
(2014) 12 AHC CK 0137

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 66696 of 2014

Shaheen Hasan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Enemy Property Act, 1968 — Section 18, 5, 8

Citation : (2015) 1 ADJ 157 : (2015) 109 ALR 168 : (2015) 127 RD 269

Hon'ble Judges : Kalimullah Khan, J;Arun Tandon, J

Bench : Division Bench

Advocate : Faizan Ahmad and S.F.A. Naqvi, Advocates for the Appellant; Gyan Prakash, Advocates for the Respondent

Judgement

1. Heard Shri Faizan Ahmad and Shri S.F.A. Naqvi, Advocates on behalf of the petitioners and the learned Standing Counsel for the State-respondents. Petitioners before this Court, who are two in number seek quashing of the order of the Chief Supervisor, Enemy Property, Home Department, Union of India, New Delhi dated 18.6.2014 whereunder the District Magistrate, Fatehpur, Custodian of the enemy property has been informed that the properties detailed in the letter have already been declared to be enemy property, therefore, necessary corrections in the relevant revenue records be got made. The present occupants as mentioned in the letter, if they want to retain the possession may be asked to pay rent for the occupation of the property, which may be determined at the current market rate so that there is no loss of revenue to the State Government. The petitioner has also prayed for quashing of the order of the District Magistrate, Fatehpur dated 4.8.2014 issued for enforcing the order made by the Chief Supervisor, Enemy Properties, Union of India referred to above, and for payment of rent since September 1965 till date for use and occupation of the said enemy property.

2. The petitioner has lastly prayed for quashing of the order dated 27.10.2014 whereunder a direction has been issued for letting out the enemy property on

lease by the District-Fatehpur.

3. It is the case of the petitioners that while issuing the order impugned dated 18.6.2014, whereby the property in question has been declared to be enemy property, no inquiry has been conducted nor the petitioners have been afforded any opportunity of hearing and for the purpose reliance has been placed upon paragraphs 20 & 21 of the present writ petition.

4. For the proposition that no declaration can be made of any property being enemy property without opportunity of hearing and without enquiry, counsel for the petitioner placed reliance upon paragraphs 5 & 6 of the Division Bench judgment of this Court in the case of Saeed Ahmed v. Custodian of Enemy Property, 2007(6) ADJ 166 (DB). He has also placed reliance upon paragraphs 16, 17 and 18 of another Division Bench judgment of this Court in the case of Swadeshi Commercial Company Ltd. v. Union of India, 2006 Law Suit (Cal) 437, and upon paragraphs 21 & 22 of judgment in the case of Tanwir Eqbal v. Union of India, 1988 Law Suit (Cal) 151. Counsel for the petitioner has also referred to the judgment of the Supreme Court in the case of Union of India (UOI) Vs. Raja Mohammed Amir Mohammad Khan, , for the proposition that the Central Government may by general or special order provide that any enemy property vested in the custodian under the Act shall be divested from him and shall be returned in such manner as may be prescribed thereon if the successor to the enemy are Indian nationals. He has also placed reliance upon the judgment in the case of Union of India (UOI) and Another Vs. Raja Mohammed Amir Mohammad Khan, , for the proposition that enemy property inherited on the death of the enemy subject by his son, who is a citizen of India can succeed the property and in such circumstance the custodian shall be bound to release the same. It has been held that if there has been inordinate delay on the part of the Central Government to take a decision on various representations made by the citizen of India son of enemy subject succeeding to the enemy property then the hands of the Court are not tied and it can direct that such property be divested from the custodian.

5. Counsel for the petitioner has also placed reliance upon the judgment in the case of Allahuddin and Others Vs. Union of India (UOI) and Others, , for the proposition that the custodian or the enemy cannot be allowed to take forceful possession of enemy property and that the Central Government could under Section 18 of Enemy Property Act, 1968 divest an enemy property vested in the custodian by general or special order. He has lastly placed reliance upon the judgment of this Court in the case of Buniyad Husain and others Vs. Zila Adhikari, Barabanki and another, , specifically paragraph 5 for the proposition that if the property is recorded in the revenue records in the name of ancestors of the petitioner, who are alleged to have migrated to Pakistan then there is no question of the same being treated as enemy property and that in absence of reasons the respondents could not have directed the property in dispute to be recorded as enemy property.

