

(1958) 02 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1279 of 1955

Malik Mohammad Jalil and Others

APPELLANT

Vs

The Asstt. Custodian (Judicial) and Another

RESPONDENT

Date of Decision : 14-02-1958

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 7, 7A

Citation : AIR 1958 All 679 : (1958) 28 AWR 516

Hon'ble Judges : N.U. Beg, J; M.L. Chaturvedi, J

Bench : Division Bench

Advocate : S.N. Kacker, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

N.U. Beg, J.—This is a writ petition under Article 226 of the Constitution of India. It has been filed by three persons, namely, (1) Sri Malik Mohammad Jalil, (2) Sri Zamirul Husain, and, (3) Sri Shabbir Husain. The opposite parties in this petition are :-- (1) The Assistant Custodian (Judicial) Azamgarh, and (2) The Assistant Custodian, Azamgarh. The petition relates to certain properties in respect of which proceedings under the Administration of Evacuee Property Act (Act No. XXXI of 1950) have been taken by the Assistant Custodian (Judicial) Azamgarh.

In this writ petition the prayer is for the issue of a writ of prohibition directing the opposite party No. 1, that is, the Assistant Custodian (Judicial) not to proceed further with case No. 216 of 1955 consolidated with case No. 235 of 1955 against the petitioners pending before him u/s 7 of the Administration of Evacuee Property Act. This writ petition arises under the following circumstances.

2. One Smt. Shugara Bibi, who was the wife of Malik Mohammad Jalil, petitioner No. 1 died on the 5th of November, 1954, leaving three sons. Two of these sons were Zamirul Husain and Sha-bbir Husain who were petitioners Nos. 2 and 3 respectively in this writ petition, and the third one was Aziz Uddin. Aziz Uddin went away to Pakistan some time in the year 1947. He, therefore, became an

evacuee. It is alleged in the petition that on the 28th March, 1955, one Kalimullah conveyed certain information to opposite party No. 2 to start proceedings for declaring the properties left by Smt. Shugara Bibi as evacuee property.

On the basis of that information two notices were issued to the petitioners u/s 7 of the Administration of Evacuee Property Act (Act No. XXXI of 1950). The first notice was issued on the 31st March, 1955. The second notice issued against them purported to be of the 6th April, 1955. It may be mentioned that, according to the petitioners, the second notice was actually issued on some date after the 8th April, 1955 and not on the 6th -April, 1955.

In this connection it was alleged that the second notice was ante-dated with a view to bring it within the period of limitation which, according to the other party, was to expire on the 8th April, 1955. In other words, the date that the second notice bore was a fictitious one.

3. The petitioners' case in the present petition is that both the notices issued against them are bad in law, because the last date for the issue of notices prescribed by the Administration of Evacuee Property (Amendment) Act (Act No. 42 of 1954) expired on the 6th of November, 1954. In the alternative, their case is that even if the last date for issue of notices be taken to be the 8th April, 1955, both the notices are bad. The first notice is bad, because, according to the petitioners, it did not specify the list of properties sought to be declared as evacuee properties.

The second notice was also bad, because, according to the petitioners, although it purported to have been issued on the 6th April, 1955, it was actually issued on some date subsequent to the 8th of April, 1955, and was ante-dated for the purpose of bringing it within the alleged period of limitation prescribed by the Amending Act.

4. The petition was contested on behalf of the opposite party. According to them, the last date for the issue of notices prescribed by the Amending Act expired not on the 6th November, 1954, as alleged by the petitioners, but on the 8th of April, 1955. Both the notices were, therefore, issued within the prescribed period of limitation. They also controverted the alternative case of the petitioners. According to them, the first notice did contain a list of property as required by law. Further, according to them, the second notice was not ante-dated. Both the notices were, therefore, perfectly valid and good notices.

5. The present petition initially came up for hearing before a learned Single Judge of this Court. The learned Judge thought it raised a Question of law relating to interpretation of Section 4 of the Amending Act. He formulated the said question as follows:

"Is it permissible to the Custodian of Evacuee Properties to issue a notice u/s 7 of the Act six months after May 1954, or will the period of six months be calculated

from 8-10-1955 when the whole Act XLII of 1954 came into force?"

As, in his opinion, the above question of law was an important one, he referred the case for decision by a Division Bench. The case has, accordingly, come up for hearing before us today.

6. We shall first take up the question of law referred to above for decision. In order to appreciate the arguments of the counsel for the parties, it will be helpful to give brie(sic) rical retrospect of the relevant law. The principal Act dealing with the evacuee property is the Administration of Evacuee Property Act (Act No. 31 of 1950). This Act consolidated the entire law relating to evacuee property in India. It was passed for the purpose of providing for the administration of evacuee property and for certain matters connected therewith.

