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**(2006) 09 AHC CK 0206**  
**In the Allahabad High Court**

Ram Dabar and Ram Avadh

APPELLANT

Vs

The Deputy Director, Consolidation and Others

RESPONDENT

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**Date of Decision :** 05-09-2006

**Acts Referred:**

Administration of Evacuee Property Act, 1950 — Section 10, 18, 7

**Citation :** (2007) 2 AWC 1156 : (2006) 2 RD 640

**Hon'ble Judges :** Poonam Srivastava, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Poonam Srivastava, J.—Heard Sri Namwar Singh, learned Counsel for the petitioners and Sri Bajrangi Misra, learned Counsel appearing for the contesting respondent Nos. 5/1 to 5/4.

2. The dispute relates to plot Nos. 169 and 170 of "Khata No. 22-Aa and also plot no, 63 of Khata No. 22-Ba of village Noorpur Mahul, Tehsil Phulpur, District Azamgarh. Certain relevant facts pointed out by the counsel for the petitioners is that disputed plots belonged to one Ahmad Hassan and Achhaibar. Ahmad Hassan was a tenant of the Sir, who is said to have migrated to Pakistan. Consequent to his migration, his property was declared as evacuee property. One Moinuddin purchased plots from the custodian under the sale certificate dated 23.2.1960, which is brought on record along with " supplementary rejoinder affidavit. Subsequently Moin Uddin aforesaid executed a sale deed of plot Nos. 169 and 170 in favour of Mahboob respondent No. 5 vide sale deed dated 9.4.1962 and also transferred plot No. 63 in favour of his wife Smt. Habisulnisha respondent No. 4 by means of the sale deed dated 31.8.1971. It is submitted on behalf of the petitioners that they were not aware about the revenue entries on the basis of sale deed, they continued in undisturbed possession all through. Another fact pointed out by the counsel for the petitioners is that Moinuddin instituted a suit no, 990 of 1961 under Sections 229-B, 209 U.P. Z.A. and L.R. Act against father of the petitioners Achhaibar claiming Bhomdhari rights of plot

Nos. 96, 352 Aa, 352 Ba as well as plot Nos. 169, 170 and 63, which are plots in dispute. The pleadings in the aforesaid suit was to the effect that after migration of Ahmad Hassan, Sir land became Bhoomdhari after enforcement of U.P. Act No. 1 of 1950. The plaintiff Moinuddin also claimed to be Bhoomdhar on the basis of sale certificate issued by the custodian in his favour. This suit was decided in terms of compromise. Claim of Moinuddin was upheld in respect of plot Nos. 96, 352 Aa and 352 Ba meaning thereby the compromise was not in respect of disputed plot.

3. When the village was notified under the provisions of Consolidation and Holdings Act (hereinafter referred to as the Act), plot No. 63 was recorded in the name of respondent No. 4 and plot Nos. 169 and 170 in favour of the respondent No. 5 as Bhoomidar. Two objections were preferred u/s 9 A (2) by the petitioners in respect of plots Nos. 169, 170 and 63 challenging the entries in favour of the respondent Nos. 4 and 5. It was contended on behalf of the petitioners that the plots stood recorded in the name of their father in 1359 Fasli. The Consolidation Officer vide order dated 22.9.1978 allowed objections of the petitioners and directed the name of the respondent Nos. 4 and 5 be expunged. Two appeals were filed against the order of Consolidation Officer, one by the respondent No. 4 and other by respondent No. 5. Both the appeals were decided by the common order dated 24.10. 1979. The order of Consolidation Officer was set aside and the entries in favour of respondent Nos. 4 and 5 were restored. The petitioners filed two revisions u/s 48 of the Act, which were dismissed on 18.4.1981. The order of the S.O.C. and D.D.C. are impugned in the instant writ petition.

