

(1970) 12 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1203 of 1968

Ram Kripal Singh and Others

APPELLANT

Vs

The Assistant Custodian General, Evacuee Property and Others

RESPONDENT

Date of Decision : 16-12-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31
Evacuee Interest (Separation) Act, 1951 — Section 27, 9(2)

Citation : AIR 1972 Patna 38

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : Lal Narain Sinha, S. Akbar Hussain, Imam H. Asharaf and Muzaffar Hussain, for the Appellant; Basudeo Prasad, Nawal Kishore Prasad Sinha and H.A. Muzaffar, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiyaji, J.—The question, which falls for determination in this writ application, is whether the provisions of Section 9 (2) of the Evacuee Interest (Separation) Act, 1951 (Act LXIV of 1951), (hereinafter referred to as "the Separation Act"), in so far as they extinguish the mortgagee's right of the petitioners are ultra vires of the Constitution.

2. The facts of the case are simple. Most. Bibi Shakila, resident of village Karaipersarai in the sub-division of Biharsharif was declared evacuee on the 5th March, 1952 by the Assistant Custodian. Biharsharif. in Evacuee Case No. 315 B/7 of 1949-50. Lands of plot Nos. 5364, 5399, 5306 and 5307 originally belonged to the above named evacuee. The plots are situated in village Fazal Chak Musna in Mahal, Yahyapur, Police Station Poonpooon, district Patna. Bibi Shakila had mortgaged 8 bighas of bakasht land comprised in plots 5399, 5306, 5307 and 5270 for Rs. 8,000/- by a registered deed dated the 7th January, 1945 and 5.79 acres by another deed of the same date in respect of plot No. 5364 for

Rupees 9,000/- to one Bhagwandas. On the 25th June, 1951 and 21st January, 1950, the above named mortgagee transferred his mortgage right in portion of the lands mortgaged to him for Rs. 8,000/- to the petitioners 3 and 4 and by means of two registered deeds for sums of Rs. 3,000/- and Rs. 9,000/- to petitioners 1 and 2 and the petitioners came in possession as mortgagees. The properties belonging to Bibi Shakila were declared evacuee properties on the 18th May, 1952. The petitioners on the 18th September, 1952, filed a petition before the Deputy Custodian for confirmation of the mortgage of 1.89 and 5.79 acres of land taken in mortgage for Rs. 3,000/- and Rupees 9,000/- respectively. The Assistant Custodian by his order dated the 25th August, 1956 rejected the application for confirmation. The Assistant Custodian took the view that the mortgage was created in the year 1945 and, as such, it did not require confirmation, as the mortgage right appeared to have been extinguished in accordance with Section 9(2) of the Separation Act.

3. The petitioners filed an appeal against the order passed by the Assistant Custodian. The Custodian of the Evacuee Property, Bihar, in Revision Cases Nos. 210 and 211 of 1954, declared the lands as evacuee properties subject to the subsisting mortgages. He further ordered that the mortgages should be referred to the competent officer according to the provisions for decision whether the mortgage right had actually been extinguished or not and whether the lands could be taken possession of without paying the mortgage debts. It appears that the mortgaged properties were included in the auction without waiting for the decision by the competent officer. The Assistant Custodian, Patna, acting as the Managing Officer of the acquired evacuee properties by his order dated the 4th March, 1966 rejected the bid on the ground that the properties had not been declared evacuee properties, and, therefore, the sale was not maintainable. A copy of the order is Annexure 2 to this writ application. The petitioners then filed an application before the Assistant Settlement Commissioner for transfer of plots Nos. 5364, 5399, 5306 and 5307 at reserved Jama fixed by the Department and payment of rent for the period after the expiry of the term of the mortgage deed executed by the evacuee in favour of Shri Bhagwandas in the year 1945. The Asstt. Settlement Commr. recommended to the Managing Officer for transfer of the plots to the petitioners. A copy of the letter is Annexure 3 to the writ application. At the same time in Appeal No. RI-82 of 1966 filed by one Pahalwan Singh, he directed the Department's Counsel to file suo motu revision against the order dated the 4th March, 1966, passed by the Assistant Custodian, Patna.

