

(1973) 05 AHC CK 0024
In the Allahabad High Court
Case No : Special Appeal No. 636 of 1970

Mohammad Din	Vs	APPELLANT
H.C. Asthan and Others		RESPONDENT

Date of Decision : 02-05-1973

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 43
Constitution of India, 1950 — Article 19(1), 226
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 13

Citation : AIR 1974 All 438

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Bashir Ahmad, for the Appellant; V.K. Burman, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—One Mohammad Amin, who was the father of Mohammad Din, on the stand taken by the Evacuee Property Authorities, migrated to Pakistan in June, 1948. His properties were treated to be evacuee property and got automatically vested in the Custodian under the provisions of U.P. Ordinance No. I of 1949. Subsequently, treating the properties to be evacuee property a notification was issued u/s 12(1) of the Displaced Persons (Compensation and Rehabilitation) Act (Act XLIV of 1954) and the property in question was thereby acquired. The acquired property was thereafter auctioned on 1-12-1960 and purchased by some one who has not been made a party in the present special appeal; nor was he made a party in the writ petition giving rise to this appeal. The Assistant Custodian of Evacuee Property had during the lifetime of Mohammad Amin issued notices on 16th November, 1957 claiming arrears of rent in respect of the evacuee property. At this place it may be pointed out that Mohammad Amin had subsequent to his migration to Pakistan in June, 1946 come back to India on a temporary permit which allowed him to stay here for only six weeks. He, however, illegally continued to reside in India even after the expiry of the aforesaid period and was prosecuted and convicted on 16th

November, 1957. When the aforesaid notices were issued he was in India. He filed an objection against the aforesaid notices, but the same was dismissed. Mohammad Amin died in 1959 and thereafter the appellant continued to file objections, appeals and revisions before various authorities which were all rejected. The appellant thereafter instituted a writ petition in this Court which was dismissed by a learned Single Judge by the judgment under appeal.

2. Learned counsel for the appellant urged that U.P. Ordinance No. I of 1949 was ultra vires and, consequently, the property in question never vested in the Custodian, nor it became the evacuee property. The invalidity of the aforesaid Ordinance has, in our opinion, been cured by the amending Act of 1960 which added Sub-section (2-A) to Section 8 of the Administration of Evacuee Property (Act XXXI of 1950) Act. The said Sub-section (2-A) provides:--

"Without prejudice to the generality of the provisions contained in Sub-section (2) any property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian, shall, notwithstanding any defect in, or the invalidity of, such law or any judgment, decree or order of any court, be deemed for all purposes to have validly vested in that person as if the provisions of such law had been enacted by Parliament, and such property shall on the commencement of the Act, be deemed to have been evacuee property declared as such, within the meaning of this Act and accordingly, any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken."

3. In view of the aforesaid Sub-section (2-A) and the judgment of the Supreme Court in *Azimunissa and Others Vs. The Deputy Custodian, Evacuee Properties, District Deoria and Others*, which Lays down the effect of Sub-section (2-A) aforesaid, we are of opinion that the decision given by the respondents that the property in question was evacuee property, is unassailable.

4. Learned counsel for the appellant then urged that the proceedings for acquiring the property in question u/s 12(1) of Act XLIV of 1954 and the auction sale held on 1-12-1960 (which date falls subsequent to the death of Mohammad Amin) were illegal. In support of his contention learned counsel relied upon *Dr. Zafar Ali Shah and Others Vs. The Assistant Custodian of Evacuee Property, Jhansi and Others*, . The submission made by the learned counsel in this connection cannot be accepted on a variety of grounds. As a result of the property being acquired u/s 12(1) of Act XLIV of 1954 the property became acquired property and vested in the Central Government. Neither the Union of India nor the person who purchased the property at the auction held on 1st December, 1960, were as already pointed out above, made parties in the writ petition, nor have they been made parties even in the special appeal. The question cannot, therefore, be adjudicated upon in their absence. That apart Zafar Ali's case (*supra*) relied upon by the learned counsel, is clearly distinguishable. In the said case, it was held that on the requisite publication

being made u/s 12(1) of Act XLIV of 1954 the right, title and interest only of an evacuee in evacuee property gets extinguished and not of a person who is a non-evacuee. That was a case of several co-sharers owning the property and only two of them being evacuee. That was not a case where the right, title and interest of an evacuee had devolved upon his heirs. In the instant case, Mohammad Amin father of the appellant was an evacuee, and on his death, his right, title and interest devolved on the appellant. The interest which devolved upon the appellant on the death of his father could not be larger than that of his father. In Salmond on Jurisprudence 12th Edition, at page 443 dealing with the topic of inheritance it has been stated:

