

(1966) 12 DEL CK 0010
In the Delhi High Court
Case No : C.W. No. 143-D of 1959

Turat Singh Shadi Ram

APPELLANT

Vs

Custodian of Evacuees Property and Regional Settlement
Commissioner, New Delhi and Others

RESPONDENT

Date of Decision : 20-12-1966

Acts Referred:

Citation : AIR 1967 Delhi 54

Hon'ble Judges : I.D. Dua, Acting C.J.

Bench : Single Bench

Advocate : Gopal Narain Agarwal, for the Appellant; S.N. Shanker and Srinivasa Rao, for the Respondent

Judgement

(1) This petition under Article 226 and 227 of the Constitution was admitted by a bench of the Punjab High court on Circuit on 6-3-1959 and the petitioner was released on bail on furnishing security for appearance before the Revenue Assistant if and when necessary after the decision of the writ petition.

(2) The petitioner has alleged in his writ petition that he had inherited in 1927 from his late father Shri Shaddi Ram Property bearing Municipal (Old) No. 304 and (new). No.1051 situated in Gali Hiranand, Maliwara, Wrd No.5 Delhi, which had been acquired by his father by purchase on 18-8-1992. From 1927 to 1941, he treated that property as his by various acts of ownership and possession. He also mortgaged it and redeemed the mortgages so created. On 4-6-1941, there was some award in a controversy between him and his two sons when the property was divided, one third share falling to the petitioner's share. The award was duly registered. On 23-8-44, he mortgaged his divide one-third share to Smt. Ramjamai. A suit was instituted against the petitioner on the said mortgagee for the recovery of debt and in execution of a decree for sale secure therein, the property was advertised for sale by public auction. The petitioner sought to compromise the matter with the decree-holder. On 30-1-1947, the petitioner in order to satisfy the mortgagee decree, sold his one-third share to

none Daulat Ram son of Sardar Singh by means of a registered sale deed, with the sale money, the mortgage decree was satisfied. The property was also mutated in favor of the purchaser Daulat Ram. The remaining two-third of the property inherited had already been mutated in favor of the petitioner's son. Indeed we are not concerned with the two-third share, mortgaged that property with Dr. Raghbir chand, who later instituted a suit for the recovery of the mortgage debt by sale of the property. This suit was decreed on 3-5-1950 and the Court in execution proceeded to appoint a receiver of this property for some time. In 1950, Daulat Ram who had married a Muslim lady became a covert to Islam and changing his name to Daulat ram alias Mohd. Din. Migrated to Pakistan, with the result that the one third share was declared as evacuee property.

In that property, there were two or three tenants paying a total rent of about Rs.21/- per mensem. On 18-8-1956 the Custodian for Evacuee Property offered to appoint the petitioner as manager of that property but the petitioner declined the offer. No agreement or security bond suggested by the Custodian was evacuated. Through some mistake or our of malice or for some other reason, so proceeds the averment in the writ petition, the custodian of Evacuee Property, respondent No.1 sent a notice to the petitioner in December 1958, requiring him to pay a sum of Rupees 5,733/0- On account of rent of the property for the period ending October, 1958, On 21-1-1959 the petitioner's son through his counsel sent a notice u/s 80 CPC to respondent No.1 stating that the notice was illegal and that Daulat Ram alias Mohd, din was the owner of the divided one third share and that the petitioner had not realised any rent whatsoever in respect of the property vesting in the Custodian. This property vesting in the custodian. This property was in tenancy of Ram Sarup and P.C Mittal, the custodian, respondent No.1 is instead of enquiring into the matter, directed the assistant collector, respondent No.2 to recover the amount from the petitioner immediately and in pursuance of these directions, respondent No.2 without any notice arrested the petitioner on 27-2-1959 and committed him to detention in the judicial lock up.

It was in these circumstances that the present writ petition was presented. It is being pleaded that the amount claimed was neither in fact nor in law due from the petitioner, in paragraph 20 (V) it is pleaded that "the custodian has not determined the liability of the petitioner and has not given any decision according to section 48 of Administration of Evacuee Property Act or other law after hearing the petitioner and examining his contention and the order of respondent No.1 for recovery of the money is illegal and ultra vires.

(3) It is unnecessary to go into the details of the reply contained in the affidavit of Shri Y.L. Taneja, Settlement Commissioner dated 28-1f1-1f960, in which it has been pleaded that the petitioner has been in occupation of the two-third share which is non-evacuee portion of the property and has been collecting rent from all the seven tenants of the whole property which is composite property and the

evacuee portion has not yet been divided from the non-evacuee share, adding that the petitioner is occupying and in fact managing the whole of the property including evacuee property. For the purposes of this writ petition all that need be stated is that in answer to paragraph 20(V), it has- been pleaded that the liability of the petitioner, has been determined u/s 48 of the Administration of /evacuee Property Act, (A copy of the order is annexed here with and marked R/3). In paragraph 13 of the reply, it may be pointed out all that has been stated is that a notice requiring the petitioner to pay the amount was issued on 22-12-1958 which was served on the petitioner's wife. In pursuance of the said notice he appeared before respondent No. 2 on 30-12-1958 when he stated that nothing was due from him. He however, asked for time up to 5-1-1959 which was granted. On the said date he remained absent and warrants for attachment were issue on 5-1-1959. It is obvious that respondent No.2 is the Assistant Collector and not the Custodian.

