

(1972) 11 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 400 of 1970

Pannalal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-11-1972

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 10(1), 10(2)
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12

Citation : AIR 1973 Raj 150

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Advocate : A.C. Inani, for the Appellant;

Final Decision : Allowed

Judgement

V.P. Tyagi, J.—This writ petition of Pannalal arises out of the following circumstances :

Petitioner Pannalal had advanced a loan to one Ashraf Ali who after the partition of the country, migrated to Pakistan leaving behind him three house properties in the town of Ajmer. Petitioner had obtained a decree on 2nd August, 1948, of Rs. 4,000/- with 3 per cent interest against Ashraf Ali from the court of the Sub Judge. First Class, Ajmer in Civil Suit No. 436 of 1948. On 12th of September 1949, the petitioner registered his third party claim with the Assistant Custodian of the erstwhile State of Ajmer for the payment of the decretal amount and the same was registered vide the letters of the Assistant Custodian (Annexure 2 and Annexure 3) dated 24th of July 1951 and 21st of September, 1951, respectively. Thereafter it so appears that the Assistant Custodian did not take any proceedings to pay off the claim of the petitioner as registered with him under Rule 22 of the Administration of Evacuee Property (Central) Rule Section 1950. It is alleged that the properties of the evacuee which vested in the custodian were ultimately sold for Rs. 46,100/- but the authorities did not care to discharge the decretal debt which was due to the petitioner from the evacuee. Petitioner made

various representations to the authorities concerned to expedite the payment of the decretal debt but to his dismay those representations did not bear any fruit. A reply was received from Shri T.N. Mathur Accounts Officer of the Regional Settlement Commissioner Raiasthan. Jaipur vide his letter No. RSCR/AO (C)/Accts/Third party claim/68/10398 wherein it was mentioned that the claim of the petitioner was receiving attention of the department. This letter has been placed on the record as Annexure 6. Thereafter, petitioner's counsel wrote letter to the Regional Settlement Commissioner. Jaipur, requesting him to expedite the matter and to that letter a reply was received once again from the same officer vide letter dated 8th November. 1968 (Annexure 8) expressing that the matter was receiving his attention. But the grievance of the petitioner is that no action was taken by the Assistant Regional Settlement Commissioner who was functioning as a custodian also. When upto 1970 the petitioner did not receive any satisfactory reply from the office of the Assistant Settlement Commissioner. Rajasthan Region, Jaipur, who had promised to look into the matter, a letter was again addressed to Shri N.B. Gorwaney who was then Assistant Settlement Commissioner. Raiasthan Region, reminding him of the promise made by him. In reply to that letter Shri Gorwaney wrote back to the petitioner that the aforesaid three properties belonging to the evacuee have already been disposed of and the sale proceeds thereof have constituted Part of the compensation pool which vests in the Central Government and that the Custodian had no jurisdiction to make payment out of the compensation pool to satisfy the petitioner's claim.

2. It is averred by the petitioner that under the law the Assistant Settlement Commissioner, Jaipur, was also exercising the powers of the Custodian and as such he was under an obligation to discharge the liabilities of an evacuee under the provisions of Section 10(1) read with Section 10(2)(a) of the Administration of Evacuee Property Act, 1950 (hereinafter called the Act). Having failed to get his money from the Custodian, after trying for a long period of 21 years, the petitioner was compelled to knock the doors of this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution and has prayed that by issuing an appropriate writ, order or direction, the respondents may be asked to pay the amount of Rs. 7,000/- to the petitioner under the decree passed by the Sub-Judge. Aimer with 3 per cent future interest thereon.

3. The petitioner has impleaded the Union of India, the Regional Settlement Commissioner. Jaipur and the Custodian of Evacuee Property. Jaipur as the respondents, but none of the respondents cared to appear before this Court and file the reply to the petition.

4. On 8th of August 1972, when the case came up for hearing before this Court, Dr. S.K. Tewari, who represents the Union of India, was directed to let this Court know whether the Custodian has any funds with him out of which the decree of the petitioner could be satisfied. The learned Deputy Government Advocate, even after three adjournments could not supply any information to this Court.

5. The question that arises for the determination of this Court is whether the

Custodian is under a statutory obligation to pay the decretal debt of the petitioner, especially when the third party claim of the petitioner was duly registered with the Custodian with the copy of the Civil Court decree obtained by him in the year 1949. Ex. 2 and Ex. 3 go to show that the Custodian had registered the claim of the petitioner, but thereafter he did not pass any order whether the claim was a valid claim or not nor did he reject the petitioner's claim. u/s 10(2)(m) of the Act read with Rule 22 of the Rules, before the section was amended and the rule was deleted, it is clear that the Custodian had a power to discharge the debt of the evacuee if such a debt was registered with him and was found to be genuine. By an Amending Act No. 91 of 1956. Section 10(2)(m) was amended by the Legislature and consequently Rule 22 was deleted, but even thereafter the position of a third party claim was not in any manner affected.

