

(1997) 09 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 11031 of 1989 and 29847 of 1995

Pestonji D. Baria and Others

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 10, 7(3)
Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 6, 6(1), 7
Companies Act, 1913 — Section 10A, 12, 8, 9
Constitution of India, 1950 — Article 226
Influx from Pakistan (Control) Act, 1949 — Section 10(1)

Citation : (1998) 1 ALD 38 : (1997) 6 ALT 381

Hon'ble Judges : N.Y. Hanumanthappa, J;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. Vilas Afzulpurkar and Mr. E. Ella Reddy, for the Appellant;
Government Pleader for Revenue and Mr. K. Ramakrishna Reddy, for the Respondent

Judgement

A.S. Bhate, J

1. This order disposes of all the three writ petitions viz., W.P.No.11031 of 1989; W.P.No.13353 of 1989 and W.P.No.29847 of 1995.

2. One Sivaram Parasrami Navani contended that he was allotted Ac.12-21 gts. of land in S.No.381 of Mancherial village, Rajendranagar mandal in Ranga Reddy district by the then Settlement Officer and Custodian of Evacuee Property, Bombay. This was under proceedings in R.C.No.Hyd/57/1786 dated 7-3-1969. The proceedings were marked to the Deputy Custodian-cum-District Collector, Hyderabad and the Managing Officer (Tahsildar, Hyderabad West Taluk) for effecting the delivery of the said vacant possession of the said allotted land to Sri Sivaram Parasrami Navani (for short "Navani"). The applications were made on behalf of Navani for handing over the vacant possession in pursuance of the aforesaid order. Ultimately Mr. Navani allegedly made a petition before the

Custodian and Secretary to Commissioner of Survey Settlement and Land Records, A.P., Hyderabad some time in September, 1988. The said authority by an order dated 27-2-1989 in C.S.R. and L.R's proceedings No.SEP 3/147/82 directed the Mandal Revenue Officer, Rajendranagar to hand over the possession of the vacant area of only Ac.8-01 gts. of land to the petitioner. One Sri P.D. Baria filed an objection petition not to deliver the possession of the land in S.No.381 of Sri Navani or his agent Tulj'a Singh as he (Mr. Baria) had purchased Ac.4-20 gts. from the said S.No.381 by a registered sale deed and that he was in actual possession of the said land for more than 30 years. The Custodian, A.P. Hyderabad and Secretary to the Commissioner of Survey Settlement and Land Records, A.P., Hyderabad heard the said objection. After making necessary enquiry the Custodian held that the objection made by Sri P.D. Baria that he was the owner of the land was a belated one and he should have approached the Regional Settlement Commissioner, Bombay in the year 1954 itself. However, the Custodian held that Mr. Baria being a sitting occupant since 1952 in the said land he was eligible for regularisation of the occupation by a negotiated market value and it was not fair to evict him from the said land. He further ordered that an amount of Rs. 10,000/- should be collected from the sitting occupant, Mr. Baria. for regularization of his occupation. Time of one month was granted for approaching the Mandal Revenue Officer, Rajendranagar to remit the negotiated market value.

3. Thus Sri Navani was not given the possession of Ac.4-20 gts. of land which was found to be in possession of Mr. Baria. This order was passed by the Custodian on 29-5-1989 in case No.SEP.3/147/82. -

4. Feeling aggrieved by the said order, Mr. Baria filed W.P.No.11031 of 1989. It was averred in the said writ petition that the land was purchased lawfully from the predecessors-in-title. The names of all the predecessors were stated in the writ petition. It was pointed out that all transactions were duly recorded in revenue records and the mutation in favour of Mr. Baria has been sanctioned in 1978 and "pattedar pass book" was issued in their favour. It was submitted that large investments were made by Mr. Baria and his family. Therefore, the impugned order was challenged as ex facie illegal. Mr. Baria was not only occupant but was also the owner of the property and the direction to pay the negotiated price was totally untenable. It was contended that in fact the proceedings initiated on behalf of Mr. Navani were untenable because Mr. Navani himself never appeared and it was only his General Power of Attorney, who was prosecuting the matter. The G.P.A. holder had in his turn given his power to Mr. Tulja Singh which is untenable in law. A person holding a delegated power cannot delegate his power further. It was also contended that the property was never declared as evacuee property as required by the provisions of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the "Act") and therefore, Mr. Navani was not entitled to any part of the said property. Mr. Baria was a bona fide purchaser of the property and he was not liable to pay any compensation and could not be dispossessed of the property possessed by him

as a owner.

