
(1957) 04 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 421 of 1956

The Lord Krishna Sugar Mills Ltd., Saharanpur

APPELLANT

Vs

The Assistant Custodian, Saharanpur and Another

RESPONDENT

Date of Decision : 10-04-1957

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 48, 48(2), 7

Citation : AIR 1958 All 396 : (1957) 27 AWR 542

Hon'ble Judges : Gopalji Mehrotra, J

Bench : Single Bench

Advocate : Shanti Bhushan, for the Appellant; S.S. Dhawan, for the Respondent

Final Decision : Allowed

Judgement

Gopalji Mehrotra, J.—The petitioner is a limited company registered under the Indian Companies Act, 1913, and has a sugar factory for the manufacture of sugar. On 28-3-1955 notices were issued by the Assistant Custodian, Saharanpur, under Rule 6 (1) of the Administration of Evacuee Property Rules, addressed to 50 persons who were formerly employees in the petitioners' factory requiring them to show cause why orders be not passed declaring them evacuees and all their properties to be taken over under the provisions of the Administration of Evacuee Property Act. Among the properties certain amounts were mentioned as evacuee money alleged to be lying with the Mills to the credit of those evacuees. The total amount was Rs. 4,207/15/-. The petitioner company was also mentioned as an interested person in the notices issued in the names of those evacuees. The amount was claimed to be in respect of bonus payable for the year 1946-47 under a Government Order made in the crushing year 1947-48.

The amounts were alleged to have been due to the employees of the petitioner at the time of their alleged migration to Pakistan. The petitioner disputed that any amounts were payable from them to any of the alleged evacuees and their claim, if any, was barred by limitation. An objection was filed by the petitioner before the Assistant Custodian in which a number of points were raised

concerning the employees being declared as evacuees and also challenging the fact that any amount was lying with the Mills to the credit of the alleged evacuees and the right of the Custodian to declare that amount as evacuee property. The Assistant Custodian among other issues framed an issue with regard to the question of limitation and also what will be the effect of the amount being held as time barred on the proceedings under the Administration of Evacuee Property Act. The Assistant Custodian held that the question whether the realisation of those amounts was barred by time could not be gone into in these proceedings.

If the amount was an evacuee property it had to be declared in these proceedings as such irrespective of whether its recovery was barred by limitation or not. The objections were therefore dismissed by the Assistant Custodian by his order dated 17-9-1955. The petitioner then received a notice dated 3-11-1955 from the Assistant Custodian, Saharanpur, demanding the payment of the said sum by 15-11-1955. It was stated in the notice that if the amount was not paid in time it would be recovered as arrears of land revenue. Proceedings were thereafter taken for the recovery of the amount as arrears of land revenue from the petitioner. On 16-2-1956 an official of the Custodian's Department came to the petitioner's office but the Managing Director of the petitioner company was out of station.

The official then left word that he will come again to attach the property of the petitioner within a few days if the payment of the amount was not made immediately. On these facts the present petition was filed in this court on 5-3-1956 for the following reliefs:

(a) A writ in the nature of mandamus to be issued directing the respondents not to recover the said amount of Rs. 4,207/15/- from the petitioner either as arrears of land revenue or by any other coercive process.

(b) The proceedings for the realisation of the said amount of Rs. 4,207/15/- as arrears of land revenue be quashed.

2. By an order of this Court the realisation of the amount by the Assistant Custodian was stayed meanwhile.

3. A counter-affidavit has been filed on behalf of the Assistant Custodian, Saharanpur. In the counter-affidavit it is asserted that 50 notices u/s 7(1) of the Administration of Evacuee Property Act were issued to 50 persons who were formerly employees in the petitioner's factory asking them to show cause why they should not be declared evacuees and why their properties mentioned in the notices be not declared evacuee properties. The properties which were mentioned in the notices and sought to be declared evacuee properties were certain sums of money lying with the petitioner to the credit of each notices. The petitioner company was mentioned as interested person in the aforesaid notices. The Assistant Custodian, Saharanpur, received credible information that the amount mentioned in each notice stood to the credit of the evacuee in the

account books of the petitioner as salary or bonus. In response to the notice issued the petitioner company appeared and disputed the amounts as being payable to any of the alleged evacuees.

