

(1957) 03 PAT CK 0027
In the Patna High Court
Case No : Misc. Judl. Case No. 312 of 1956

Mt. Bibi Mehar Ban Bano

APPELLANT

Vs

Govt. of India and Others

RESPONDENT

Date of Decision : 27-03-1957

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 10, 10(2), 17

Civil Procedure Code, 1908 (CPC) — Section 64

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12(1), 12(2)

Citation : AIR 1957 Patna 679

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : P.R. Das, S.S. Asghar Hassan, S.S. Sarwar Ali and Amir Ali Khan Warsi, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, C.J.—In this case the petitioner Musammat Bibi Mehar Ban Bano has obtained a rule from the High Court calling upon the respondents to show cause why the order of the Custodian of Evacuee Property, dated the 3rd April, 1956, should not be quashed by a writ in the nature of certiorari. Cause has been shown by the learned Government Pleader, on behalf of the respondents Nos. 1 and 2. There is no appearance on behalf of respondent No. 3, Agha Tufail Ahmad.

2. The petitioner was married to Agha Tufail Ahmad, respondent No. 3, and it is alleged by the petitioner that a sum of Rs. 41,000/- was settled as prompt dower debt at the time of the marriage. On the 30th of January, 1947, the petitioner instituted a suit against her husband for the recovery of the dower debt to the extent of Rs. 41,000/- with interest thereon. The suit was partly decreed by the Subordinate Judge. Two appeals were filed to the High Court against the decree of the Subordinate Judge, one on behalf of respondent No. 3 and the other on behalf of the petitioner.

The appeal of respondent No. 3 was dismissed by the High Court and the appeal

of the petitioner was allowed. A decree was granted in favour of the petitioner for the full amount of the dower debt claimed. Respondent No. 3 owned a house in New Kadamkuan which was holding No. 132, Circle No. 20A, ward No. 10, of the Patna Municipality. In execution of the decree the petitioner caused this house to be attached for the realisation of the entire decretal amount.

In June, 1949, the Bihar Administration of Evacuee Property Ordinance (Ordinance No. III of 1949) was passed and came into force. This Ordinance was subsequently repealed by Central Ordinance No. 27 of 1949, which came into force from the 18th of October, 1949. This Ordinance was also subsequently repealed and replaced by the Administration of Evacuee Property Act, 1950 (Act XXXI of 1950) which came into force from April, 1950. In the year 1951 respondent No. 2 was declared an evacuee and the disputed house was declared as evacuee property and vested in the Custodian.

On the 5th of June, 1951, the petitioner applied before the Custodian for registration of her claim under the provisions of Central Act XXXI of 1950 with regard to the decretal amount. On the 18th of June, 1954, the Custodian admitted the petitioner's claim. On the 17th of July, 1954, the claim of the petitioner was registered by the Custodian for the amount of Rs. 43,808/- and odd. On the 16th of November, 1954, the petitioner made another application, and on the 25th of November, 1954, the petitioner's claim for interest was also registered, the total amount of her claim now being Rs. 48,935/- and odd.

On the 19th of February, 1956, the petitioner filed an application before the Custodian praying that the disputed house should be sold to her and she should be put in possession of the house and the amount of her claim may be set off against any price which may be offered for the house at the proposed sale. This application was rejected by the Custodian by his order dated the 3rd April, 1956, which is to the following effect :--

"With reference to her petition dated the 19th March, 1956, she is informed that her request for addition of interest after 13th October, 1950, decreed by Patna High Court cannot be acceded to. Her request for allotment of the house to her also cannot be considered as the same has been acquired by and has vested in the Central Government under the Displaced Persons (Compensation and Rehabilitation) Act 1954.

Sd/- Illegible, Custodian, Evacuee Property, Bihar."

3. It is necessary to state that on the 9th of October, 1954, the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act 44 of 1954) came into effect. Section 12 of this Act granted power to the Central Government to acquire evacuee property for rehabilitation of displaced persons. In exercise of this power the Central Government issued a notification on 10th of July, 1955, stating that it had decided to acquire all evacuee properties in the urban areas of the Bihar State.

The result of this notification was that the title to the disputed house vested absolutely in the Central Government, free from all encumbrances, and it was no longer open to the petitioner to ask the Custodian to transfer the disputed house to her in lieu for her dower debt.

