

Dr. Mohammad Saheb Mahboob Medico

Vs

The Deputy Custodian-General and another (and connected petition)

Civil Appeal No. 456 of 1958

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta, N. Rajagopala Ayyangar JJ)

25.04.1961

JUDGMENT

DAS GUPTA, J. -

On April 1, 1950, the Deputy Custodian, Jaipur, made an order in proceedings instituted under s. 19 of the Administration of Evacuee Property Ordinance declaring the appellant Dr. Mohammad Saeed a medical practitioner of Jaipur to be an intending evacuee. By the same order a notice was directed to be issued to the respondent to show cause why he should not be declared to be an evacuee under s. 2(d)(i) and s. 2(d)(iii) of the Ordinance. When thereafter the Administration of Evacuee Property Act, 1950 (Act XXXI of 1950), came into force another notice was issued on the appellant under s. 22(b) of the Act to show cause why his property should not be declared evacuee property on the ground that he had transferred a substantial portion of his assets to Pakistan. On November 16, 1951, the Deputy Custodian, Jaipur held Dr. Mohammad Saeed to be an evacuee under s. 2(d)(iii) of the Administration of Evacuee Property Ordinance, 1949. He also held Dr. Mohammad Saeed's property to be evacuee property under s. 7 of the Ordinance and also under s. 22(b) of the Administration of Evacuee Property Act, 1950.

On appeal the District Judge, Jaipur, set aside this declaration of the appellant as an evacuee under s. 2(d)(iii) of the Ordinance and remanded the case for a fresh decision in the light of the observations made by him. As regards the order under s. 22(b) the learned District Judge agreed with the Deputy Custodian that Dr. Mohammed Saeed had transferred a substantial portion of his assets to Pakistan between November 1947 and September 1948. Being of opinion however that only this act of transfer which took place before the 18th day of October, 1949, but other circumstances including the appellant's conduct after October 18, 1949, have to be taken into consideration before action under section 22(b) can be taken, he found that it was difficult to say that the appellant had been making preparations for his migration to Pakistan. Accordingly he set aside the order made by the Deputy Custodian under s. 22(b). The Custodian of Evacuee Property, Rajasthan, moved the Custodian-General of Evacuee Property for revision of this order. The Deputy Custodian-General of Evacuee Property who heard this petition in revision was unable to agree with the District Judge's findings on the question as regards the order under s. 22(b) and accordingly made a reference under s. 27(2) of the Administration of Evacuee Property Act, 1950, to the High Court of Rajasthan. The High Court rejected the contention raised on behalf of this appellant that the circumstances as to the transfer of substantial portion of his assets should relate to an act done by any person, after, he was declared as an intending evacuee. It further held that the fact that Dr. Mohammad Saeed had during the period from August 14, 1947 to October 18, 1949, transferred a substantial portion of his assets in India to Pakistan constituted under the law a preparation for his migration to Pakistan and that this justified a declaration by the Custodian of his property situated in Rajasthan in which Dr.

Mohammad Saeed has a right or interest, to be evacuee property. Accordingly, the High Court set aside the decision of the District Judge in respect of Deputy Custodian-General's orders under s. 22(b) and directed the Custodian-General or the Deputy Custodian-General, if authorised to deal with it, to dispose of the proceedings in accordance with the decision of the High Court. In accordance with this direction the Deputy Custodian-General on August 10, 1957, held that the property of the petitioner was rightly declared to be evacuee property under s. 22(b) by the Deputy Custodian. The appeal has been filed against this decision by special leave granted by this Court.

After the appeal was heard in part of January 23, 1961, the hearing was adjourned to enable the appellant to make a writ petition. A petition under Art. 32 of the Constitution was then filed on February 14, 1961, praying for a writ of certiorari and/or mandamus or direction to quash the order made under s. 22(b). The appeal and the petition have come up for hearing together.

As the writ petition challenges the validity of the law as enacted in s. 22(b) it will be proper and convenient to take up that petition for decision first. Of the several grounds urged in the petition against the validity of s. 22(b) only one, viz., that s. 22(b) contravenes Art. 14 of the Constitution has been pressed before us. While however in the grounds as stated in the petition the attack was that discrimination had been made between persons declared as intending evacuee in respect of whose property proceedings had been started before the commencement of the Act and those in respect of whose property no such proceedings had yet been started and further that Art. 14 was contravened because a person declared to be an intending evacuee who had done one of the acts prescribed as constituting a preparation for migration to Pakistan, was denied the right to show that he had, in fact, no intention so to migrate and had made no preparation for the purpose and by imposing upon him a very grave penalty, neither of those contentions were urged at the hearing.

The only argument on the question of contravention of Art. 14 which Mr. Bishan Narain urged on behalf of the petitioner was that in two matters there was discrimination between an intending evacuee whose property was declared evacuee property under s. 22(b) and an evacuee whose property might be declared to be an evacuee property, where the evacuee had done practically the same thing for which another person has been declared as an intending evacuee. Learned Counsel has pointed out that under s. 2(d)(iv) of the Administration of Evacuee Property Act, 1950, as it stood after its amendment by Act 11 of 1953, a person who has after the 18th day of October, 1949, transferred to Pakistan without the previous approval of the Custodian his assets or any part of his assets situated in any part of the territories to which the Act extends is an evacuee; so that any property of such a person is evacuee property within the meaning of the Act. When in respect of property of such a person an order has been made under s. 7 of the Act declaring it to be evacuee property the evacuee or his heir will be entitled to make an application for restoration of the property under s. 16 of the Act, and after due inquiry the Central Government may, subject to the conditions specified in the section make an order restoring the property to the applicant. Another benefit which a person who is an evacuee within the meaning of s. 2(d)(iv) is entitled to, along with other evacuees, is that of s. 13 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954), under which when any property of an evacuee has been acquired under s. 12 there shall be paid to an evacuee compensation in respect of his property..... in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakistan.