4. The department moved the Assistant Custodian General for suo motu revision of the order passed by the Assistant Custodian, Patna on the 4th March, 1966, concerning 10.61 acres of land of plots Nos. 5364, 5399, 5306 and 5307. The Assistant Custodian General in suo motu Revision No. 150 of 1967 held that the Assistant Custodian had no jurisdiction to release the property from sale holding that it was composite. He further held that in view of the fact that the mortgage was created in the year 1945. It elapsed in the year 1965 when the mortgagees had been in possession for over twenty years. On the expiry of twenty years, the

mortgage right was extinguished and the property vested in the Custodian. The Assistant Custodian General set aside the order passed by the Assistant Custodian and directed him to resume possession of the properties and consider whether the sale already effected should be maintained. The present writ application has been filed under Articles 226 and 227 of the Constitution to quash the order of the Assistant Custodian General.

5. Cause has been shown on behalf of the respondents who have appeared after service of notice. In the show cause petition, it is stated that the mortgage deed executed by Bibi Shakila was a usufructuary mortgage, and, in 1965 it was extinguished and the property vested in the custodian free of encumbrance, and the order passed by the Assistant Custodian General was legal and with jurisdiction.

6. The learned Advocate General, appearing on behalf of the petitioners, raised two contentions; firstly, that the provisions of Section 9 (2) of the Separation Act contravene Articles 14, 19(1)(f) and 31(1) and 31(2) of the Constitution and, therefore, they are void, and secondly, that the Assistant Custodian General had no jurisdiction to exercise his suo moto revisional powers.

7. For the decision of this case, we have to take into consideration that in 1947 due to the partition of India, a terrible communal frenzy flared up in the wake of that partition, and, many Muslims left for Pakistan or other places outside the territories now forming India. For the proper management of the properties left behind by the evacuees, Administration of Evacuee Property Ordinance was, promulgated. Thereafter, the Administration of Evacuee Property Act, 1950 (Act 31 of 1950), (hereinafter referred to as "the Evacuee Property Act"), was passed by the Parliament. In the administration of the evacuee properties, some of them were found to be intermixed with non-evacuee interest. Therefore, it became difficult to determine the exact property or value thereof which vested in the Custodian. In order to remove this difficulty, the Parliament passed another legislation, namely, the Separation Act, to enable separation of such properties or settlement of claims of non-" evacuees. In 1954, the Displaced Persons (Compensation and Rehabilitation) Act. 1954 (Act XLIV of 1954), hereinafter referred to as "the Displaced Persons Act", was passed, with the object to facilitate the rehabilitation of displaced persons. The_ Act provides for the appointment of a Chief Settlement Commissioner, Settlement Commissioners and Settlement Officers to determine and pay amount of compensation and rehabilitation grant to persons having verified claims. The Act further provides for management of the evacuee properties by Managing Officers and Managing Corporations and for setting up a Displaced Persons" Welfare Corporation. Similar other enactments were also made by the Parliament, but in this case we are not concerned with them.

8. Section 9 of the Separation Act deals with usufructuary mortgages in possession irrespective of whether the mortgagee is an original mortgagee or a transferee from him. It may be useful for appreciation of the point raised to

reproduce Section 9 (2) of the Separation Act together with the marginal heading :

"9. Certain reliefs in respect of mortgaged property of evacuees.

XX XX XX XX (2) Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of that period."

9. The Separation Act as such has not been challenged as ultra vires of the Constitution by the petitioners. The attack is confined to the vires of Section 9 (2) of the Act alone.

10. After declaration of the evacuee property, the equity of redemption vests in the custodian by virtue of the operation of Section 8 of the Evacuee Property Act. The interest of the mortgagee in possession is evidently immovable property. Because of the admixture of the interest of the evacuee mortgagors and the rights of the non-evacuee mortgagees in one and the same property, the mortgaged lands constitute "composite property" as the term is defined in Clause (d) of Section 2 of the aforesaid Act. Composite properties presented complex problems not easy of solution with the help of the provisions of the Evacuee Property Act because of the intervening of evacuee and non-evacuee interests. In order to solve that problem, it was deemed expedient by the Parliament to make special provisions for the separation of the interests of evacuees from those of other persons in composite properties and for matters connected therewith. The object of the Act, apparently, therefore, was that not only the separation of the interest of the evacuee from those of the non-evacuees but also to deal with other matters that were closely connected with the separation of those interests.

Section 9 of the Separation Act formulates a practical method of separating and assessing the two interests in composite property by doing which it becomes possible to make evacuee interest available for a pool, which might be used for the implementation of an appropriate compensation scheme for the benefit of the displaced persons, and similar other legislations. The question whether the Administration of Evacuee Property Act violated the provisions of Articles 14, 19(1)(f) and 31(1) and (2) of the Constitution came up before this High Court for consideration in S.M. Zaki Vs. The State of Bihar and Others, . It was held that the Act, although in certain cases it may work some hardship cannot be said to be an unreasonable legislation placing undue fetters upon the right to manage

and hold property. Some of the other High Courts and the Supreme Court also have held that the Act does not do so.