5. W.P.No.13353 of 1989 was preferred by Mr. Sivaram Parasrami Navani (for short "Navani") through his Special Power of Attorney Holder Mr. Tulja Singh for challenging the same order. It was contended in the said writ petition that Mr. Navani was entitled to the whole of the land and the land having vested under the provisions of the Act in the Custodian it has a overriding effect. The order passed by the Custodian allotting whole of the land to Mr. Navani has become final. It was therefore prayed that the vacant possession of the whole area of Ac. 12-21 gts. from S.No.381 be given to Mr. Navani,

6. W.P.No.29847 of 1995 was filed by Mr. Sevaram Parasrami Navani (for short "Navani") through his alleged attorney H. Tulja Singh. This writ petition was filed because M/s. Control and Schematics Private Limited which is Respondent No.3 in this writ petition challenged the order dated 27-2-1989 in SEP3/147/82 by a revision before Respondent No.1 i.e., the Commissioner of Survey and Settlement-cum-Land Records, Deputy Custodian, Hyderabad. Respondent No. 1 in the said revision cancelled the original allotment dated 17-3-1969 passed, in favour of Mr. Navani, by the Settlement Officer and Custodian of Evacuee Property, Bombay. The said order was passed in case No.SEP3/249/89 dated 21-12-1994 and was communicated to the petitioner in this writ petition (Mr. Navani's G.P.A.). This communication was dated 20-2-1995. That order is now challenged.

7. The RespondentNo.3 i.e., M/s. Control and Schematics Private Limited, contends in this writ petition that petition on behalf of Mr. Navani was not tenable because it has been filed by a person, who was not competent to file the same. It is alleged that the petitioner i.e., Mr. Navani is a non-existing person and his whereabouts are not known. The petitioner Mr. Navani died long back and therefore, there cannot be any representation on behalf of a dead person. Mr. Tulja Singh in fact does not hold any power of attorney. No original power of attorney was ever produced. It was contended that Respondent No. 3 had purchased Ac.6-00 of land from S.No.381 of Mancherial village. It was originally registered in the name of Samishta Switchgear (Private) Limited and subsequently the name was changed to the present one. As the respondent was in effective possession of the land and as he had developed the said land after purchase from Smt. M. Vijaya Laxmi, Respondent No.3 could not be dispossessed. It was pointed out that purchase by Respondent No.3 was after obtaining necessary permission under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. It was again pointed out that the alleged allotment order was passed in favour of Mr. Navani in 1969, and Mr. Tulja Singh was never able to produce the same. This property was never declared, as required by the provisions of the Act, as an Evacuee Property. This being the true position, no allotment of the said land could be done by the Custodian in favour of Mr. Navani or any one else. Several other factual points were also raised.

8. We have heard the learned Counsel in all these writ petitions at length. Before

we consider the points raised it would be necessary and proper to refer to Sections 6 and 7, of the Act. They are as follows ;

"Section 6(1) The Central Government may, by notification in the Official Gazette, appoint for any State a Custodian and as many Additional Deputy or Assistant Custodians of Evacuee Property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under this Act, and the same person may be appointed as the Custodian, or as the case may be, Additional Deputy or Assistant Custodian of Evacuee Property for two or more States.

(2) Subject to the provisions of this Act, all Custodians, Additional Deputy or Assistant Custodians of Evacuee Property shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian-General.

(3) Subject to the provisions of sub-section (2), Additional Deputy and Assistant Custodians shall discharge the duties imposed on them by or under this Act under the general superintendence and control of the Custodian for the State, but the Central Government may, by general or special order, provide for the distribution of work among them

Provided that nothing in this sub-section shall be deemed to empower the Custodian to question any order made by an Additional Deputy or Assistant Custodian in respect of any matter which the Assistant, Deputy or Assistant Custodian is empowered by or under this Act to determine.

Section 7(1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

) Where during the pendency of any proceeding under sub-section (1) for declaring any property to be evacuee property, any person interested in the property dies, the proceeding shall, unless the Custodian otherwise directs, be continued and disposed of as if such person were alive.

(2) Where a notice has been issued under sub-section (1) in respect of any property, such property, shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(3) The Custodian shall, from time to time, notify, either by publication in the Official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1).