4. Submission on behalf of the petitioners are manifolds. Sri Namwar Singh, Advocate, has emphasized that since there was no proper declaration u/s 7 of Administration of Evacuee Property Act and, therefore, until the property is published in the official gazette u/s 7(3), the disputed plots could not be held to be an evacuee property. Consequently, the custodian could not have any right whatsoever. Consequent sale deed by the custodian in favour of Moinuddin aforesaid should be treated as naught. The declaration could only be made after giving notice, which admittedly was not done in the instant case. The petitioners filed extract of list of evacuee property maintained by the custodian. It has been pointed out that the disputed plots are conspicuously absent in the said list. Reliance has been placed on a number of decisions, *Dr. Rajendra Prakash Sharma v. Gyan Chandra and Ors.* : [1980]3SCR207 , *Dr. Zafar Ali Shah and Others Vs. The Assistant Custodian of Evacuee Property, Jhansi and Others*, On the basis of aforesaid decisions, it is argued that the disputed plots were admittedly Sir pots of Ahmad Hassan, who was a proprietor intermediary. On the advent of Section 4 of U.P. Act No. 1 of 1950, the entire rights, title and interest of Zamindar vested in the State of U.P. It is emphasized by the counsel that even though it is concluded that after migration of Ahmad Hassan, the property came within domain of the custodian, the custodian held the property on behalf of the intermediary but on the date of vesting the property vested in the State. In the circumstances, the custodian had no right whatsoever to execute sale deed in

the year 1962.

5. Second submission on behalf of the petitioners is that the alleged sale certificate executed by the custodian cannot be given any weight-age for want of previous approval of Custodian General under the proviso of Section 10(2)(o) of Evacuee Property Act. Besides, there is no reference that the said sale deed was registered under Indian Registration Act or was granted any exemption from Registration. In the circumstances, no right or title could pass in favour of the respondent Nos. 4 and 5 for want of registration and the said sale deed could not be acted upon as it was a document, which was void and ab-initio. No objection could be raised by the petitioners before the S.O.C. regarding rights of custodian on both courts, either the property being evacuee property or possession of the said property on the advent of U.P. Z.A. and L.R. Act, since the Consolidation Officer allowed objections of the petitioners and appeal was preferred by the contesting respondents. In support of aforesaid contentions, learned Counsel for the petitioners has placed reliance on the decisions of the Apex Court *Chunni Lal and Ors. v. Chief Settlement Commissioner and Ors.* 1970 A.W.R. 191 *Sardhana Cooperative Farming Society v. Custodian General, Evacuee Property Mussoorie, U.P. and Ors.*

6. Third submission on behalf of the petitioners is that certified copy of the register of Evacuee Property maintained by the custodian was brought on record, which was not considered by the consolidation authorities while rejecting the objections of the petitioners in appeal and revision. Compliance of the procedure of law as provided u/s 7 of Evacuee Property Act was not made and also that Sir land could not be sold by the custodian in the manner, which has been done in the instant case. No notice or opportunity was afforded to the petitioners before the property was declared evacuee property. Admittedly, Ahmad Hassan is said to have migrated to Pakistan, whereas Achhaiber father of the petitioners still continued to live in the country. The suit filed by Moinuddin ended into compromise only with a view to get a declaration of the illegal entries before the custodian. Schedule 5 of U.P. Z.A. and L.R. Act will not apply because property was never declared evacuee property (hereinafter referred to as the property). Therefore, the custodian had no dominion over the property on the advent of the Act No. 1 of 1950. The consolidation authorities came to a conclusion that it was nobody's case that the petitioners had not complied with the requirement of law and there was no pleading to the effect. Therefore, it was burden of the petitioners to have established. Two consolidation authorities completely lost sight of the fact that the petitioners were in continuous possession over the disputed land. Learned Counsel for the respondents had emphatically disputed arguments advanced on behalf of the petitioners. Since father of the petitioners neither filed any objection under the Evacuee Property Act nor any proceedings u/s 26 Schedule 5 of U.P. Z.A. and L.R. Act, therefore, declaration of the plots as evacuee property became final and rights of the petitioners stood extinguished. The compromise was never challenged at any stage. State of U.P. and Gaon Sabha was also party in the suit initiated by Moinuddin but neither State Nor

Gaon Sabha raised any objection. Achhaiber father of the petitioners filed two written statements and, therefore, claim of the petitioners was rightly rejected by the S.O.C. and D.D.C. Both the authorities have recorded categorical finding that the plots in dispute belonged to Ahmad Hassan, who migrated to Pakistan, therefore, orders of the Deputy Director of Consolidation and S.O.C. are just legal and cannot be set aside in writ jurisdiction. The rights of the petitioners have extinguished after the disputed land came under the dominion of custodian and Ahmad Hassan migrated to Pakistan.

