

---

**(1981) 05 AHC CK 0044**  
**In the Allahabad High Court**  
**Case No : First Appeal No. 186 of 1968**

Mohd. Rehan Raza Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

---

**Date of Decision :** 12-05-1981

**Acts Referred:**

Administration of Evacuee Property Act, 1950 — Section 28, 4, 48  
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 36

**Citation :** AIR 1981 All 256

**Hon'ble Judges :** Satish Chandra, C.J;K.N. Seth, J

**Bench :** Division Bench

**Final Decision :** Dismissed

---

## Judgement

K.N. Seth, J.—This appeal arises out of a suit instituted by the plaintiff appellant for declaration that property No. W. D. 15/125 to 127 called Razvi Manzil situate in Mohalla Behariour, Bareilly, is a waqf property and is not liable to be transferred by the defendants as property of the evacuees.

2. The case set up by the plaintiff was that under the waqfnama dated 26-9-1931 executed by Smt. Abbasi Begum a waqf was created in respect of the property in dispute. The Mut-walli appointed under the waqf deed and the members of his family migrated to Pakistan and the management of the property has been taken over by defendant No. 5. Under the mistaken belief that since all the beneficiaries have migrated to Pakistan defendant No. 5 intends to sell the property as evacuee property belonging exclusively to the evacuees. The plaintiff claimed that he was the ultimate beneficiary under the waqf and the property could not be said disregarding the waqf and the ultimate benefit of the plaintiff. The plaintiff served a valid notice on the defendants u/s 80, C. P. C. but the defendants did not recognise the rights of the plaintiff. Hence the suit.

3. In defence it was pleaded that under the waqf deed dated 26-9-1931 Kanat Ali was the Mutwalli who migrated to Pakistan and he was declared an evacuee under the provisions of the Evacuee Property Act and since the waqf was Alal

Aulad the property was managed by defendant No. 5 as Custodian. Subsequently Wazir Ali migrated to Pakistan and after him the other two beneficiaries Sugra Begum and Mohammad Ali continued to live in the house as they had a right of residence. Thereafter Mohammad Ali also migrated to Pakistan and Sugra Begum was allowed to live in Gular Wala Portion. She also migrated to Pakistan subsequently. It was asserted that no beneficiary under the waqfnama remained in India. The property was acquired under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act and vested in the Central Government. It was further asserted that the plaintiff had no cause of action nor was a beneficiary under the deed. The defendants also pleaded that the suit was barred under the provisions of the Administration of Evacuee Property Act and the Displaced Persons (Compensation and Rehabilitation) Act and the Court had no jurisdiction to try the suit. A further plea was raised that the notice u/s 80 C. P. C. was not valid.

4. The trial Court held the notice u/s 80, C. P. C. to be valid but dismissed the suit on the finding that the plaintiff was not a beneficiary and had no right to sue and that the suit was barred under the provisions of the Administration of Evacuee Property Act and the Displaced Persons (Compensation and Rehabilitation) Act and the Court had no jurisdiction to entertain the suit. Aggrieved by the decree of the Court below the plaintiff has come up in appeal.

5. There is no controversy that Smt. Abbasi Begum under a registered deed dated 26-9-1931 created a Waqf Alal Aulad in respect of the property in dispute. She named her son Kanat Ali as the first Mutwalli. It was further stipulated that after the death of Kanat Ali. Ishtiaq Ali son of Akbar and after him his eldest son and thereafter the eldest son generation after generation shall be the Mutwalli who will have right of residence in the property. It was lastly stipulated that if the line of the beneficiaries indicated above became extinct, the income of the property after meeting expenses of the repairs etc. would be spent on the Mazar of Shah Mohammad Ahmad Raza Khan.

