

(1953) 01 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15/5 of 1951-52

Mohamed Habibuddin

APPELLANT

Vs

Government of Hyderabad

RESPONDENT

Date of Decision : 15-01-1953

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 1, 40
Constitution of India, 1950 — Article 14, 226

Citation : (1953) 01 AP CK 0005

Hon'ble Judges : Misra, C.J;M.A. Ansari, J

Bench : Division Bench

Advocate : Syed Mohd. Ahsan Abidi and Mohd. Yousuf Mazhar Ali, for the Appellant; B.N. Shasiri, for the Respondent

Judgement

1. This is an application for writs of certiorari and prohibition against an order of the Custodian of the Evacuee Property, which is of 4-4-1951. He has refused confirmation of the sale of a house, No. 1079-B, in favour of the applicant. The house is situated in Ma-Sahib Talab, Hyderabad City and belonged to one Akhtar Jahan Begum. The applicant claims that on Mchir 25, 1358 Pasli (25-8-1949) he purchased it for Rs. 35,000 and took possession. The sale deed is alleged to have been registered on the same date. It is admitted that Akhtar Jahan Begum afterwards left for Pakistan, and is an evacuee as defined by the law relating to the Administration of Evacuee Properties. Before the transaction of the sale was completed the Hyderabad Evacuee Property Regulation had come into force on 22-8-1949. The regulation was later repealed by another State Regulation which was also repealed by the Administration of Evacuee Property Act which was extended to this State by the Notification for September 1950. The applicant had applied for the confirmation of the sale in his favour to the Deputy Custodian of Hyderabad under the Regulation on 14-2-1950, which was refused. Whereupon, he went in appeal which was also disallowed by the Custodian. Against this order he went in revision to the Custodian-General, which has been rejected on 17-3-1950. In between the dates of the dismissal of the appeal and

the rejection of the revision petition, this application for issuing of the Writs was filed in this Court challenging the correctness of the order of the Custodian as well as the constitutionality of Section 40 of the Administration of Evacuee Property Act (31 of 1950).

2. If the applicant's case on the unconstitutionality of Section 40 of the Act fails, there is no ground to allow his Writ application. For their Lordships of the Supreme Court in the case of - Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, , (A) have laid down that to justify issuing of the Writ of certiorari the order must be either in excess of jurisdiction, without jurisdiction or in violation of fundamental principles of justice. Therefore, the Writs prayed for can only be issued if all or any one of the aforesaid conditions exist in the particular case, otherwise not. The applicant himself sought the confirmation of the sale under the provisions of the Regulation similar to Section 40 of the Act, and this provision conferred jurisdiction on the Custodian in his discretion to confirm or refuse the sale. The order upon the application cannot in these circumstances be held either, in excess of jurisdiction or to be without jurisdiction. As regards the violation of the fundamental principles of justice, the authorities in reaching the conclusion against the applicant gave the Petitioner every opportunity to urge his case. They proceeded in a manner laid down for the hearing of such applications. If their conclusions are against him, it does not follow that any error in them, assuming that there are such errors, can be corrected-by issuing a Writ of certiorari. For every error is not necessarily of natural justice and it cannot be corrected as if this Court sits as an appellate authority over the decisions of Custodians of Evacuee Property. The success or otherwise of the application therefore depends upon the acceptance or rejection of the arguments addressed on behalf of the applicant, relating to Section 40 of the Evacuee Property Act being against Arts. 14, 19(1)(f) and 31 of the Constitution. We propose to deal with the arguments seriatim.

3. The ground urged for holding the Section to be violative of Article 14 is that it places certain disabilities on persons who are citizens of this State for purchasing properties from those who are defined as evacuees under the Act. Moreover, the Act does not extend to the whole of India. The test generally applied to ascertain whether any particular enactment is violative of the article is to see whether it is based on some rational classification. The rational classification denotes three things: a reasonable differential between the persons governed by the impugned Act and those not covered, a definite objective for enacting the law and a nexus between the two that should be just and reasonable. In the case of - The State of West Bengal Vs. Anwar Ali Sarkar, , (B) Fazl Ali J. says:

There is nothing sacred or sacrosanct about the test of reasonable classification, but it has undoubtedly proved to be a useful basis for meeting attacks on laws and official acts on the ground of infringement of the equality principle.

