
(2016) 05 AHC CK 0197
In the Allahabad High Court
Case No : Writ-C. no. 20806 of 2016

Sanjai Mohan

APPELLANT

Vs

Commissioner and Others

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons Claims and Other Laws Repeal Act, 2005 — Section 2

Citation : (2016) 7 ADJ 47 : (2016) 117 ALR 841 : (2016) 2 RJ 1465

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Ramendra Asthana, Advocate, for the Appellant; C.S.C, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—This dispute in this writ petition is regarding Shop no.WB- 16/88 (Municipal no.6/5/13) situate Neem Ki Charai, Bara Bazar, District Bareilly.

2. The aforesaid shop was part of the property of one Nabi Hussain who migrated to Pakistan. The Assistant Custodian Judicial II, Bareilly by an order dated 20.03.1958 declared the aforesaid shop to be an evacuee property.

3. The petitioner moved an application dated 25.09.2007 before the Prescribed Authority (Evacuee Property) Bareilly contending that the shop in dispute situate on the ground floor is an evacuee property and that he is living on the first floor upper portion of it as the owner which is not part of the evacuee property. Therefore, appropriate proceedings may be drawn and that it may be transferred to him on the market value or may be let out to him.

4. The said application was rejected vide order dated 19.10.2007 by the Additional District Magistrate (Administration)/Prescribed Authority (Evacuee Property) Bareilly.

5. The revision filed by the petitioner before the Commissioner of the Division has also been dismissed vide order dated 23.02.2016.
6. Apart from the other things one of the grounds for rejection of the application is that the Administration of Evacuee Property Act, 1950 has been repealed without saving anything done under it. Since the Act itself has been repealed the application is not maintainable.
7. These two orders have been assailed in the present writ petition and the argument is that since the property is an evacuee property, the Prescribed Authority (Evacuee Property) is empowered to take action in respect thereof.
8. The argument is wholly misconceived and is not tenable for the simple reason that the Displaced Persons Claims and Other Laws Repeal Act, 2005 which has received the assent of the President on 05.09.2005 and was published in the Gazette of India, dated 06.09.2005 vide Section 2 of the Act provides for the repeal of certain Acts including the Administration of Evacuee Property Act, 1950. The aforesaid Act contains no saving clause to save the acts done under repealed enactment.
9. Once the entire Act has been repealed the prescribed authority under it ceases to exist leaving no scope for any application under the said Act or applicability of any provision of the said Act.
10. A bare reading of the application of the petitioner which has been rejected reveals that the petitioner being the owner of the first floor portion wants to occupy the shop in dispute which is beneath his portion for which purpose the remedy if any may be before the Civil Court.
11. In view of above, the writ petition is dismissed as misconceived with liberty to file civil suit or to draw proceedings before any other forum as may be advised.