4. Mr. P. R. Das on behalf of the petitioner conceded that if Act 44 of 1954 applied to the petitioner's case, the order of the Custodian, dated 3rd of April, 1954, would be correct and the application of the petitioner would have no merit. But the argument of the learned Counsel was that the provisions of Act 44 of 1954 cannot apply to the case of the petitioner and she is entitled to an order that the Custodian should transfer the disputed house to her u/s 10(2) of Act XXXI of 1950, read with Rule 22 of the rules framed by the Central Government under that Act.

5. It is necessary at this stage to set out the relevant provisions of Act XXXI of 1950 and Act 44 of 1954. Section 10 of Act XXXI of 1950, as amended by Act 91 of 1956, deals with the powers and duties of the Custodian. Section 10(1), 10(2), 10(2) (m), (n) and (o) are as follows:

"10. Powers and duties of the Custodian generally:-- (1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in Sub-section (1), the Custodian may, for any of the purposes aforesaid,--

X X X X X (m) incur any expenditure, including the payment of taxes, duties, cesses and rates to Government or to any local authority:

(n) pay to the evacuee, or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto, any sums of money out of the funds in his possession;

(o) transfer in any manner whatsoever any evacuee property, notwithstanding anything to the contrary contained in any law or agreement relating thereto:

Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee, except with the previous approval of the Custodian-General."

Rule 22 of the rules made by the Central Government u/s 56 is to the following effect:

"22. Claims by third parties.-- (1) Any person claiming the right to receive any payment from any evacuee or from the property of such evacuee, whether in repayment of any loan advanced or otherwise, may present a petition to the

Custodian for registration of his claim. Such application shall be signed and verified by the claimant in the same manner as a plaint is required to be signed and verified under the Code of Civil Procedure, 1908.

Explanation.-- An application under this sub-rule shall lie in respect of a claim for refund of money paid as consideration for the transfer by an evacuee of any property, where such transfer is not confirmed by the Custodian u/s 40 of the Act.

(2) (a) Where a claim made under Sub-rule (1), is supported by-

(i) a decree of a competent Court; or

(ii) a registered deed executed and registered before the 14th August, 1947; or

(iii) a registered deed executed and registered on or after the 14th August, 1947, and the transaction in respect of which the deed was so executed and registered has been confirmed by the Custodian; or

(iv) an acknowledgment in writing executed by the evacuee himself before the 1st March, 1947; or

(b) where such claim is of the nature referred to in the "Explanation" to Sub-rule (1) and the Custodian holds that the transfer of the property in respect of which the claim is made was a bona fide transaction, the Custodian may register the claim or such part thereof as has not been satisfied:

Provided that in the case of a claim of the nature referred to in the Explanation to Sub-rule (1), the claim shall be registered only for that amount of money which is proved to have been paid as consideration for the transfer of the property.

(2A) In any case which does not fall under Sub-rule (2), the Custodian shall direct the claimant to establish his claim in a civil court.

(3) The mere registration of a claim shall not entitle the claimant to payment and the Custodian may for reasons to be recorded refuse payment.

(4) NO debt incurred by the evacuee before the property vested in the Custodian shall be paid without the sanction of the Central Government or Custodian General.

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Section 12 of Act 44 of 1954 empowers the Central Government to acquire evacuee property for rehabilitation of displaced persons. The section is in the following terms:

""12. Power to acquire evacuee property for rehabilitation of displaced persons-

(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to

such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under Sub-section (1) the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3) It shall be lawful for the Central Government, if it so considers necessary, to issue from time to time the notification referred to in Sub-section (1) in respect of-

- (a) all evacuee property generally; or
- (b) any class of evacuee property; or
- (c) all evacuee property situated in a specified area; or
- (d) any particular evacuee property.

(4) All evacuee property acquired under this section shall form part of the compensation pool."

Section 13 relates to payment of compensation for evacuee property acquired under the Act. Section 13 states:--

"13. Compensation for evacuee property acquired under this Act-- There shall be paid to an evacuee compensation in respect of his property acquired u/s 12 in accordance with such principles and in such manner as may be agreed upon between the Government of India and Pakistan."

