

(2009) 12 DEL CK 0192

In the Delhi High Court

Case No : Writ Petition (C) 10921 of 2009

Mohd. Aleem

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0192

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : R.R. Shukla and T.N. Tripathy, for the Appellant; Sachin Dutta, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Counsel for the petitioner relies upon judgment in the Suit No. 564/1965 titled Sheikh Sultan Ahmed v. Mst. Bismilla Jan and Ors. and submits that the respondents have wrongly not taken the said decision into consideration. The said suit as per the documents filed on record was presented on 16th October, 1965, and was immediately decreed on the basis of the statement made by the parties within two months on 15th December, 1965. The suit appears to be collusive and the respondents herein were not parties to the said suit.

2. Union of India enacted the Defence of All India Act, 1962 and Defence of India Rules, 1962 for vesting of Enemy Property in the custodian. This was followed by the Enemy Property Act, 1968 for continuation of vesting of Enemy property in the custodian.

3. The admitted position is that late Sheikh Sultan Ahmed expired in Karachi, Pakistan on 3rd November, 1961. The properties held by him except the share of Smt. Bismilla Jan, an Indian national, had vested with the Custodian of Enemy Property by virtue of Government of India notification dated 10th September, 1965. Vesting is by force of law.

4. In the year 1960, late Qamaruddin had filed a civil suit against his tenant through his general power of attorney holder. After his death, his legal representatives were brought on record. The said suit was disposed of vide judgment dated 26th March, 1968. Learned Judge had recorded and given specific finding that the estate in India left behind by late Qamaruddin was inherited by Pakistani nationals and their shares, except share of Bismilla Jan, an Indian national, stand vested in the custodian of Enemy Property w.e.f. 10.9.1965. No one had challenged and questioned the said decision by way of appeal. The judgment and the findings became final.

5. In furtherance to the enactment, the respondents had declared the premises No. 556, Gandhi Market, Chandni Chowk as Enemy Property vide their letter dated 8th March, 1972. By another letter dated 24th June, 1978, the officer incharge had informed the occupants of premises Nos. 556, 557, 593 and 605, that the said properties were vested in the Custodian of Enemy Properties under the Enemy Property Act. By another letter dated 29th January, 1998, the SDM, Sadar Bazar, Delhi had reported details of properties recorded in the name of Mr. Qamaruddin. By letter dated 5th July, 1999, the SDM Daryaganj was asked to take over the management of these properties. By reported dated 13th July, 1999, 19 properties recorded in the name of late Qamaruddin in the revenue records, were held to be properties vested in the Custodian of Enemy Property under the Enemy Property Act, 1968.

6. The present writ petition has been filed in the year 2009, on the basis of alleged unregistered Will dated 23rd December, 1957. Earlier the plea taken was that there was an oral Will. Now it is pleaded that there was a written Will. The respondents have rightly disbelieved the story of Will as an afterthought.

7. In view of the vesting of the properties under the Enemy Property Act, 1968, I do not find any merit in the present writ petition and the same is dismissed.