It was further contended that the claim, if any, was time-barred. The petitioner company filed a written objection before the Assistant Custodian raising several pleas, stating that the alleged amounts were not payable from the petitioner to any of the alleged evacuees and that the claim, if any, was barred by the law of limitation. It is then asserted in the counter-affidavit that at the time of hearing of the proceedings u/s 7 the company kept back its account books, though its Assistant Accountant gave evidence before the Assistant Custodian and admitted that the company kept regular accounts. One of the issues framed by the Assistant Custodian was in the following terms:

"Whether the realisation is time-barred. If so, what is the effect of the present proceedings?"

As regards this issue the Assistant Custodian (Judicial) held that the question whether the realisation was time-barred or not could not be gone into in the proceedings u/s 7 as in those proceedings only the title of the evacuee was to be seen and the question of limitation would be an obstacle if the Custodian went to a law court but the position might be different if he effected the recovery of money in the exercise of his powers under the Administration of Evacuee Property Act. The objections were dismissed and the amounts mentioned in the notices were declared to be evacuee properties of the 50 notices. On 3-11-1955 a notice was sent u/s 48 of the Administration of Evacuee Property Act to the petitioner demanding the payment of the said sum of Rs. 4,207/15/- by 15-11-1955. On 15-11-1955 the petitioner company neither paid the amount nor appeared before the Assistant Custodian to file any objections against the notice u/s 43 of the Administration of Evacuee Property Act and no payment was ever made by the petitioner company.

The proceedings therefore for the recovery of the said amount as arrears of land revenue have now been taken. On 16-2-1956 the Evacuee Property Manager, Saharanpur, went to the petitioner company's office. He was asked to come on 23-2-1956. He again went to the company's office on 23-2-1956 and he was asked to come on 24-2-1956. On 24-2-1956 ultimately the Manager of the petitioner company refused to make payment. (4) From the brief facts given above it is apparent that there is not much controversy between the parties as regards the facts. That in March 1955 notice was issued u/s 7 of the Administration of Evacuee Property Act for proceedings u/s 7 in which the petitioner was shown as an interested party is not denied. That an objection was filed by the present petitioner in those proceedings on two grounds; firstly, that the amount was not Day-able and secondly that the recovery of the amount was barred by time. The objection of the petitioner was rejected by the Assistant Custodian on the ground that in proceedings u/s 7 only the title of the evacuee could be gone into and the question of limitation could only arise when an

attempt is made to recover the amount in a court of law.

The Assistant Custodian further appears to have been of opinion that no defence of limitation will be available if in the exercise of powers under Administration of Evacuee Property Act the Assistant Custodian took proceedings for the recovery of the amount. Thereafter notice u/s 48 of the Act was given in the following terms:

"Whereas an amount of Rs. 4207/15/- is due against you on account of deposits of following Evacuees. You are, therefore, asked to deposit the above amount by 15-11-1955 with the E. M. P. Shri Hansraj Sondhi, failing which amount will be recovered as arrears of land revenue."

Thereafter details of the amount were given in this notice. Proceedings were taken for the recovery of the amount after the failure of the petitioner to pay up the amount within the specified time mentioned in the notice.

5. The main contention raised by the petitioner in this petition is that the notice u/s 48 of the Act given to the petitioner was illegal and the entire subsequent proceedings for the recovery of the amount as arrears of land revenue were also without jurisdiction. This argument was based on the contention that the Administration of Evacuee Property Act did not authorise the Custodian to adjudicate matters of disputed debts and to recover them as arrears of land revenue. Even Section 48 of the Act did not cover the case of the debts due to an evacuee and the proper remedy in such cases for the Custodian was to institute a legal proceeding against the debtor in a civil court u/s 9(2)(iv) of the said Act.