It is also necessary to refer to Rule 93 of the rules framed by the Central Government u/s 40 of Act 44 of 1954. Rule 93 states as follows:

"93. The Central Government may acquire any property declared or deemed to have been declared as evacuee property under the Administration of Evacuee Property Act, 1050 (XXXI of 1950), (hereinafter in this rule referred to as the said Act), except any such property falling under any one or more of the following categories, namely:--

(i) any such property-

(a) in respect of which proceedings are pending before any authority, under the said Act, in which the question at issue is whether the property is or is not evacuee property; or

(b) in respect of which the period of limitation, if any, fixed for an appeal or revision under the said Act for disputing the vesting of the property in the

Custodian as evacuee property has not expired;

(ii) any such property in respect of which an application for the grant of a certificate under Sub-section (1) of Section 16 of the said Act is pending or in respect of which the period of limitation fixed for making such application has not expired;

(iii) any such property which has been restored u/s 16 of the said Act, or in respect of which an application under Sub-section (2) of that section for its restoration is pending or in respect of which a certificate under Sub-section (1) of that section has been granted but no application under Sub-section (2) of that section for its restoration has been made;

(iv) any such property which has been transferred and the transfer is effective u/s 40 of the said Act, or in respect of which any proceeding's are pending under that section;

(v) any such property which is a composite property within the meaning of the Evacuee Interest (Separation) Act, 1951 (LXIV of 1951);

(vi) any such property in respect of which any proceedings are pending in a Civil Court wherein the question at issue is whether the property is evacuee property or not;

(vii) any such property which is being treated or is being managed as a trust property for a public purpose of a religious or charitable nature under Sub-section (1) of Section 11 of the said Act;

(viii) any such property in respect of which a reference made by the Custodian to the Central Government for orders under Clause (iii) (d) of Sub-rule (6) of Rule 14 of the Administration of Evacuee Property, (Central) Rules, 1950 is pending."

6. The argument put forward by Mr. P.B. Das on behalf of the petitioner is that the provisions of Act XXXI of 1950 have not been repealed by Act 44 of 1954 either expressly or as a matter of necessary implication. It was contended that the provisions of both the Acts could stand together and effect could be given to both the Acts. In this connection reliance was placed by learned Counsel upon a statement of the law in Maxwell on Interpretation of Statutes, 10th Edition, at page 170, which states:--

"But repeal by implication is not favoured. A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is a reasonable presumption that the Legislature did not intend to keep really contradictory enactments on the Statute-book, or, on the other hand to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted unless it be inevitable. Any reasonable contraction which offers an escape from it is more likely to be in consonance with the real intention."

It was also submitted by learned Counsel that the proper test of implied repeal is

whether the two Acts could stand together and whether effect could be given to both the Acts. It was argued that both the Acts could be reconciled if the new Act as construed only to apply to such properties with regard to which claims were not registered by the Custodian under the provisions of Act XXXI of 1950. I agree with the learned Counsel for the petitioner that there is no repeal by implication and that effect could be given to the provisions of both the Acts, namely, Act XXXI of 1950 and Act 44 of 1954.

But I do not agree with the contention of learned Counsel on behalf of the petitioner that the reconciliation of the two Acts could be effected in the manner he has suggested. As a matter of construction I think that Act 44 of 1954 would apply to all properties where there is a notification by the Central Government under the provisions of Section 12(1) of that Act. With regard to the other properties of an evacuee, the provisions of the old Act, namely, Act XXXI of 1950, would continue to have effect that the Custodian appointed under the old Act would have jurisdiction to manage and to dispose as mentioned in Section 10 of that Act and Rule 22 of the rules framed under that Act.

It should be noticed in this connection that Section 12 of Act 44 of 1954 grants merely a power to the Central Government to acquire evacuee property for rehabilitation of displaced persons. The power may be exercised by the Central Government with regard to any particular evacuee property or with regard to any class of evacuee properties or with regard to all evacuee properties in general. If no notification is issued by the Central Government u/s 12, the provisions of Act XXXI of 1950 would apply to all evacuee properties.

But if any notification is issued by the Central Government u/s 12(1) of Act 44 of 1954, the power of the Custodian under Act XXXI of 1950 would be taken away with regard to these properties; but the power of the custodian would continue with regard to the other properties which are not mentioned in the notification u/s 12(1) of Act 44 of 1954. I think that is the proper manner in which the provisions of Act XXXI of 1950 and the provisions of Act 44 of 1954 should be construed and should be reconciled. I do not think that the registration of the claim of an evacuee u/s 10(2), read with Rule 22 of the old Act, has any bearing on the question of interpretation of either of the two statutes.