7. After hearing learned Counsels for the respective parties and giving careful consideration to the document brought on record. It is evident that the consolidation authorities proceeded on an assumption that the plots in dispute were admittedly evacuee property. In view of what has been held by a Division Bench of this Court, provisions of Section 3 Schedule 5 of U.P. Z.A. and L.R. Act and Section 18(2) of Administration of Evacuee Property Act, I am of the considered opinion that they cannot be read in isolation. Provisions will apply to a property, which continued to be evacuee property even after the Act No. 1 of 1950 coming into force. Both the provisions should be read in harmony. Once U.P. Z.A. and L.R. Act is made applicable to the property, which was previously held by the custodian, there is nothing in the provisions of Schedule 5 of the Act, which could lead to a conclusion that the control of custodian was retained in respect of said land after the date of vesting. Admittedly, land was Sir land and once U.P. Z.A. and L.R. Act is enacted and is made applicable to the plots, the custodian was left with no right, the propriety rights of evacuee vested in the State. The custodian loses all the interest so far as Zamindari land is concerned. In this view of the matter, submission made by the counsel for the petitioners is absolutely right that since custodian had no control over the property, sale deed executed in favour of Moinuddin cannot be given effect to. The S.O.C. and D.D.C. have completely overlooked this aspect of the matter while allowing the appeal and revision in favour of the contesting respondents.

8. Learned Counsel for the respondents has cited a decision of the Apex Court Assistant Custodian E.P. and Ors. v. Brij Kishore Agarwala and Ors. : [1975]2SCR359 . On the basis of aforesaid decision, he submits that an evacuee property automatically vests in the custodian u/s 5. Notification u/s 6 of the U.P. Ordinance is not necessary, it only enables the custodian to notify the property, which has already vested in him.

9. So far as the question regarding notification of the property as evacuee property or necessary notice to the interested party is concerned that need not be gone into for the reasons that there is no dispute about the fact that land was Sir land and once Z.A. and L.R. Act came into force, the custodian lost all effective controls over the such property. After the date of vesting, he could only claim a compensation as provided u/s 4 (1) of Schedule 5 of U.P. Z.A. and L.R. Act. Provisions of Schedule 5 of the Act will definitely have precedence and, therefore, I hold that the orders of S.O.C. and D.D.C. suffer from this material

illegality that they have failed to consider the objections in this light. So far as question of vesting of property of displaced person and its declaration as an evacuee property under the Act is concerned, it is not very relevant for the merits of the present case. Assuming that it is a case of automatic vesting in the custodian even then since the land was an agricultural land and, therefore, on enactment of U.P. Act No. 1 of 1950, the possession of the custodian stood materially altered and the property vests in the State. The sale deed was executed in the year 1962 and 1971, it was much after the U.P. Z.A. and L.R. Act was made applicable to the property in question, therefore, I come to a conclusion that the sale deed executed by the custodian was without authority. This question has not been decided by the consolidation authorities. I am of the opinion that it requires reconsideration. The matter is remanded to the S.O.C. to decide the question regarding validity of the sale deed and consequent rights of the parties in respect of the disputed plots.

10. For the reasons discussed above, the orders impugned in the instant writ petition are quashed. The writ petition is allowed. The matter is remanded to the S.O.C. for a fresh decision. It is made clear that the matter is pending since long time, the S.O.C. shall make every endeavour to decide the appeal expeditiously, preferably within a period of four months from the date a certified copy of this order is produced before him.