It was also secondly contended that the rights of the Custodian could not be higher than those of the evacuee himself and if the recovery of any debt was barred by limitation so far as the evacuee is concerned the Custodian has no right to recover the amount as arrears of land revenue.

6. It is conceded by the counsel for the Assistant Custodian that the amount of money was not any debt due from the company to the Custodian. It was really a debt due to the evacuee which was his property and vested in the Custodian after it had been declared as an Evacuee Property in proceedings u/s 7. It was strenuously urged that it was open to the Assistant Custodian u/s 48 to recover it as arrears of land revenue.

7. In order to appreciate the points it is necessary to refer to certain provisions of the Administration of Evacuee Property Act, 1950. Section 7(1) of the Act provides that:

"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 inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property".

Section 8 provides that:

"Any property declared to be evacuee property u/s 7 shall be deemed to have vested in the Custodian for the State."

Sub-section (4) of Section 8 provides that:

"Where after any evacuee property has vested in the Custodian any person is in possession thereof he shall be deemed to be holding on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf".

Section 9 of the Act gives power to the Custodian to take possession of evacuee property which vests in him. Section 10 enumerates some of the powers and duties of the Custodian generally. Sub-section (1) of Section 10 provides that:

"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 purposes of securing, administering preserving and managing any 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 purposes as aforesaid, do all acts and incur all expenses necessary or incidental thereto"

Section 13 of the Act provides that:

"13(1) Any amount due to any evacuee in respect of any property which has vested in the Custodian or in respect of any transaction entered into by an evacuee, shall be paid to the Custodian by the person liable to pay the same.

(2) Any payment made otherwise than in accordance with Sub-section (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person".

Section 48 provides that:

"48 (1) Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrear of land revenue.

(2) For the purpose of Sub-section (1), the decision of the Custodian as to the sum due to the State Government or to the Custodian, shall be final".

Sub-clause (2) of Section 48 was inserted by the amending Act No. XLII of 1954. Section 48 of the Administration of Evacuee Property Act has been further amended by the Administration of Evacuee Property (Amendment) Act, 1956. The present Section 48 reads as follows:

"48 (1) Any sum payable to the Government or to the Custodian in respect of any evacuee property under any agreement, express or implied, lease or other document or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.

(2) If any question arises whether a sum is payable to the Government or to the Custodian within the meaning of Sub-section (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Custodian shall, subject to any appeal or revision under this Act, be final and shall not be called in question by any court or other authority.

(3) For the purposes of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by the Indian Limitation Act, 1908, or any other law for the time being in force relating to limitation of actions".

8. Section 24 also has been amended and appeal has been provided against an order u/s 48 by any party aggrieved by any such order. This amending Act though published on 28-12-1956 by virtue of Section 2 of the amending Act will be deemed to have come into force on 22-10-1956. The proceedings for the recovery of the amount had started prior to the coming into force of this Act. What is the effect of this amending Act of 1956 on the present petition will be considered later.

9. The Standing Counsel for the opposite parties, however, strenuously contended that even under the provisions of Section 48 as it stood before the amendment of 1956 there was power in the Assistant Custodian to treat the amount as an amount due to the Custodian and take proceedings for its realisations as arrears of] land revenue.

10. The counsel for the petitioner relied upon a number of cases for the proposition that it is not open to the Assistant Custodian acting u/s 48 of the Act to determine the rights of the evacuee as against the third party in respect of any sum of money which is claimed by the Custodian to be due to the evacuee from the third party and which has been disputed by such party. The first case is D. B. Godbole v. Kunwar Rajnath, AIR 1956 Bom 652 (A). That was a case in which it was held that:

"Section 48 is a procedural Section which lays down the mode of recovery of any sum due to Government or the Custodian. It does not purport either to create rights or impose liabilities. The sum that may become due under the provisions of the Act must be ascertained by looking to the other provisions of the statute. Section 48 itself throws no light on what are the sum or sums due under the provisions of the Act. Whatever power is conferred upon the "Custodian under Sub-section (2) is for the purposes of Sub-section (2), which is a procedural Section providing for the mode of recovery of certain sums due to Government or the Custodian. This Sub-section makes the decision of the Custodian final, but the finality attaches only to that decision of the Custodian which is given with regard to the sums due to the Custodian, and reading Sub-section (2) in the light of Sub-section (1) it is dear that the sums due to the Custodian with regard to

which his decision is rendered final are the sums due under the provisions of the Act. Undoubtedly the Custodian has the authority under the Act to appoint a manager, undoubtedly he has also the authority to call upon him to render accounts, but it does not follow from that, that under the provisions of the Act either he has the authority to determine the liability of the manager whom he has appointed or to call upon him to pay any amount which he determined as due from him. It is impossible to take the view that the Parliament in incorporating Sub-section (2) of Section 48 in the Act intended that the Custodian should be given the power to decide the liability of third party in all matters where third party had any dealings either with him as the Custodian or with evacuee properties and that deciding this liability, his decision should be final. What the Custodian can decide is something due under the provisions of the Act, and unless he can satisfy the Court that a sum claimed by him from a person is due under the provisions of the Act, Section 48(2) can be of no help."

To the same effect is an earlier decision of the Bombay High Court reported in *S. Benjamin v. Ebrahim Aboobakar*, ILR (1955) Bom. 84 (B).

11. The next case is the case of *Custodian General of Evacuee Property v. Harnam Singh*, AIR 1957 Punj 58 (C). In this case it was held that:

"A debt or other obligation is due when it is legally enforceable, i.e. when the creditor has a right to demand payment and to enforce collection.

The summary remedy provided by Section 48 for the recovery of sums due to the State Government or to the Custodian must, in my opinion, be restricted to sums legally recoverable, i.e., sums which are admitted or proved to be due and cannot be extended to sums which are alleged or claimed to be due".

In this case reliance was placed on the two earlier-decisions of the Punjab High Court reported in *Firm Sahib Dayal Bakshi Ram Vs. Assistant Custodian of Evacuees' Property, Amritsar and Another*, and *Firm Pariteshah Sadashiv Vs. Asst. Custodian of Evacuee Property, Amritsar and Another*, Similar view was taken in the case of *Sharf Uddin v. The State of Uttar Pradesh* 1957 All LJ 41 (F). In the case of *Sharf Uddin* (F) (supra) it was held by me that the effect of Sub-section (2) of Section 8 of the Administration of Evacuee Property Act, 1950 is that all the properties which automatically vested in the Custodian under the Ordinance have been put on a par with the properties which after the coming into force of the Act have been declared as evacuee property. Section 10 does not authorise the Custodian to fix rent of any property in, possession of a trespasser. Section 48 does not. deal with the substantive provisions of the Administration of Evacuee Property Act. It only provides for the recovery of arrears. Sub-section (2) only provides that for the purposes of Subsection (1), namely, for the recovery of the arrears, the decision of the Custodian as to the sum due to the State Government or to the Custodian shall be final.

This does not confer any power on the Custodian to determine the amount due from the third party which claims title adverse to the evacuee. In that case the

Custodian had treated a particular person in possession of the property, which according to him, belonged to the evacuee and vested in the Custodian as a tenant and assessed him to certain rent and then claimed certain amount as arrears of rent due from him as land revenue u/s 48. In that connection it was held that such a power was not given to the Custodian u/s 48. The ratio of that decision to my mind applies to the facts of the present case also. It has been accepted by the counsel for the Custodian that the amount which is alleged to have been lying to the credit of the evacuees with the present petitioner was their property which also vested in the Custodian. In that view of the matter Section 48 will not apply to the recovery of any such property belonging to the evacuee, especially where the title to the property, if I may call it, is disputed by the present petitioners.

12. The cases referred to above have been sought to be distinguished on the ground that they were all cases prior to the amendment of 1956. It was further contended that in the Punjab case the learned Judges were not right in saying that:

"It is a fundamental principle of law that every person who receives an injury is entitled to claim the protection of the Courts. Broadly speaking, the Courts alone have the power to decide justiciable controversies both on questions of fact as well as of law; they alone can protect the rights and interests of individual citizens and they alone have power to hear, determine and to enforce."