11. The ground on which *S.M. Zaki Vs. The State of Bihar and Others*, has been decided applies equally to the impugned provisions of Section 9 (2) of the Separation Act. Section 9 of the Separation Act only provides the manner in which the unencumbered extent of the evacuee interest can be precisely known and thus taken out of the conception of composite property. The provisions of this section are in accord with the intention of the Act.

12. It has been urged on behalf of the petitioners that Section 9 (2) of the Separation Act is repugnant to the provisions of Article 14 of the Constitution, because it does not address itself to the question of interest earned by individual mortgagees. It wipes out every mortgagee who had been in possession of the mortgaged property for twenty years or over without considering whether an individual mortgagee had earned within that period the amount sufficient to cover the principal amount and the interest thereon. The learned Advocate General emphatically suggested that the provisions of Section 9 (2) must be related to different circumstances. He urged that Section 9 (2) was based on no reasonable classification and so it violated Article 14 of the Constitution. The contention of the learned Advocate General seems to be attractive; but, on analysis, it becomes apparent that it has no merit. Article 14 of the Constitution ensures "equality before the law" or "equal protection of laws", but it cannot be pushed to the extent that they prescribe complete prohibition of legislation which is not general in character or universal in application, or to include an unqualified forbidding direction that the State will in no case have the power to classify persons or things even though the necessity of making law for a section of the subjects or things may in their interest be imperative. The fundamental guarantee of Article 14 of the Constitution should not be construed in such a manner as to make legislation impossible for all practical purposes. Section 9 (2) of the Separation Act wipes out all the mortgagees in possession after twenty years. The classification cannot be said to be arbitrary, rather it is based on an intelligible principle having a reasonable relation to the object which the legislature seeks to attain. If the classification on which the legislation is founded fulfils this requirement, then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the legislation cannot be regarded as a denial of the equal protection of the law, for, if the legislation were all embracing in its scope, no question could arise of classification being based on intelligible differentia having a reasonable relation to the legislative classification which should be scientifically perfect or logically complete. The view which I have taken is based on the pronouncement on the subject in *Kedar Nath Bajoria Vs. The State of West Bengal*, .

13. Now, Sub-section (2) of Section 9 of the Separation Act only prescribes a uniform method of extinction of a mortgagee who has taken possession on any

terms whatsoever of any agricultural land and is entitled to receive profits accruing from the lands and to appropriate the same on the expiry of the period mentioned in the mortgage deed or twenty years whichever is less from the date of the execution of the mortgage deed. It is based on the assumption that the mortgagee had fully realised his principal amount with interest from the mortgage property over which he had possession for a period of twenty years. In my opinion, there is no want of reasonable classification, nor it is the acquisition of the property which can be said to be hit by Article 14 or Article 31 of the Constitution.

14. In *Sampuran Singh v. Competent Officer* AIR 1955 Pep 148 it has been held that the Separation Act does not create any distinction among members of the group of evacuee mortgagors or discrimination among members of the group of non-evacuee mortgagees; and, that read as a whole, Section 9 exhibits the relation of the object of the Act with the classification made; and, further that classification of evacuee mortgagors or non-evacuee mortgagees into distinct groups has, regard being had to the object of the Legislature, to be held to have a reasonable basis.

15. The Displaced Persons Act makes some incidental provisions regarding revision of orders already passed or which may be passed under the Act. This Act was passed on the expiry of the Displaced Persons (Claims) Act, 1950. The main object of the Displaced Persons Act was to complete the work started under the above Act. The result of the above consideration is that on partition in 19-17 several Acts were passed by the Parliament to meet the exigencies of the situation. They are special legislations dealing with taking possession of the evacuee properties and their management including all ancillary questions of taking possession of such evacuee properties.