6. We have heard Shri S. F.A. Naqvi on behalf of the petitioner.

7. At the very outset we may record that there is absolutely no dispute with regards to the legal propositions as have been laid down in the judgments, which have been cited at Bar on behalf of the petitioner. We may only record that no property can be declared to be an enemy property except

"(a) after holding an enquiry and after affording opportunity to the persons concerned

(b) there is always a power with the Central Government under Section 18 of the Enemy Property Act, 1968 for divesting the property, which was earlier declared to be an enemy property

(c) if the legal descendants of the enemy subjects are citizens of India then on the death of the enemy subject, the property can be inherited by the legal descendants, citizen of India and in that circumstance the property has to be divested as it ceases to be an enemy property

(d) if the Central Government does not act upon the representations, which are made within reasonable time for such divesting by the Citizen of India then the Court can issue appropriate orders in that regard."

8. We, therefore, proceed to decide the present writ petition on the basis of the legal propositions, which have been noticed hereinabove.

9. From the facts as are disclosed in the present writ petition, we find that the property in dispute was admittedly the property of one Siddiq Hasan, who had migrated to Pakistan in the year 1949 and that the property was taken possession of by the Custodian treating it to be enemy property in accordance with the provisions of the Defence of India Act, 1962. Such vesting of the property in the custodian stands admitted in paragraph 4 of the present writ petition. It is stated in the present writ petition that the brother of Siddiq Hasan namely Shabbir Hasan filed an application before the Custodian General, Lucknow for the property being divested and that on revision an order was passed on 17.7.1968 divesting the property from the Custodian. It is stated that in respect of the said property three Waqf deeds were executed, one by Smt. Khatoon Bibi, second by Siddiq Hasan, third by Hazra Bibi and that in respect of Waqf created by Hazra Bibi and Khatoon Bibi there were orders for releasing the property divested from the Custodian. So far as the properties which fell in the share of Siddiq Hasan is concerned, it is stated that an order was issued on 10.7.1969 by the Custodian, Enemy Property, Lucknow, copy whereof is enclosed at page 61 of the present writ petition. The operative portion of the order reads as follows:

"Further the Asstt. Custodian will find out which plots were the sir, khudkasht and grove recorded in the name of waqf and those plots shall be deemed to be bhumidhari of the waqf and shall be relinquished in its favour.

The record of the case be sent to the Managing Officer, Varanasi who will examine whole position and intimate the final position to me within 4 weeks from today."

10. It is stated that in pursuance thereof another order was passed on 10.10.1970 whereby the plots mentioned in the letter were released in favour of Shabbir Hasan being Waqf property and, thereafter, a direction was issued to Tehsildar, Bindki to mutate the name of Siddiq Hasan. These two letters according to the petitioner demonstrate without reasonable doubt that the enemy property, which was vested in the custodian under the Defence of India Act, 1962 stood relinquished in favour of Shabbir Hasan in the year 1970 and thereafter there cannot be any reversion of the property as enemy property in the Custodian, inasmuch as, the legal descendants of Shabbir Hasan are all citizens of India and their names stand recorded in the relevant records. Reference is also made to the orders dated 27.1.1970 (Annexure 14), dated 13.1.1971 (Annexure 15) and dated 5.1.1972 (Annexure 16) enclosed with the present writ petition in respect of separate plots.

11. The petitioner on the basis of these documents submitted that the property, which was earlier taken in custody as enemy property stood released in favour of Shabbir Hasan and the order now passed for treating the property to be an enemy property without notice and opportunity to the occupiers or the legal descendants of Shabbir Hasan, is patently illegally .

12. We may record that the contention so raised on behalf of the petitioner does not appeal to the Court. The Enemy Properties Act, 1968 had been enforced on 20.8.1968 and this Act specifically provides under Section 5 that notwithstanding the expiration of Defence of India Act, 1962 and Defence of India Rules, 1962 enemy property vested before such expiration in the Custodian of Enemy Properties of India appointed under the Rules and continuing to vest in him immediately before the announcement of this Act shall from such commencement, vest in the Custodian. Similar declaration has also been issued under Sub-section 2(5) qua the enemy properties covered by Defence of India Act 1971 and Defence of India Rules 1971.