It is urged that it may be open to legislature to take away the jurisdiction of the ordinary courts and to vest it in a special tribunal. As the learned Judges of the Punjab High Court have based their decision on this erroneous principle that case has not been rightly decided. It is true that it is open to a Legislature by making provision in a statute to take away the powers of ordinary courts. But the main question to be considered is:

"Is there anything in Section 48 which has got the effect of taking away the powers of ordinary courts to determine the claims between the evacuee and the third party?"

Strong reliance was placed by the counsel for the other side on Clause (2) of Section 48 which makes the decision of the Custodian as to the sum due to the State Government or to the Custodian final. But as has been pointed out in the Punjab case and the other cases to which I have already referred & with which I am in complete agreement that Sub-clause (2) makes a decision of the Custodian final for the purposes of Sub-section (1) and the purpose of Sub-section (1) is to provide for the speedy recovery of any sum due to the State Government or to the Custodian. Having regard to the entire scheme of the Act Section 48 is only a procedural Section which provides for the recovery of the amount in a summary proceedings as arrears of rent. It does not confer any power on the Custodian to determine the rights and liabilities of the third parties as against the evacuee. Moreover, as pointed out by the Punjab High Court

Judges, the words "sums due" can only mean a "sum for which anyone has a right to demand". A sum can be regarded due only which is legally enforceable. In my opinion therefore there is no force in this contention.

13. It was then urged that the provisions of the amending Act of 1956 will apply to the facts of the present case. It is contended that Section 48 being procedural Section any amendment made in that Section will have a retrospective effect. The Act became operative from the 22nd of October, 1956. Admittedly therefore when the proceedings were taken for the recovery, this Act was not in force and when the petition was filed in this Court even at that time this Act had not come into force. Under the circumstances it cannot be said that the rights of the parties will be governed by the provisions of the amending Act. Even if this Act is taken to govern the present case Section 48, Sub-section (2) of the amended Act gives a power to the Custodian to decide the question after making such enquiry as he may deem fit and giving the person an opportunity of being heard. In the present case no opportunity was given to the petitioner to be heard.

It was urged by the counsel for the Custodian that when notice was given to the petitioner u/s 7 it filed objections. The petitioner was heard and after hearing it was decided by the Custodian that it was a property which vested in the Custodian and could be recovered under S 48. The petitioner therefore had been given an opportunity to be heard in this case. That was the notice issued to the petitioner u/s 7 on the footing that this was an evacuee property in which the petitioner was interested. Objections were filed u/s 7.

The Custodian held in those proceedings that it was a property which vested in the Custodian and the question of limitation would only arise if and when the Custodian intended to enforce that by means of suit. Section 48(2) on the contrary gives protection to a person by whom a debt is alleged to be payable to claim hearing. No such procedure was followed in this case when notice u/s 48 was given. As I have already pointed out, by amendment of Section 24, by the amending Act of 1956 a right of appeal has been provided against that order and if the authorities intended to act under new Section 48 they would have given opportunity to the petitioner to be heard and any determination by the authorities was subject to a right of appeal given to the petitioner. Emphasis was also laid on Clause (3) of the amended Section 48 which provides that:

"For the purposes of this Section a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by the Indian Limitation Act, . . ."

and therefore it is contended that this provision is expressly-enacted in order to give a right to the Custodian to recover the amount even though its recovery is barred by limitation. In the present case it was contended by the petitioner that the recovery was barred by limitation but the petitioner has also contended that the amount was never payable by it to the evacuees. In my judgment therefore this petition must be allowed.

14. I therefore allow this petition with costs and issue a writ of mandamus directing the respondents not to recover Rs. 4,207/15/- from the petitioner under a notice of demand issued to the petitioner on the 3rd of November, 1955 and further quash the subsequent proceedings for realisation of the amount as arrears of land revenue.