

(1994) 05 CAL CK 0007

In the Calcutta High Court

Case No : F.M.A.T. No's. 2047 and 2062 of 1992 and C.O.T. No's. 2361 and 2376 of 1992

Zafar Ahmed and Others

APPELLANT

Vs

Tanwir Iqbal and Others

RESPONDENT

Date of Decision : 05-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Enemy Property Act, 1968 — Section 6

Citation : (1994) 2 CALLT 156

Hon'ble Judges : Krishna Chandra Agrawal, C.J.; Suhas Chandra Sen, J

Bench : Division Bench

Advocate : R.N. Das, Uma Sanyal, J.K. Banerjee and Subrata Dutta, for the Appellant; J. Islam, Z. Islam and Hossen Ara Begum, for the Respondent

Judgement

Krishna Chandra Agrawal, C.J.—These two appeals have been preferred against the judgment of a learned Single Judge setting aside and dismissing the writ petition of the petitioner, Tanwir Rasul.

2. Briefly stated, the facts are as under :-

Rasul, predecessor-in interest of the respondents purchased the property in question from Khadija Khatun by a registered sale deed dated 1.9.1969. On 21.4.1979, the respondent received a notice issued by the Assistant Custodian of the Enemy Property intimating that Khadija Khatun was a Pakistani national and that the disputed property was an enemy property. It was further mentioned in the notice that a property in dispute was an enemy property. As such, it had vested in the Government of India under Notification dated 10.9.65 issued under Rule 133 (V) of the Defence of India Rules, 1962. The respondent filed a reply denying that ascertaining Khadija Khatun was not a Pakistani national. Accordingly, the property, in question was an enemy property, as alleged. The Assistant Custodian, by a letter dated 23.4.1979 directed the tenant of the disputed property not to pay rent of the house to the respondent. Having felt

aggrieved, the respondent moved a writ petition before a learned Single Judge. The learned Single Judge issued Rule Nisi which was subsequently vacated by him, and the writ petition was dismissed. Against the said order, the respondent preferred a special appeal on the Civil Appellate Jurisdiction side. The appeal was allowed and the Assistant Custodian of the Enemy Property was directed to dispose of the representation made by the respondent in answer to the show-cause notice. After giving them a reasonable opportunity of being heard, the Custodian was directed to release the property in case it was found that it was not an enemy property. On 14.2.1984, the Assistant Custodian of the Enemy Property after giving hearing to the parties concerned passed an order on 14.2.1984 declaring premises No. 6, Harinbari 1st Lane, Calcutta as enemy property. This was the property involved in dispute in between the parties. In 1984, Tanwir Iqbal and Ors. filed a writ petition No, 68,18 of 1984. The writ petition was allowed quashing the order dated 14.2.1984 passed by the Assistant Custodian. Liberty was given to Union of India to have the matter heard in accordance with Section 6 of Enemy Property Act, 1968 by a high ranking Officer. The Union of India filed an appeal against the said judgment being F.M.A.T. No. 22,73 of 1988. On 14.7.1988, the direction was given in F.M.A.T. No. 2273 of 1988 was to the Custodian of the" enemy property to make the adjudication order and passed a speaking order.

3. Pursuant to the Appeal Court's order dated 14.7.1988, the Custodian of the enemy property passed the speaking order declaring Premises No. 6, Harinbari 1st Lane, Calcutta as an enemy property. The said Tanwir Iqbal and Ors. filed 3rd writ petition being C.O. No. 5794(W) of 1989 .against this judgment. The writ petition was allowed and the order of the Custodian of the enemy property was quashed on 18.6.1992. In this appeal, Officer for the Union of India alleged that the learned Single Judge committed an error in interfering that the order of the Assistant Custodian according to him on the facts stated. The view taken by the learned Single Judge could not be sustained. The learned Counsel appearing for the respondent has urged that the learned Single Judge has properly appreciated the controversy and holding that the notice was not filed. We have heard the learned Counsel for the parties. In our opinion, the judgment of the learned Single Judge is correct and does not call for any interference. The sale deed obtained by the respondent from Smt. Khadija Bibi about whom the controversy was raised by the appellant was that she was a different lady to whom the property belonged. The learned Single Judge after considering the evidence found that the said Khadija Khatun was the owner of the said property and that she had not migrated to Pakistan in 1949. The property wrongly declared as enemy property. We are of the view that the property had been purchased and are a registered sale deed by the respondent which had been attested by the Solicitor. The assertion of the Solicitor which was to the fact that the property belonged to the said Khadija Khatun had been accepted even by the Registrar. Under the sale deed, the title had accrued by the Registrar. Apart from the presumption which is attached to a registered document of its correctness. There

was no evidence satisfying that the respondent had not purchased it from its owner. As against the judgment aforesaid, the Union of India filed an Appeal No. 2047 of 1992 ascertaining that Smt. Khadija Bibi was not the owner of the property and she had migrated to Pakistan. The property was rightly declared as enemy property.

4. We have gone through the evidence and our opinion that the conclusion was sought to be created by the Union of India that Khadija Khatun was a different lady than the Khadija Bibi. The scrutiny of the entire evidence by the learned Single Judge as negative to the contention of the Union of India. In our view, the learned Single Judge was right in doing so. The sale deed filed by the respondent establishes that the property belonged to Smt. Khadija Bibi, this; had been attested by the Solicitor, whose name was mentioned therein. The Registrar has authenticated the signature of the attesting witness of Smt. Khadija Khatun. There is presumption under the law about the registered document has to be presumed as correct. The burden lies on the person who is disputing this correctness. No evidence had been produced by the Union of India to prove this document. It is established that the claim of the Union of India that Smt. Khadija Khatun had migrated to Pakistan is not correct. Apart from this sale deed, there is no other evidence on record which could establish the same. As she was the owner of the property and had not migrated to Pakistan, the finding of the learned Single Judge that the notice issued by the Custodian of enemy property without jurisdiction. We agree with this finding of the learned Single Judge. Consequently, we dismiss the appeal.

5. Against the said judgment of the learned Single Judge in these two appeals No. 2047 of 1992 and No. 2062 of 1992 the respondent filed cross objection. We have heard the learned Counsel appearing for the parties and the cross objection also. There are no merits in this cross objection. The learned Counsel appealing for the respondent would not advance any argument in support of the same.

6. In the result, both the appeals as well as cross objection are disposed of without any order as to costs.

Suhas Chandra Sen, J.

7. I agree.