13. What logically follows from the declaration so issued under Section 5 of the Enemy Property Act, 1968 is that all such enemy properties, which vested in the Custodian as on 20.8.1968 shall continue to vest in him under the Enemy Property Act, 1968.

14. We may record that under Section 8 of the Enemy Property Act, 1968 the powers of the Custodian in respect of enemy property vested in him have been defined and it has been provided that he shall have a right to maintain the properties and of preserving them. The section does not confer any right upon the Custodian to divest any of the properties, which has come to vest in him under the said Act of 1968.

15. We find that all the orders, which have been relied upon by the petitioner in

support of his plea that the Assistant Custodian had divested the enemy property on an application filed by Siddiq Hasan, are subsequent to the enforcement of the Enemy Property Act of 1968 i.e. 20.8.1968. We may clarify that the order dated 17.7.1968 is only an order asking the authorities to clarify the position as to what part of the property is covered within the Waqf and as to which part is outside the Waqf property. There had been no actual divesting under the order dated 17.7.1968 and, therefore, it cannot be said that the said order had that been effect of divesting the property in question from the Custodian prior to 20.8.1968.

16. We may further record that the power of divesting the enemy property is vested with the Central Government only under the Enemy Property Act, 1968.

17. From the records it is established that neither Shabbir Hasan nor any of his descendants ever made any application for the property to be divested as they were the legal heirs of the enemy subject and after the death of the enemy subject they have inherited the property and being citizens of India the property may be divested from the Custodian.

18. We may record that for divesting the enemy property at the hands of the Custodian by the Central Government on an application being made by any of the descendants of the enemy would necessarily require examination of two facts; (a) whether the person making the application is really the descendant of enemy subject entitled to inherit the property of the enemy or not, (b) whether the right over the property had been altered in between or not.

19. We, from the records find that at no point of time the petitioner or his ancestors ever made an application under the Enemy Property Act, 1968 for the same being divested from the Custodian for the reason that they are the legal descendants of the enemy subject and citizens of India, entitled to inherit the property as has been laid down in the case of Raja Mohammad (supra).

20. We may also record that the order impugned in the writ petition is not an order directing vesting of the property in the Custodian as a enemy property. It is an order, which records that the property had been vested in the Custodian much earlier and efforts be made to collect rent for the use of the property so that there is no loss of revenue to the Government.

21. Such orders are not required to be made after opportunity of hearing to the occupiers, as is being claimed by the petitioners in paragraphs 20 & 21 of the present writ petition, inasmuch as, it is not a declaration of the property as enemy property for the first time as already noticed above. The declaration of the property as enemy property had taken place under the Defence of India Act and Rules, 1961 i.e. much earlier before coming into the force of the Enemy Property Act, 1968

22. In the facts of the case, we are, therefore, of the considered opinion that so long as the property is not divested under any order of the Central Government

in exercise of powers under Section 18 of the Enemy Property Act, 1968 the Chief Supervisor of Properties, Union of India is justified in issuing directions for the rent being recovered in respect of the enemy properties for use and occupation thereof by the occupiers. Therefore, the order dated 18.6.2014 wants no interference. Similarly, consequential orders issued by the District Magistrate asking the petitioners to pay the rent in terms of the order dated 4.8.2014 also does not warrant any interference nor does the order asking the District Authorities to settle the land on patta so that no loss of revenue is caused to the State Government in respect of enemy properties warrants any interference.

23. The writ petition, in so far as it challenges the orders impugned dated 4.8.2014, dated 18.6.2014 and dated 27.10.2014 has no merit and is dismissed.

24. However, we clarify that this order shall not in any way affect the right of the petitioners, or any other person claiming to be legal descendant of Siddiq Hasan entitled to inherit the enemy properties on the strength of his being an Indian citizen, to make an application before the Central Government for divesting of the properties under Section 18 of the Enemy Property Act, 1968. If such application is made or has already been made, it shall be considered by the Central Government in accordance with law at the earliest possible. Writ petition is dismissed subject to the observations made.