(7A) Notwithstanding anything contained in this Act, no property shall be

declared to be evacuee property on or after the 7th day of May, 1954:

Provided that nothing contained in this section shall apply to

(a) any property in respect of which proceedings are pending on the 7th day of May, 1954, for declaring such property to be evacuee property; and

(b) the property of any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident in Pakistan:

Provided further that no notice u/s 7 for declaring any property to be evacuee property with reference to clause (b) of the preceding proviso shall be issued after the expiry of six months from the commencement of the Administration of Evacuee Property (Amendment) Act, 1954.

Explanation I ;--A person shall be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of clause (b) of the first proviso, if he was ordinarily residing in Pakistan before that date, notwithstanding that he was temporarily absent from Pakistan on that date.

Explanation II :--A person who had left India for Pakistan before the 7th day of May, 1954, on the authority of a passport or any other valid travel document issued by any competent authority in India, and who was temporarily residing in Pakistan on that date, shall not be deemed to have been resident in Pakistan on that date within the meaning of clause (b) of the first proviso.

Explanation III:--A person who had left Pakistan for India on or after the 18th day of July, 1948, and who was in India on the 7th day of May, 1954, shall, unless he came to India under a valid permit for permanent return or for permanent resettlement, issued under the influx from Pakistan (Control) Act, 1949 (XXIII of 1949), be deemed to have been resident in Pakistan on the 7th day of May, 1954, within the meaning of clause (b) of the first proviso.

From these provisions it is clear that the Custodian has to hold an enquiry in the matter of any evacuee property and this enquiry has to be made after causing notice as prescribed under the Act. Section 7(3) requires that the Custodian has to notify either by publication in the Official Gazette or, in any other manner prescribed by the Act all the properties declared by him to be Evacuee properties under sub-section (1). Therefore, unless such notification either by publication in the Official Gazette or in any other manner prescribed by the Act is done, the property does not become evacuee property. It is only after such notification is made that the property so declared is deemed to have vested in the Custodian for and on behalf of the State.

Section 10 of the Act runs as follows :

"Section 10(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 purpose 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, -

(a) carry on the business of the evacuee;

(b) appoint a manager for the property of the evacuee or for carrying on business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section;

(c) enter, or authorise any other person to enter, any land or premises to inspect any evacuee property;

(d) take all such measures as may be necessary to keep any evacuee property in good repair;

(e) complete any building which was vested in him and which requires to be completed;

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... ..

... ..

(i) take such action as may be necessary for the recovery of any debt due to the evacuee;

(j) institute, defend or continue any legal proceeding in any Civil or revenue Court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee;

... ..

(I) in any case where the evacuee property which has vested in the Custodian consists of a share or shares in a company, exercise, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913) or in the Articles of Association of the company, the same rights in the matter of making a requisition for the convening of a meeting or of presenting a petition to the Court under the provisions of the Indian Companies Act, 1913 (VII of 1913) or the Articles of Association of the company or in any other matter as the evacuee shareholder himself could have done had he been present although the name of the Custodian does not appear in the register of members of the company.

(II) in any case where the evacuee property which has vested in the Custodian consists of fifty-one per cent or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (VII of 1913), or in the Articles of Association of the company:

Provided that the Custodian shall not take charge of such management of the company except with the previous approval of the Central Government;

(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;

(p) acquire any non-evacuee interest in evacuee property, whether by way of purchase or otherwise:

Provided that no such acquisition shall be made except with the previous approval of the Custodian General.

(1) delegate, by general or special order, all or any of his functions under this Act to such officers or persons as he thinks fit;

Section 10A. (1) Where any person is in arrears of rent in respect of any evacuee property vested in the Custodian, the Custodian may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is deemed to be holding any evacuee property on behalf of the Custodian under sub-section (4) of Section 8, the Custodian may, having regard to such principles of assessment of rent as may be prescribed, by order, assess the rent payable in respect of such property, and that person shall be liable to pay the rent so assessed.

(3) Where any person is, or has at any time been, in unauthorised possession of any evacuee property vested in the Custodian, the Custodian may, having regard to such principles of assessment of damages as may be prescribed, assess the

damages on account of the use and occupation of such property, and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(4) Where any person being in possession of any evacuee property vested in the Custodian has caused damage to any such property, the Custodian may assess the compensation payable on account of the damages so caused and may, by order, require that person to pay the compensation within such time and in such instalments as may be specified in the order.

(5) No order shall be made under sub-section (2) a sub-section (3) or sub-section (4), until after the issue of a notice in writing to the person concerned calling upon him to show cause within such time as may be specified in the notice why such order should not be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Custodian.

Clause (o) of Section 10 states that the Custodian can transfer in any manner whatsoever any evacuee property.