(4) Section 48 of the Administration of Evacuee Property Act No. XXX1 of 1950. Which deals with the recovery of certain sums as arrears land revenue, is in the following terms.

"48 (1) Any sum payable to the government or to the Custodian respect of any evacuee property under any agreement express or implied , or other document or other wise howsoever, may be recovered in the same manner as an area 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 enquiry 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 not with standing 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

Now, it is obvious that whenever a question arises whether a sum is payable within the meaning of Section 48(1), it is the Custodian who has to make such enquiry as he may deem fit after giving to the person by whom the sum is alleged to be payable an opportunity of being heard and then decide the question. In the affidavit, all that I find is that in pursuance to the notice the petitioner appeared before respondent No. 2 who is the Assistant Collector and not the Custodian. In the affidavit in reply, reference is made to a document described as R/3 which is nowhere traceable and indeed no reliance has been placed on any such document on behalf of the respondents in the arguments.

Reference has been made by Shri Shanker to a Bench decision of the Punjab High Court, in Amar Nath Vs. Deputy Custodian General Punjab and Others, in

which it is mentioned that the purpose of amending section 48 by providing machinery for decision of questions of sums being payable to the Custodian is to get over the difficulties created by some decisions under the old section, as a result of which the Custodian could not realise the sums due to Muslim evacuees, having become barred by time. But this decision does not dispense with the requirement of the Custodian coming to a decision after hearing the person on whom the liability is to be fixed. No such determination has been arrived at on the present record in compliance with the provisions of Section 48, as amended. But for this Section, there is no other provision of law pointed out at the bar which confers power on the Custodian to determine the amount due to the department from persons situate like the petitioner, as indeed without the authority of law. This section accordingly calls for strict compliance. No decision of the Custodian under this section has been placed on the record by the respondents and none has been brought to my notice. As a matter of fact, it is not the respondents' case that the Custodian ever granted an opportunity of hearing to the petitioner in proceedings for determining the amount due.

(5) The result, Therefore, is that proceedings for the recovery of the rent amount including the warrants of the petitioner's arrest must be quashed and set aside. The order of the Mtoion Bench relating to the release of the petitioner on bail and his security for appearance before the Revenue Assistant must also be ignored as unnecessary. It would, however, be open to the Custodian to come to the requisite decision u/s 48.

(6) It has been suggested on behalf of the respondents that the petitioner is difficult to be traced now for serving on him a notice unless this Court fixes a date for hearing the petitioner on the question of the amount claimed, it would be well nigh impossible to proceed in accordance with the provisions contained in Section 48. The petitioner's learned counsel has, however, submitted that his client is not even responding to his letters and, Therefore, it would be in the fitness of things for the department itself to contact the petitioner. It has also been suggested that under Article 226 of the Constitution, this Court has no jurisdiction to give any further direction. In my opinion, while exercising jurisdiction under Article 227 of the Constitution along with Article 226, this Court can appropriately give suitable directions after quashing the impugned order. Interests of justice in this case demand that the petitioner be directed through his counsel to appear on 6-2-1967 before Shri Sardari Lal, Assistant Custodian, in room No. 58, Gallery No. 4, Jamnagar House, New Delhi, for proceedings u/s 48 of the Administration of Evacuee property Act. This long date has been given on the request of the petitioner's learned counsel.

Merely because the petitioner is not responding to his counsel's communication is no ground for holding that the petitioner is not represented through an authorised counsel, information to whom must, in law, be deemed to be information to the petitioner of this Court's direction that the petitioner should appear before the Assistant Custodian on 6-2-1967. So long as a litigant is

represented by a duly authorised counsel in this Court, intimation of this Court's relevant orders and directions in the cause to the counsel must in law amount to intimation thereof to the client. It is a well-recognised legal fiction that the counsel embodies in his person the client who has engaged him for pleading his cause in the Court when he is representing the client in the course of his professional engagement. In the present case, the petitioner's Advocate also seems to be authorised to act on his behalf. In these circumstances, the consequences of the petitioner's non appearance under the law would obviously follow. Article 226 does not seem to prohibit this Court from issuing a direction to the petitioner to appear for proceedings u/s 48, but assuming there is any technical obstacle in adopting this course as indirectly suggested on behalf of the petitioner. Article 227 of the Constitution would seem to contemplate no such hurdle in this Court's way and I feel little hesitation in taking resort to this Article for this purpose.

(7) As result of the foregoing discussion, this writ petition succeeds and allowing the same, I quash the impugned order and the warrants of arrest and direct the petitioner to appear before the Assistant Custodian on 6-2-1967 as explained above. The petitioner is entitled to his costs in this Court.

(8) Petition allowed.