It received the assent of the President on 17-4-1950, and was published in the Gazette of India (Extraordinary) dated 18-4-1950. Section 7(1) of this Act provided that where the Custodian was of opinion that any property was evacuee property within the meaning of the Act, he could issue notice to the persons interested, hold enquiry into the matter and pass an order declaring such property to be evacuee property. In the year 1954, the Legislature conceived the idea of liquidating the law relating to evacuee property in India.

It, accordingly, passed an Amending Act called the Administration of Evacuee Property (Amendment) Act (Act No. 42 of 1954). The purpose of the Amending Act was to abrogate the Evacuee Property law in respect of persons who had done or did any act on or after 7-5-1954, which, if done before that date, would have rendered them subject to the Evacuee Property Law, and to amend the Administration of Evacuee Property Act, 1950, for that purpose and certain other purposes. In pursuance of the aforesaid purpose, the Amending Act inserted Section 7A in the Principal Act (i. e. Act No. 31 of 1950). This was done by Section 4 of the Amending Act, which provided as follows:

"Section 4. Insertion of new Section 7A in Act XXXI of 1950 -- After Section 7 of the Principal Act, the following section shall be inserted, namely:--

"7A. Property not to be declared evacuee property on or after 7-5-1954--

Notwithstanding anything contained, in this Act, no property shall be declared to be evacuee property on or after 7-5-1954:

Provided that nothing contained in this section shall apply to--

(a) any property in respect of which proceedings are pending on 7-5-1954 for declaring such property to be evacuee property; and

(b) the property of any person who, on account of the setting up of the Dominion of India and Pakistan or on account of civil disturbance or the fear of such disturbances had left on or after the 1-3-1947, any place now forming part of India, and who on 7-5-1954, was resident in Pakistan:

Provided further that no notice u/s 7 for declaring any property to be evacuee property with reference to Clause (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954."

(Explanations 1, 2 and 3 not relevant).

7. The present case is admittedly governed by Sub-clause (b) of the first proviso to the newly added Section 7-A. Accordingly, the second proviso of the said newly added section will apply to the present case, and no notice for declaring the property in question to be evacuee property could be issued after the expiry of "six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954." The Amending Act came into force on 8-10-1954. The question in the present case is whether the period of limitation of six months prescribed for the issue of notice under this proviso is to be computed from 7-5-1954 as is contended for on behalf of the petitioners, or from the 8-10-1954 as is contended for on behalf of the opposite party. In this connection, the learned counsel for the petitioners relied on Section 10 of the Amending Act which lays down that:

"The Amendments made in the Principal Act by Section 4 and Section 8 of this Act shall be deemed to have come into force on 7-5-1954."

The argument of the learned counsel for the petitioners is that Section 7A having been introduced by Section 4 of the Amending Act, the Amending Act qua Section 4 should, in view of Section 10, be deemed to have come into force on the 7-5-1954, and hence six months" period of limitation for issue of notice should be computed from 7-5-1954.

8. Having heard the learned counsel for the petitioners, we find ourselves unable to accept his contention. In our opinion, according to the proviso in question, the period of six months laid down for the issue of notice is to be computed, as the proviso itself lays down, "from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954". The above expression, in our opinion, clearly implies that the date referred to in this proviso is the date on which the entire Amending Act came into force. It is possible that an Act might come in force on one date and the various sections of the Act might come into force on different dates.

For the purpose of computing the period of limitation the proviso in question does not refer to any date on which any particular section of the Amending Act came into force, but to the date on which the Amending Act itself came into force. The Amending Act admittedly received the assent of the President on 8-10-1954. u/s 3, Clause (18) of the General Clauses Act (Act No. 10 of 1897) the word "commencement" used with reference to an Act means the date on which the Act comes into force.

Under Section 5 of the General Clauses Act where any Central Act is not

expressed to come into operation on a particular day, then it shall come into operation in the case of an Act of Parliament on the day on which it receives the assent, of the President. The Amending Act, therefore, came into force on 8-10-1954, when it received the-assent of the President, and would be deemed to commence from that date. The date referred to in this proviso is, accordingly, the 8-10-1954.

9. If it was the intention of the Legislature that the period of six months should be computed not from the date of the commencement of the Act itself, but from the date of the commencement of any particular section of the Act, there appears to be no reason why the Legislature should not have clearly specified it. Further, if the Legislature intended that the period of limitation should commence from 7-5-1954, there appears to be no reason why it should not have specifically mentioned the date, 7-5-1954, in the proviso in question as the date for computing the period of limitation, instead of referring to the date of the commencement of the Amending Act.