Section 12 of the Act runs as follows :

"Section 12(1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may" cancel any allotment or terminate any lease, or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person (whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act) :

Provided that in the case of any lease granted before the 14th day of August, 1947, the Custodian shall not exercise any of the powers conferred upon him under this subsection unless he is satisfied that the lessee-

(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(b) has used or is using such property for a purpose other than that for which it was leased to him; (or)

(c) has failed to pay rent in accordance with the terms of the lease;

Explanation ."--In this sub-section, "lease" includes a lease granted by the Custodian and "agreement" includes an agreement entered into by the Custodian.

(2) where by reason of any action taken under sub-section (1), any person has ceased to be entitled to possession of any evacuee property, he shall, on demand by the Custodian, surrender possession of such property to the Custodian or to any person duly authorised by him in this behalf.

(3) If any person fails to surrender possession of any property on demand under sub-section (2), the Custodian may, notwithstanding anything to the contrary

contained in any other law for the time being in force, eject such person and take possession of such property in the manner provided in Section 9.

12A (1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property; and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian, is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order, he shall stand absolved of all responsibilities with respect to the property or the lease granted by him.

(2) On the making of any such declaration as is referred to in sub-section (1),-

(a) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until it is determined by lapse of time or by operation of law;

(b) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (1) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has no effect.

(3) Nothing contained in this section shall-

(a) be deemed to empower the CUSTODIAN to grant, without the consent in writing of the original lessor or his successor. in-interest--

(i) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; or

(ii) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure, different from that of the original lease;

(b) render the Custodian liable to any sum in excess of the sum payable to the lessor under clause (b) of sub-section (2); or

(c) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian.

It is under this provision that the Custodian has power to vary or cancel any allotment of evacuee property.

9. It will thus be seen that the property has first to be notified according to the provisions of the Act as the evacuee property and then only the Custodian gets jurisdiction to allot the same. In the instant case it has been found by the Commissioner of Survey, Settlements and Land Records in proceedings in SEP3/249/89 dated 21-12-1994 as there was no notification declaring the

property as evacuee property. Even at the time of hearing of this writ petition there was no record to show that the property was declared as evacuee property at any time. Nobody on behalf of Mr. Navani has produced copy of any such notification or any Sanath in original or authorised certified copy of it. In absence of the property having been notified as an evacuee property in fact Mr. Navani himself was not entitled to the allotment of the said property. The order passed in favour of Mr. Navani was thus patently unsustainable. Therefore, this is the basic question of fact that the property was never notified as an evacuee property. The claim of Mr. Navani is therefore not sustainable in law.

10. Further more, the second point raised to challenge the, claim of Mr. Navani is also substantial Mr. Navani has never appeared in person. This is inspite of the fact that a specific stand is taken that Mr. Navani is not alive and is not a person existing. Mr. Navani, who claims to have obtained an order of allotment has not given any General Power of Attorney in favour of Mr. Tulja Singh, who is prosecuting all these proceedings. Mr. Tulja Singh, says that Mr. Navani had given G.P. A. to one Mr. Gurubux Parasrami Navani and the said Gurubux Parasrami Navani has executed a power of attorney in favour of Mr. Tulja Singh, A person, who has been delegated power by the Principal cannot delegate his power on behalf of the principal to any other person. Moreover, Mr. Tulja Singh has not produced any power of attorney, in original, though it was disputed. This is inspite of the fact that in the revision i.e., SEP3/147/82 Mr. Tulja Singh was directed to produce Mr. Sivaram Parasrami Navani and, the original" power of attorney. This was not complied with. It is thus clear that the proceedings initiated on behalf of Mr. Sivaram Parasrami Navani are themselves initiated by a person without having any lawful authority. He has therefore, no locus standi.

11. In the result we are of the view that the writ petitions filed on behalf of Mr. Sivaram Parasrami Navani must fail and the writ petition filed by Mr. Baria deserves to be allowed. It is thus directed that W.P.NO. 13353 of 1989 and W.P.No.29847 of 1995 are both dismissed. W.P.No.11031 of 1989 is allowed and it is directed that it is not necessary for Mr. Baria, the petitioner or his successors to pay any amount in respect of Ac.4-20 gts. of land from S.No.381 of Mancherial village, Rajendranagar mandal in Ranga Reddy district and they are entitled to continue in possession in their own right. If any amount is paid the same shall be refunded to them.

12. The writ petitions are accordingly disposed of. No order as to costs.