"The rights which a dead man thus leaves behind him vest in his representatives. They pass to same person whom the dead man, or the law on his behalf has appointed to represent him in the world of the living. This representative bears the person of the deceased, and therefore, has vested in him all the inheritable rights, and has imposed upon him all the inheritable liabilities of the deceased. Inheritance is in some sort a legal and fictitious continuation of the personality of the dead man, for the representative is in some sort identified by the law with him whom he represents. The rights which the dead man can no longer own or exercise in propria persona, and the obligations which he can no longer in propria persona fulfil, he owns exercises, and fulfils in the person of a living substitute. To this extent, and in this fashion, it may be said that the legal personality of a man survives his natural personality, until his obligations being duly performed, and his property duly disposed of, his representation among the living is no longer called for."

5. The appellant, therefore, inherited "the right, title and interest of an evacuee in the evacuee property" within the meaning of Section 12(2) of Act XLIV of 1954. The mere fact that the appellant may not have been an evacuee himself, is therefore, not very material. For purposes of Section 12 it was enough if the right, title and interest which he was holding, was of an evacuee in evacuee property. Section 13 deals with payment of compensation in lieu of acquisition of right, title and interest of an evacuee in the evacuee property. Such compensation will be payable to the person in whom the said right, title and interest vests on the date of the acquisition. The appellant having inherited the rights and liabilities of his father in the property in question held it, subject to the liability of its being acquired u/s 12 of Act XLIV of 1954 and would be entitled to compensation payable in lieu of such acquisition. The word "evacuee" in Section 13, in our opinion, includes the person in whom the right, title and interest of the evacuee vests at the time of acquisition. This submission made by the learned counsel also therefore, fails.

6. It was next contended that the appellant was never an evacuee. He was all along a citizen of India and he having inherited the property in question, it was not open to the Assistant Custodian to demand any rent from him. This submission also has, in our opinion, no substance. As would appear from the

order dated 3rd January, 1961 of the Deputy Custodian General U.P., Lucknow, Mohammad Amin father of the appellant had during his lifetime made an application for restoration of the property u/s 16 of the Administration of Evacuee Property Act, and that application was rejected. The property therefore, continued to be under the Administration of the Custodian. Section 43 of the Administration of Evacuee Property Act lays down that where in pursuance of the provisions of this Act, any property has vested in the Custodian, neither the death of the evacuee at any time thereafter, nor the fact that the evacuee who had right or interest in that property had ceased to be an evacuee at any material time, shall affect the vesting or render invalid anything done in consequence thereof. In view of Sub-section (2-A) of Section 8 of this Act already referred to above, the property in question shall be deemed to have been evacuee property declared as such within the meaning of this Act. The application for restoration of possession made by Mohammad Amin u/s 16 having been rejected, and the property having continued to vest in the Custodian even after the death of Mohammad Amin for purposes of Administration of Evacuee Property Act by virtue of Section 43 of the said Act, it cannot be said that the impugned notices became invalid on the death of Mohammad Amin.

7. Lastly, it was urged that Section 43 of the Administration of Evacuee Property Act referred to above is ultra vires because it places unreasonable restriction on the right of the appellant to manage his property, and thereby infringes Article 19(1)(a), (f) of the Constitution.

This argument is, also unsustainable. Firstly, the property in question has already been acquired by the Central Government u/s 12(1) of Act XLIV of 1954, as a result of which the right, title and interest of the evacuee in this property in the hands of the appellant has extinguished and the appellant cannot now claim to have any interest in the property. Secondly, the argument of the learned counsel proceeds on the assumption that on the death of his father the appellant inherited the property in question without any limitations in regard to its management. This assumption is wholly unfounded. As already pointed out above, the property in question was an evacuee property, with the result that it had vested for purposes of management in the Custodian. On his father's death the appellant inherited the right, title and interest of the evacuee in the property in question. The inheritance was subject to the statutory limitation that as a result of vesting the management of the property was to be done by the Custodian. As such if this right of the Custodian was continued u/s 43 of the Administration of Evacuee Property Act even after the death of Mohammad Amin, it cannot be said that any restriction was placed on the appellant's right to manage a property which had absolutely vested in him. The property had come in the hands of the appellant subject to the aforesaid restriction. In this view of the matter it is really not open to the appellant to challenge the validity of Section 43 of the Administration of Evacuee Property Act on the ground that it infringes Article 19(1)(f) of the Constitution.

The various submissions made by the learned counsel for the appellant having failed, the appeal is dismissed with costs.