16. Section 9 (2) of the Separation Act cannot be said to be violative of Article 19. The provisions of the section make no discrimination between one person and another in the group, and each one of them is treated alike under similar circumstances and conditions. All properties are subject to reasonable regulation by the State. The restrictions, therefore, imposed by the legislature, as I have shown above, are reasonable and in the interest of public,

17. Reliance was placed by the learned Advocate General on three decisions of the Supreme Court. In *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, the validity of the provisions of the Payment of Bonus Act, 1965, were challenged. According to the Supreme Court, Section 34 imposes a special liability to pay bonus determined on the gross profits of the base year on an assumption that the ratio, which determines the allocable surplus, is the normal ratio not affected by any special circumstances and perpetuates for the duration of the Act that ratio for determining the minimum allocable surplus each year. The Supreme Court held that the determination of bonus derived from the working of the base year without taking into consideration the special circumstances governing that determination is *ex facie* arbitrary and

unreasonable, Therefore, Section 34 (2) was declared invalid on the ground that it infringes Article 14 of the Constitution. The facts of this case are entirely different. In *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, , the Municipal Corporation of the City of Ahmedabad imposed property tax on the petitioner on the basis of a flat rate per 100 sq. ft. of the floor area of the petitioner's property as also of all other textile mills, factories, university buildings, etc. under Rule 9 of the Taxation Rules. It was held that the flat rate method according to the floor area could only be applied where the majority of properties are so nearly alike in character as to be regarded identical for rating purposes. There was nothing to show the conditions prerequisite for determination of annual value of textile factories in Ahmedabad on the basis of rental value per foot super of floor area existed at the relevant time, nor, had it been shown that the so-called contractor's basis was adopted by the municipal authorities of Ahmedabad. Further, there did not seem to be any basis for dividing the factories and the building thereof under two general classes as buildings used for processing and building for non-processing purposes. According to the Supreme Court, it was sure to give rise to inequalities as there had been no classification of the factories on any rational basis.

18. In *The State of Kerala Vs. Haji K. Kutty Naha and Others etc.*, some provisions of the Kerala Buildings Act, 1961, were considered by the Supreme Court. In the Act for determining the quantum of tax, the sole test was the area of the floor of the building. Reliance was placed on the case in *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, . The Supreme Court, in view of the fact that no attempt had been made for any rational classification by the legislature, held that the charging section of the Act was violative of the equality clause of the Constitution. The Supreme Court was convinced on the facts of this case that they were sure to lead to inequalities as there had been no reasonable classification. The instant case is entirely different. The classification made in Section 9 (2) of the Separation Act is not only reasonable, but it is also in support of the object of the Act.

19. It was contended by learned Advocate General that the effect of Section 9 (2) of the Separation Act can be given only after the decision by a Competent officer u/s 8. Section 8 mainly provides that "the competent officer shall hold an inquiry into the claim" of persons in a composite property and pass order determining the interest of the evacuee and " the claim in such property, Section 9 (2) of the Separation Act is a redeeming clause extinguishing the mortgagee's interest on the expiry of the period mentioned in the mortgage deed or twenty years whichever is less from the date of the execution of the mortgage deed. Therefore, if it is found on the fact of the record that a period of twenty years has elapsed, the mortgagee's right as a matter of law is extinguished without the order of the competent officer. The Assistant Custodian General correctly decided that the mortgage right certainly lapsed in the year 1965 when the

mortgagees had been in possession for over twenty years. The mortgage debt was apparently extinguished, and the question of sending or referring the case to the competent officer did not arise.

20. In my opinion, there is no force also in the second contention raised by learned Advocate General. The order dated the 4th March, 1966 (Annexure "2") had been passed by the Assistant Custodian, Patna, by which he rejected the bid and ordered transfer of the land to the mortgagee. The Custodian General possessed u/s 24 of the Evacuee Property Act full power and jurisdiction to determine the soundness of decisions of the inferior authority and pass such orders as the exigencies of a given case demand. Section 27 of the said Act empowers the Custodian-General to exercise his revisional power either suo motu or on application made in that behalf at any time. The power of the custodian General is uncontrolled by any time factor, but only by the scope of the Act within which he functions. The power of revision given to the custodian General as contemplated by Section 27 of the said Act are more extensive than the ordinary appellate powers. The Assistant Custodian, Patna, is subordinate to the Assistant Custodian General, Evacuee Property. Uttar Pradesh and Bihar, at Lucknow. Therefore, exercising the powers u/s 27 of the Evacuee Property Act, the Assistant Custodian General was competent to set aside the order passed by the Assistant Custodian, Patna, exercising suo motu revisional jurisdiction u/s 27 of the said Act. There is thus no illegality or want of jurisdiction involved in the impugned order.

21. For the reasons stated above, I find no merit in the application and, accordingly, it is dismissed, but, in the circumstances of the case, there will be no order for costs.

S.N.P. Singh, J.

22. I agree.