Mahajan J. in the above case refers:

By the process of classification the State has the power of determining who should be regarded as a class for purposes of legislation. The classification permissible, however, must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis.

Das J. in the same case says:

In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the act. The differentia which is the basis of the classification and the object of the act are distinct things and what is necessary is that there must be a nexus between them.

Then Aiyar J., approves in the case the several propositions laid down by Fazl Ali J. in the earlier case of - *State of Bombay v. F.N. Balsara* AIR 1951 SC 318 (C). The seventh proposition in the latter case is as follows:

While reasonable classification is permissible such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrary and without any substantial basis

Then the test of reasonable classification had been applied by the majority of their Lordships of the Supreme Court in the latter case of - *Raning Rawat v. State of Saurashtra* AIR 1952 SO 123 (D), and in - *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, (E). We have, therefore, to ascertain the constitutionality of Section 40 of the Administration of Evacuee Property Act by applying the aforesaid classification test to it.

4. It is well known that after the partition of the country a large number of persons migrated from this country to Pakistan and this migration created different problems. The fact of having migrated is a reasonable differentia marking them off from the others, and so also those who had purchased their properties from those who acquire lands from persons still residents in the country. This distinction is a rational one having regard to the circumstances in which the large influx of population took place.

5. The next question is about the object of the legislation, and whether it can be held to be Just and proper. In the case of *Kathi Raning Rawat Vs. The State of Saurashtra*, (D) it has been held by the majority of the Supreme Court that in order to ascertain the object, the preamble and the surrounding circumstances of the legislation could be gone into. The object of the Act is to provide for the administration of evacuee properties and for certain matters connected therewith. This, in our opinion, is a definite and rational object, and the second requirement of the doctrine of classification has been accordingly fulfilled in the case.

6. The third question is the nexus between the object and the provisions contained in the Section . The entire scheme of the Act is to provide for the custody and administration of the evacuee property. The title of the evacuee is not affected, the restoration of the properties contemplated, and the Custodian acts practically as a statutory agent. Section 40, in our opinion, contemplates ascertainments of the good faith, valuable consideration, legality and genuineness of the conveyances by the evacuee undoubtedly with a view to properly administer the property, and there is thus a reasonable nexus between the object and the Section which is impugned by the applicant. The three conditions having been fulfilled the discrimination complained of by the applicant does not violate the guarantee of the equal protection of the laws given to him by Article 14, and this plea of his therefore fails.

7. It was then urged that the Act is discriminatory because it extends only to part of the country. Now the territorial classification has been recognised as a rational classification both in this country and United States and what is good ground of classification cannot render discrimination thereby brought in as violative of the guarantee of equal protection. The result is that the argument of the Advocate of the applicant about Section 40 being unconstitutional on grounds of its being violative of Article 14 fails.

8. The next argument is that the need of confirmation is an unreasonable limitation on the right of the citizens of this country to acquire property, and Section 40 is void because it is contrary to the freedom to acquire properties conferred by Cl. (f) of sub-Art. (1) of Article 19. In advancing this argument, the Advocate of the applicant has overlooked the undoubted power of the sovereign to prevent persons under its jurisdiction from conducting themselves in a manner detrimental to the general welfare. This is generally known as the police power & is distinct as well as separate from the right of eminent domain. Its distinguished characteristic is that the State can regulate exercise of the right of property in order to prevent its being detrimental to the interest of the general public. From one point of view considerable resemblance between the two powers exists. In that each power recognises the superior right of the community against the selfishness of the individual; but there is this fundamental differentia between them that for the proper exercise of the police power it is necessary to make compensation, nor does it amount to taking of the property. The power is constitutionally recognised by Clause (5) of Article 19, which authorises reasonable restrictions on the exercise of the right of the property in the interest of the general public. Now there are authorities of different High Courts in this country holding certain restrictive provisions of the Administration of Evacuee Property Act as reasonable and constitutional, and Section 40 being intimately connected with the scheme of the Act and being based on the necessity for ascertaining the genuineness and legality of transfers, appears to us to be a reasonable restriction on the right of a citizen to acquire property. Thus, in the case of - Asiatic Engineering Co. Vs. Achhru Ram and Others, (P), it has been observed at page 773:

In fact, we think that upon a fair consideration of all the factors involved, the enactment can be justified as satisfying the requirements of Article 19(5). For this reason, we think that there is no force in the argument that the Act is void under Article 19(f) of the Constitution, nor can, in our opinion, any argument be at all advanced under Article 31 of the Constitution.

Similarly, in - *Shanta Devi v. Custodian of Evacuee Property* AIR 1952 MP 181 (G) Dixit J. at page 186 observes:

If it were necessary to decide the point I would be prepared to hold that the restrictions imposed by the Act are reasonable and in the interest of general public.

So also in - *Sheikh Mohd. Din, Sheikh Mehtab Din Vs. Thakar Singh, Gurmukh Singh and Another*, (H) a Division Bench has held that the restrictions contained in Section 17 of the Act are reasonable and in the interest of the general-public. The several provisions of the Act are closely connected and we are of opinion that Section 40 of the Act is not violative of Article 19(1)(f) of the Constitution. Therefore, this part of the argument also fails.

9. It was then urged that the refusal to confirm will result in taking of the property of the applicant without compensation, and therefore, Section 40 infringes Clause (2) of Article 31 of the Constitution, and is unconstitutional. In this connection, it was argued that the agreement between this country and Pakistan does not extend to Hyderabad State, and therefore Section 40 is not covered by Clause (5) of Art, 31. This argument overlooks the distinction between the exercise of police power and of eminent domain. Nichols in the *Law of Eminent Domain*, 3rd Edn., Vol. 1, page 70 observes:

A proper exercise of the police power by the sovereign does not require the payment of compensation. Compliance with an enactment of the legislature in the exercise of the police power for purposes of health, morals, safety or welfare without compensation does not constitute a damaging or taking of property without just compensation within the meaning of the law of eminent domain. It follows therefore that the constitutional provisions which limit the exercise of the power of eminent domain, so that just compensation must be provided for, have no application to and impose no limitation upon the proper exercise of the police power.

The difference has been also pointed out in the case of - *D.K. Nabhirajiah Vs. The State of Mysore and Others*, (I), by Chandrasekara Aiyar J., for he observes at page 343:

There was no requisition of property in this case u/s 75-A of the Defence of India Rules. The control Order was promulgated under R. 81(2)(bb) which provides for the regulation of letting and subletting houses. It is rather the exercise of a police power of Regulation in public interest than anything done in the exercise of a power of eminent domain, in which case alone questions relating to

compensation and public purpose will arise.

10. The necessity of confirmation contained in 8. 40 having been held to be reasonable, constitutional and in exercise of the police power, the absence of any provision relating to compensation which is a limitation on the exercise of the power of eminent domain does not arise in this case and this argument of Section 40 being contrary to Article 31 of the Constitution also fails.

11. It was then urged that on the day the property was purchased the applicant did not know that his vendor was going to be an evacuee as she left the place subsequently, and therefore his being subjected to the loss is harsh and inequitable. These would have no weight if the Act be held to be retrospective. Now, Sub-section (1) of Section 40 clearly requires confirmation of all transfers made after 14-8-1947 by the evacuees and "evacuee" has been defined as any person who leaves after the first day of March 1947. The Act, in these circumstances, is clearly retrospective and the mere fact that its application will result in hardship to an individual cannot be a ground of exempting him. Then it was argued that Section 40 vests absolute discretion in the Custodian to allow or disallow sales. But the object of the Act having been clearly laid down, the Section, in our opinion cannot be held to be bad on the ground of vesting uncontrolled discretion in the Custodian.

12. On the grounds mentioned above, we think that there is no force in this application, and therefore, it is disallowed.