneficiaries under his Will and the said properties were not even for a brief moment, the properties of other natural heirs who were residing in Pakistan. It is further relevant to state that any doubt that could possibly have been entertained was settled by the arbitral award rendered by Sheikh Mohd. Harron, which was made the Rule of Law on 26.04.1978.

29. In view of the above, the impugned order to the extent that it holds that 48.959% of the properties of Late Hazi Rehman Elahi belong to his five heirs in Pakistan and thus, vest with the Custodian, is set aside.

30. The petitions and pending application are, accordingly, disposed of.