

Dr. Zafar Ali Shah and Others

Vs

The Assistant Custodian of Evacuee Property, Jhansi and Others

Writ Petition No. 96 of 1959

(CJI B. P. Sinha, S. K. Das, N. Rajgopala Ayyangar, J. R. Madhuholkar, A. K. Sarkar JJ)

04.04.1961

JUDGMENT

SARKAR, J. –

This is a petition raising a question of violation of the fundamental right to hold property guaranteed by Art. 19(1)(f) of the Constitution. It arises out of an order made under the Administration of Evacuee Property Act, 1950, declaring two houses to be evacuee property.

What had happened was that sometime in September, 1951, two notices were issued under s. 7 of the Act addressed respectively to Nusrat Ali and Fateh Ali, requiring them to show cause why they should not be declared evacuees and their properties, being the two houses in dispute, to be evacuee property. Neither of these two persons having appeared, a declaration was made by the Custodian on January 10, 1952, under that section that Nusrat Ali and Fateh Ali were evacuees and the houses were evacuee property. Upon such declaration the houses vested in the Custodian under the provision of s. 8 of the Act and he took possession of them. These houses were the property of one Khadim Ali who had never been declared an evacuee and had died on or about October 1, 1950, leaving three sons and five daughters, who thereupon became entitled to them in certain shares. Nusrat Ali and Fateh Ali were two of the sons of Khadim Ali. The Petitioners are his other son and two of his daughters. No notice under s. 7 had at any time been issued to them nor were they ever declared to be evacuees. These facts are not in dispute.

The petitioners contend that they have been wrongly deprived of their rights in the houses by the action of the Custodian. They say that for a long time they had no knowledge of the proceedings taken under the Act in respect of the houses and when they came to know of the order of the Custodian, they took various steps to protect their rights but were unsuccessful. One of such steps appears to have been an appeal preferred by the male petitioner on behalf of all the petitioners to the Custodian-General against the order of January 10, 1952. On this appeal being rejected, they moved this Court by the present petition.

The question is whether the Custodian was entitled to declare the entirety of the two houses evacuee property and deprive the petitioners of their rights in them. It is well established and not disputed, that no property of any person can be declared to be evacuee property unless that person had first been given a notice under s. 7 of the Act : see Ebrahim Aboobaker v. Tek Chand Dolwani [[1953] S.C.R. 691, 702]. Admittedly, no such notice had been issued to the petitioners. Their interest in the houses, therefore, could not have vested in the Custodian.

Learned counsel for the respondents, the officers concerned with evacuee properties, concedes that

so far as the female petitioners were concerned, their interest could not in any way be affected by the order made under s. 7 of the Act. He however contends that the male petitioner, Zafar Ali, having filed the appeal to the Custodian-General against the order of January 10, 1952, he personally at least, is bound by the order dismissing the appeal, that order being a quasi-judicial decision. It is said that he cannot, therefore, maintain this petition.

We do not think that this contention is well founded. Zafar Ali was not a party to the proceeding in which the order in dispute had been made. Strictly speaking, no appeal by him against that order lay or was necessary. Then again the appeal did not decide any question as to the right of Zafar Ali to the houses for, it was dismissed on the sole ground that it had been filed beyond the time prescribed for it. There was no judicial determination by the Custodian-General of any fact affecting Zafar Ali's right in the houses. If, as was conceded, Zafar Ali's share in the houses could not vest in the Custodian without due notice to him, then we are unable to appreciate how the position becomes different because Zafar Ali filed an appeal which was dismissed as time barred and which he need never have filed at all. The order of January 10, 1952, was without jurisdiction so far as Zafar Ali's share in the house was concerned, and it remained so in spite of the appeal.

In our view, the appeal furnishes no answer to the claim made in the petition. As no notice had been issued to the petitioners under s. 7, their interest in the two houses never vested in the Custodian. The acts of the Custodian in so far as they deprive the petitioners of their property cannot be upheld.

It was also said on behalf of the respondents that the properties had already been acquired under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and therefore the petitioners had, no longer, any claim to them. Sub-section (2) of s. 12 of this Act provides that "On the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances." It was said that a notification mentioned in this section had been issued. It seems to us that this section does not affect the petitioner's rights. It only affects the rights of an evacuee which the petitioners, on the admitted facts, are not.

We may mention here that the petitioner Zafar Ali claims that his father left a will giving him a larger share in the houses than he would have got on intestacy. We are not concerned in this case with his rights under the will, if any, and say nothing about them.

In the result, we allow the petition and set aside the order of January 10, 1952, in so far as it affected the rights of the petitioners in the properties concerned. There will be order as to costs.

Petition allowed.

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