In my opinion, the provisions of Act 44 of 1954 apply to the case of the petitioner and it follows that the title to the disputed house vested in the Central Government on 10th of July, 1955, as soon as the notification was published u/s 13(2) of Act 44 of 1954. It is manifest therefore, that the power of the custodian with regard to the disputed house was taken away on 10th of July, 1955, as soon as the notification u/s 12(1) was published and the Custodian was therefore right in saying that the request of the petitioner for allotment of the house could not be considered in view of that circumstance.

7. It was then submitted by learned Counsel for the petitioner that the petitioner had a vested right on 25th of November, 1954, when her claim was admitted and

registered by the Custodian of Evacuee Property. It was argued that the vested right of the petitioner could not be taken away on 10th of July, 1855, when the Central Government published the notification u/s 12(1) of Act 44 of 1954. It was argued that as a matter of construction a statute should not be construed to have retrospective operation unless such intention appears very clearly in the terms of the statute or arises by necessary and distinct implication.

In support of his argument learned Counsel referred to two authorities, Colonial Sugar Refining Company, Limited v. Irving 1905 AC 369 (A); and Moon v. Durden (1848) 154 ER 389 (B). I am unable to accept this argument as sound. In the first place, I consider that the petitioner had no vested right in the disputed house when her claim to the decretal amount was admitted and registered by the Custodian on 25th of November, 1954. It is true that the petitioner had attached the disputed house in proceedings for execution of her decree, but after Act XXXI of 1950 came into force the disputed house became exempt from attachment under, the provisions of Section 17 of that Act, which states:

"17. Exemption of evacuee property from processes of court, etc. -- (1) Save as otherwise expressly provided in this Act, no evacuee property which has vested or is deemed to have vested in the Custodian under the provision of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any court or other authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such (property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void.

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It is also true that the claim of the petitioner was registered by the Custodian u/s 10 of the old Act, namely, Act XXXI of 1950, read with Rule 22 of the rules made thereunder. But Rule 22 (3) expressly provides that

"mere registration of a claim shall not entitle the claimant to payment and the Custodian may for reasons to be recorded refuse payment."

Rule 22 (4) is also important. This sub-rule provides:

"No debt incurred by the evacuee before the property vested in the Custodian shall be paid without the sanction of the Central Government or Custodian General."

It was argued by Mr. P.R. Das on behalf of the petitioner that the power of the Custodian under Rule 22 to make payment of a decretal amount was coupled with a duty and the petitioner could have in the special circumstances applied for a writ of mandamus to enforce that duty.

For this proposition Counsel relied upon the well-known case of F.G. Julius v. Oxford (1880) 5 AC 214 (O), where it was held that there may be circumstances

which may couple the power with a duty to exercise it, that it lay upon those who call for the exercise of the power to show that there was an obligation to exercise it. I am not, however, satisfied that the petitioner had a vested right in the circumstances of the case on 10th of July, 1955, when the notification was published by the Central Government u/s 12(1) of Act 44 of 1954. I would, therefore, reject the argument of learned Counsel on this point.

8. Even assuming that the petitioner had a vested right on 10th of July, 1955, when the notification of the Central Government was published u/s 12(1), the argument of the petitioner must nevertheless fail because there is a clearly expressed intention of the Legislature in enacting Act 44 of 1954 that the vested rights would be interfered with. It is necessary in this connection to quote the language of Section 12(2) of the Act, which is to the following effect:--

"12. (2) On the publication of a notification under Sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances."

This section clearly states that on the publication of the notification u/s 12(1) by the Central Government, the right, title and interest of the evacuee shall be extinguished and the right to property shall vest absolutely in the Central Government free from all encumbrances. With regard to compensation for the evacuee property acquired, Section 13 states:--

"13. There shall be paid to an evacuee compensation in respect of his property acquired u/s 12 in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakistan."

As a matter of construction, therefore, I hold that the Legislature had expressed a sufficiently clear intention that Act 44 of 1954 should interfere with the vested rights, and on the publication of a notification u/s 12(1) the evacuee property should vest absolutely in the Central Government free from all encumbrances. The argument of learned Counsel for the petitioner on this part of the case must, therefore, fail.

9. For these reasons I hold that the order of the Custodian dated 3rd April, 1956, is not vitiated by any illegality and that no case has been made out by the petitioner for grant of a writ under Article 226 of the Constitution. In my opinion, the application fails and must be dismissed, with costs. Hearing fee Rs. 100/-.

Raj Kishore Prasad, J.

10. I agree.