6. The vires of the Amending Act, whereby Section 10(2)(m) was amended, was challenged before the Supreme Court but the Supreme Court held that the power of the Custodian to pay the evacuee's debt is not affected because of the amendment of Clause (m) which specifically authorised the Custodian to pay debts of the evacuee and the consequential deletion of Rule 22 of the Rules framed under the Act by which a machinery was provided for exercising that power as this power still vests in the Custodian by virtue of the provision of Section 10(2)(m) read with Section 10(1) of the Act. (See Raja Bhanupratap Singh Vs. Assistant Custodian Evacuee Property U.P., Their Lordships of the Supreme Court in this connection observed as follows:

"The power to administer u/s 10(2) is not merely a power to manage on behalf of the evacuee so as to authorise the Custodian merely to recover and collect the assets of the evacuee, but to discharge his obligation as well. Having regard to the diverse clauses in Sub-section (2) the power to administer for purposes mentioned, includes the power to pay such debts which in the opinion of the custodian are binding upon the evacuee."

7. However, the Court was of opinion that the decree of a Civil Court was not decisive of the question whether a person making a claim was entitled to the money claimed by him. It was for the Custodian to determine whether the decree holder was entitled to get that money or not. In view of these findings of the Court, it was necessary for the custodian when the claim was laid before him to find out whether the decree passed against an evacuee did entitle the decree-holder to receive the decretal amount from the Custodian u/s 10(1) read with Section 10(2)(m) and (n). In the present case, the Custodian, after registering the petitioner's claim, did not pass order either way which shows that the Custodian by his conduct because he did not reject the claim, had accepted the claim of the petitioner, but he did not take care to discharge the obligations which devolved on him by virtue of being a Custodian of the property of an evacuee against whom a decree was obtained by the petitioner.

8. In 1954 the Displaced Persons (Compensation and Rehabilitation) Act, 1954,

came into force and by virtue of the order issued by the Ministry of Rehabilitation being S. R. O. 816 dated 6th of April, 1955. published in the Gazette of India Part II. Section 3 dated 16th April. 1955 all the properties declared to be evacuee properties were transferred to the Government of India and thereafter vested in the Central Government. The Assistant Regional Settlement Commissioner. Jaipur took shelter under this transfer of evacuee properties to the Central Government and finally wrote back to the petitioner (vide Annexure 14) that the sale proceeds of the evacuee's immovable properties form part of the compensation pool which under the provisions of the 1954 Act vested in the Central Government and, therefore, the Custodian had no jurisdiction to make payment out of the compensation pool to satisfy the petitioner's claim.

9. In *N.S. Gujral Vs. Custodian of Evacuee Property and Another*, this question arose whether after the evacuee properties got vested in the Central Government by virtue of notification u/s 12 of the 1954 Act any power was still left with the Custodian to discharge the claim of the third party registered with the Custodian. The Supreme Court was of opinion that the Custodian can pass an order u/s 10(2)(m) read with Section 10(1) of the 1950 Act to pay the third party claim out of the moneys lying with him on the date the properties vested in the Central Government under the notification u/s 12 of the 1954 Act. In view of the aforesaid finding of the Supreme Court, though it was recorded in different context, it can safely be held that if the Custodian has in his possession any amount, then by virtue of the provisions of Section 10(2)(m) read with Section 10(1) of 1950 Act he can pay the claim of the petitioner out of that fund provided he is satisfied that the claim of the petitioner is genuine.

10. The provisions of Section 10(2)(m) which specifically empowered the Custodian to discharge the debts of an evacuee have now been amended and consequently Rule 22 which laid down the procedure for discharging the debts has been deleted, but this amendment in a statute cannot affect the claim of the petitioner as the amendment is not retrospective and would not in any manner affect the claim that had been registered with the Custodian as far back as in the year 1951. Andhra Pradesh High Court in *Vadapalli Sattaiah Vs. Custodian, Evacuee Property, Govt. of A.P., Hyderabad*, held that the amendment of Section 10(2)(m) by Section 4 of the Administration of Evacuee Property (Amendment) Act (91 of 1956) and the consequent deletion of Rule 22 of the Administration of Evacuee Property (Central) Rule Section 1950 is not retrospective in operation. Hence where a third party claim for a decretal debt against an evacuee is registered with the custodian prior to the coming into force of the Amendment Act. the decree-holder's right to get the payment from the funds still lying with the Custodian is not in any manner impaired by the Amendment Act of 1956. The petitioner is, therefore, entitled to have his claim satisfied out of the funds, if any, lying with the Custodian even after the immovable properties of the evacuees were transferred to the Central Government under the provisions of the 1954 Act read with the notification issued thereunder by the Government of India.

11. It is true that no direction to pay off the debts of the petitioner can be issued to the Government of India from the compensation pool that vests in the Central Government, but as observed above the claim of the petitioner is not in any manner affected by enacting the 1954 Act and thereby transferring the immovable properties of the evacuees to the Central Government by issuing notification u/s 12 of the 1954 Act. The petitioner is still entitled to get Payment from the funds which are still lying with the Custodian as I find that only the immovable properties were transferred to the Central Government under notification issued u/s 12 of 1954 Act to constitute the compensation pool. In these circumstances the petitioner is entitled to the relief sought by him.

12. The writ petition is therefore, allowed, and a direction be issued to respondent No, 3 to pay the decretal debt of the petitioner out of the funds, if any still held by him as a Custodian. The petitioner shall get his costs from respondent No. 3.