

Sadhu Ram

Vs

The Custodian-General of Evacuee Property

Petition No. 306 of 1954

(CJI S. R. Dass, Syed Jafar Imam, B. Jagannath Das, Vivian Bose, N. Chandrashekar Aiyar JJ)

28.10.1955

JUDGMENT

JAGANNADHADAS J. -

This is an application under article 32 of the Constitution which arises under the following circumstances. The petitioner, Sadhu Ram, purchased from one Imam-ud-Din, a Muslim evacuee, 43 Bighas 14 Biswas of agricultural land comprised in Khasra Nos. 2135 to 2139, 2158, 2159, 2171, 2204 and 2206 with Shamlat rights in village Kaithal, District Karnal, Punjab. The sale deed was executed on the 6th September, 1947, and registered on the 9th September, 1947, before Imam-ud-Din left for Pakistan. The consideration therefore was Rs. 3,000 and as much as Rs. 2,700 thereof appears to have been paid by the petitioner to the vendor before the Sub-Registrar. Possession also was transferred on the execution of the sale-deed. Mutation was made by the revenue authorities on the 23rd January, 1948. East Punjab Evacuees' (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947) came into force on the 12th of December, 1947. It was amended by East Punjab Evacuees' (Administration of Property) (Amendment) Ordinance, 1948 (East Punjab Ordinance No. II of 1948) which came into force on the 16th January, 1948. This gave place to East Punjab Evacuees' (Administration of Property) (Amendment) Act, 1948 (East Punjab Act XXVI of 1948) which came into force on the 11th April, 1948. By these amendments a new section, section 5-A, was inserted in the East Punjab Act XIV of 1947. It will be seen that these amendments were subsequent to the date of the execution and registration of the sale-deed and the transfer of possession thereof. Section 5-A, so far as it is relevant for our present purpose, is in the following terms :

"5-A. (1) No sale, mortgage, pledge, lease, exchange or other transfer of any interest or right in or over any property made by an evacuee or by any person in anticipation of his becoming an evacuee, or by the agent, assign or attorney of the evacuee or such person on or after the fifteenth day of August, 1947, shall be, effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorised by him".

This section purports to be retrospective. Hence an application for confirmation was made by the petitioner on the 23rd March, 1948. The Assistant Custodian, Karnal, on being satisfied about the genuineness of the transaction, recommended confirmation. But the Additional Custodian, Jullundur, by his order dated the 11th February, 1953, rejected the application for confirmation

acting on the Custodian-General's circular dated the 9th March, 1950, under which a policy of not confirming transactions relating to agricultural property was enunciated. This was affirmed by the Assistant Custodian-General on an application to him for revision.

Learned counsel for the petitioner relies on the fact that his transaction which, on enquiry, was held to be genuine, was entered into before the East Punjab Act XIV of 1947 was enacted and before the amendment thereof by insertion of section 5-A came into operation. He contends that the retrospective operation of section 5-A in such circumstances amounts to deprivation of his property, without any compensation and is, therefore, hit by article 31 of the Constitution. Whatever may have been the position if this matter had to be dealt with much earlier, it seems doubtful whether any such contention can be raised by the petitioner before us, on this date, in view of the recent Constitution (Fourth Amendment) Act, 1955, which has come into force on the 27th April, 1955. It is unnecessary, however, to base our decision on this ground.

It appears to us clear that section 5-A cannot be read as a legislative provision depriving the owner of his property. There can be no doubt that so far as transactions subsequent to the date of amendment are concerned, it is nothing more than a restriction on the transfer of property by the owner thereof. Any transferee in such a situation takes the property subject to the requirement of confirmation. The case would, then, be one which falls under article 19 of the Constitution and not under article 31. There can be no doubt that having regard to the purpose and policy underlying the law relating to Evacuee Property and the abnormal conditions which arose from and after the 15th August, 1947, the requirement of confirmation with reference to transactions affecting Evacuee Property cannot but be considered a reasonable restriction. If this requirement was in essence not a deprivation but a restriction in respect of future transaction, there is no reason for treating it as deprivation by virtue of its having been given retrospective effect, such retrospectivity being within the competence of the appropriate legislature. The retrospectivity commencing from the 15th August, 1947, is also not only reasonable but called for in the circumstances, which occasioned the Evacuee Property laws. In this case the petitioner is deprived of his bargain and incurs consequential loss, not by virtue of any unconstitutional law but by reason of the quasi-judicial order of the Custodian declining to confirm the transaction. The contention of the learned counsel for the petitioner that any fundamental right of his has been violated must, therefore, be rejected.

Learned counsel next urges that the action of the Custodian in basing his decision on some circular of the Custodian-General is illegal and that it is not relevant material under section 5-A. It is enough to say that even if this contention be correct, this does not raise any question of violation of fundamental rights. If this is the sole ground, this application is misconceived.

This petition accordingly fails and is dismissed but in the circumstances without costs.

</html