If, as the petitioners contend, the intention of the Legislature was that the date of commencement should be 7-5-1954, nothing could have been easier and simpler for the Legislature than to specifically mention the said date. In fact this date has been specifically mentioned as marking the dividing line between the two stages of the evolution of the Evacuee Property Law in the opening part of Section 7A itself. The fact that Section 10 of the Amending Act has given retrospective operation to Section 4 by laying down that it shall come into force on the 7th May, does not mean that for the particular purpose of computing the period of limitation, the date should be not the date of the commencement of the Amending Act, (but the date on which Section 4 of Amending Act is deemed to have come into force.

10. A similar expression has been used in Section 6 of the Amending Act which purports to amend - Section 16 of the principal Act. In the second proviso to the amended Section 16 the expression "the commencement of the Administration of Evacuee Property (Amendment) Act, 1954" would obviously mean 8-10-1954. As held in *In re: Malladi Ramaiah and Another*, , it is a well settled rule of drafting that the same word or term is used in an Act in the same meaning throughout, and, where in a particular place it is necessary to use the same term in a different sense from that which it bears in the rest of the Act, a special definition is added.

11. Bearing in mind the purpose of the Act, it also appears to us to be more reasonable to hold that the date of the commencement for the purpose of computing six months period of limitation prescribed for giving notice should be 8-10-1954 on which the Amending Act actually came into force and not 7-5-1954. As already observed, the purpose of the Amending Act was to abrogate the law relating to evacuee property in India. While abrogating the law, the Legislature wanted to provide a saving clause in respect of pending cases, and further, in respect of cases in which no notice had been issued regarding the

properties of persons described in sub-cl. (b) of Section 7A of the Amending Act.

The Legislature, therefore, wanted that the authorities responsible for the issuing of such notices should have a reasonable amount of time to examine those cases, and to issue such notices. This time could only have been intended to be given to them after the Amending Act had actually come into force, because it is only after that date that the authorities concerned would be apprised of the step in the direction of the abrogation of the evacuee property law which the Legislature had taken. It is, therefore, more reasonable to suppose that the full period of six months should be computed from 8-10-1954.

In the present case, the Amending Act received the assent of the President on 8-10-1954. Thus the period of five months had already expired after 7-5-1954 by the time the Amending Act had received the assent of the President. It was not possible to anticipate the exact date on which the President would give assent to the Amending Act. If the assent of the President to the Amending Act had been delayed by a period of one month, then the whole purpose of the proviso in question would have been nullified. This consideration also leads to the conclusion that the date contemplated by the Legislature in the proviso in question must be the date on which the Amending Act actually came into force and not 7-5-1954.

The view that we have taken above is in accord with the view taken by a learned single Judge of this Court in a decision reported in *Ali Hamza Osmany and Another Vs. Assistant Custodian and Another*, . This case followed the cases reported in *Satya Dev Cheema Vs. Additional Deputy Custodian, Evacuee Property, Bharatpur*, and *In re: Malladi Ramaiah and Another*, .

12. For the above reasons, we are of opinion that there is no substance in the contention advanced on behalf of the petitioners in respect of this aspect of their case.

13. So far as the alternative case set up by the petitioners is concerned, learned counsel for the petitioners stated that he would not press it provided he received an assurance from the opposite parties that this case would not be tried by any of the two gentlemen who were holding the office of the Assistant Custodian, Judicial Azamgarh, and the Assistant Custodian, Azamgarh, at the time when these proceedings were pending against them. In this connection, the learned counsel for the petitioners invited our attention to the fact that the counter-affidavit in the present case on behalf of the opposite parties has been sworn on behalf of the Assistant Custodian (Judicial) Evacuee Property, Azamgarh.

The controversial question of fact raised in the case, and, particularly, the allegation regarding the ante-dating of the notice relates to the proceedings that were pending in the court of the Assistant Custodian (Judicial) Evacuee Property Azamgarh. Under the circumstances, it might be embarrassing for the particular officer to try an issue in which the correctness of the proceedings before the same officer is challenged.

Thereafter the learned counsel for the opposite party made a statement to the effect that in order that justice may also seem to be done-in the petitioners" case now pending before the Assistant Custodian, (Judicial), the opposite parties undertake that the case would not be tried by any of the two gentlemen who were holding the office of the Assistant Custodian (Judicial) Azamgarh, and the Assistant Custodian, Azamgarh, at the time when these proceedings were pending against them; but that the case would be trie* by some officer of the department other than the two officers mentioned above who is competent to try it. In view of this statement, the learned counsel for the petitioners did not press the alternative case set out by him in the petition.

14. For the above reasons, we are of opinion, that this petition must fall. It is, accordingly, dismissed. In view of the circumstances of the case, we direct that the parties shall bear their own costs.