6. It has not been disputed that all the beneficiaries under the waqf deed have migrated to Pakistan. The plaintiff led no evidence to prove that the beneficiaries who migrated to Pakistan are dead or that the line of beneficiaries indicated under the waqfnama has become extinct. The contingency contemplated under the waqfnama for spending the income of the waqf property over the Mazar of Sana Mohammad Ahmad Raza Khan has not yet arisen. It has not been established that the plaintiff is a beneficiary under the waqf deed and has any interest to maintain the suit. Even if it be accepted that the plaintiff is the ultimate beneficiary, he can have no cause of action unless it is proved that all the beneficiaries named or indicated in the waqf deed have ceased to exist. The plaintiff may be ultimate beneficiary when the beneficiaries mentioned in the waqf deed become extinct. Sub-section (2) of Section 11 of the Administration of Evacuee Property Act provides.

"(2) In respect of any Waqf-alal-aulad. -

(a) where the Mutawalli is an evacuee, the property forming the subject matter of the waqf shall vest in the Custodian subject to the rights of the beneficiaries under the waqf, if any, who are not evacuees;

(b) where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian."

On the admitted facts the beneficiaries mentioned in the waqf deed having migrated to Pakistan became evacuees. The subject matter of the waqf consequently absolutely vested in the Custodian as there was no non-evacuee beneficiary. The plaintiff having no right in the property as beneficiary has no right to sue. In this view of the matter alone the appeal must fail.

7. It is in evidence that before the plaintiff his father Ibrahim Raza Khan was the Mutwalli of the Mazar of Shah Mohammad Ahmad Raza Khan claiming to be the Mutwalli of Razvi Manzil he had asserted his claim before the Custodian of Evacuee Property. The Custodian and Regional Settlement Commissioner by his order dated 7-3-1962 dismissed the claim. The revision filed against that order was dismissed on 10-6-1964. That order became final. Section 28 of the Administration of Evacuee Property Act provides :--

"Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding."

Section 46 of the Administration of Evacuee Property Act is in these terms :--

"Save as otherwise expressly provided in this Act, no Civil or Revenue Court shall have jurisdiction--

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b) .....

(c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine."

Similarly, Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act bars the jurisdiction of the civil Court to entertain any suit or proceeding in respect of any matter which the Central Government or any Officer or Authority appointed under this Act is empowered by or under this Act to determine. As observed by the Supreme Court in Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum, the jurisdiction of the civil or revenue Court is barred u/s 46 and no such Court can entertain any suit or adjudicate upon any question

whether a particular property or right to or interest therein is or is not evacuee property. The decision is made final whether based on issues of law or fact by Section 28 a Section 46 bars the jurisdiction of civil and revenue courts in matters which are decided u/s 7 whatever may be the basis of the decision, whether issues of fact or of law and whether simple or complicated. The claim of the plaintiff that as non-evacuee beneficiary he had interest in the property in dispute could not be entertained by the civil Court.

8. Learned counsel for the appellant contended that since the property in dispute was admittedly waqf property the nature of the property could not be changed and it could not be transferred by the Custodian and thereby change its inalienable character under the Muslim law. Reliance was placed on a decision of a learned single Judge of this Court in Mohd. Sadiq v. Amanat Ullah, Second Appeal No. 2493 of 1972 decided on 11-2-1981 : (reported in 1981 ALJ 329. The principle laid down in that case has no application in the present case as the property involved in that case was not evacuee property and the rights under the provisions of the Administration of Evacuee Property Act were not at all involved. Section 4 of the Administration of Evacuee Property Act lays down :--

"4. Act to override other laws -- (1) The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

(2) ....."

A Bench of this Court in Custodian Evacuee Property Vs. Shrimati Bibijan, held that by virtue of Section 4 of the Act the provisions of Section 11 which provides that in respect of any Waqf Alal Aulad, where the Mutwali is an evacuee, the property forming the subject matter of the waqf shall vest in the Custodian subject to the rights of the beneficiaries under the wakf, if any, who are not evacuees will override the rule under the Mohammedan law that waqf property vests in God. The property in question having vested in the Custodian is liable to be dealt with under the provisions of the Administration of Evacuee Property Act and the Displaced persons (Compensation and Rehabilitation) Act and the declaration sought for must be held to be misconceived.

9. No other point has been pressed for consideration.

10. The appeal has no merit and is dismissed with costs.