Take however the case of a person, like the present petitioner who after the 14th day of August, 1947, and before the 18th day of October, 1949, transferred his assets or any portion thereof to Pakistan. He would be an "intending evacuee" within the meaning of s. 2(e)(i) of the Act and once a

declaration had been made under s. 19 that he was an intending evacuee his property would be liable to be declared evacuee property under s. 22(b). Even so however he would not get the benefit of s. 16 of Act XXXI of 1950 or of s. 13 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

The result of the several provisions of law of the Administration of Evacuee Property Act, 1950, after it was amended in 1953 therefore is that if a person transferred his assets or any part of his assets to Pakistan without the previous approval of the Custodian after the 18th day of October, 1949, he would be an evacuee in law and his property will be liable to be declared an evacuee property, but he will still be entitled to restoration of the property under s. 16 of the Administration of Evacuee Property Act, 1950, and also to the benefit of s. 13 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954); but if a person transferred his assets or part of his assets to Pakistan between the 14th day of August, 1947, and the 18th day of October, 1949, he was liable to be declared an intending evacuee at any date before the Amended Act of 1953 came into force and if that has happened, any property belonging to him was liable to be declared evacuee property under s. 22 of the Act at any time before Chapter IV of that Act was repealed by the 1953 Act and even after that date if any proceeding under s. 22 was pending on the date of the commencement of the 1953 Act. But such a person would not be entitled to the benefit of either s. 16 of the Administration of Evacuee Property Act, 1950, or compensation under s. 13 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954). This denial of benefits under section 16 of the 1950 Act and s. 13 of the 1954 Act to one who has been declared an intending evacuee on the ground of transfer of assets to Pakistan amounts, it is urged by the learned counsel, to be a denial of equal protection of laws and it is contended that s. 22(b) of the Administration of Evacuee Property Act as it stood before the section was repealed along with other sections of Chapter IV should be held to be void.

In our judgment, this contention is not well founded. In the first place it is to be pointed out that a person who transferred assets between the 14th August, 1947, and the 18th October, 1949, and a person who transferred such assets after the 18th October, 1949, cannot properly be considered to be similarly circumstanced. It has to be borne in mind that political relations between India and Pakistan were in a fluid and disturbed state immediately after the 14th August, 1947, but the position improved to a considerable extent by the 18th October, 1949, which it may be noticed was the date when the Administration of Evacuee Property Ordinance, 1949, was made. Persons who had transferred assets between the 14th August, 1947, and the 18th October, 1949, may therefore reasonably have been considered by the legislature to form a class distinct in respect of the application of the law to their property from those who transferred assets after the 18th October, 1949. We are not however concerned with the reasons or the wisdom of the policy which underlay the denial of the benefits of s. 16 of the Administration of Evacuee Property Act and s. 13 of the Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954) to those persons who had been declared intending evacuees because of having transferred assets between the 14th August, 1947, and the 18th October, 1949, while granting these benefits to those who were evacuees under the law as amended in 1953, because of transfer of assets of Pakistan after the 18th October, 1949. What is clear is that the two groups of persons are not similarly circumstanced and so the denial of equal benefits to the two groups is not an infringement of the guarantee of equal protection of laws.

Next it is important to note that this difference - viz., that one group of persons is entitled to the benefits of the sections mentioned above while another group is not - does not flow directly or necessarily from s. 22(b). What is characterised as discrimination between an evacuee and an intending evacuee is the consequence of the legislature's omission to extend to the intending

evacuees the benefits of s. 16 of the 1950 Act and s. 13 of the 1954 Act as mentioned above and not of the provisions under s. 22(b) that under certain circumstances as specified therein the Custodian may declare the property of an intending evacuee to be evacuee property.

We do not think that it is possible to say therefore that s. 22(b) of the Administration of Evacuee Property Act contravenes Art. 14 of the Constitution.

The petition under Art. 32 of the Constitution therefore fails and is dismissed with costs.

The appeal raises the question of the effect of the application of s. 22(b) of the Act to the facts of the present case. Section 22(b), substituting therein for the words "he had done any of the acts specified in sub-clauses (i) and (iii) of clause (e) of s. 2" the words of only clause 2(e)(i), reads thus :-

"If the Custodian is satisfied, after such enquiry as may be prescribed, that the circumstances relating to any person, in respect of whom a declaration has been so made on the ground that after the 14th day of August, 1947, and before the 18th day of October, 1949, he has transferred to Pakistan his assets or any part thereof situated in any part of the territories to which this Act extends are such as may be prescribed as constituting a preparation for his migration to Pakistan, the Custodian may declare any property situated in the State in which such person has any right or interest to be evacuee property and on the issue of such notification any property specified in the notification shall be deemed to be evacuee property which has vested in the Custodian within the meaning of this Act."

It is important to notice the explanation to the section which runs thus :-

"Explanation : - The following shall be deemed to be some of the circumstances prescribed under clause (b), namely -

- (i) the transfer to Pakistan by any person referred to in that clause of a substantial portion of his assets situated in any part of the territories to which this Act extends, or
- (ii) the acquisition of, or the declaration of an intention to acquire, Pakistan nationality by any such person."

It need only be mentioned that a declaration has been "so made" means that a declaration has been made under section 19 of the Act that he is an intending evacuee.

It is no longer in dispute that Dr. Mohammad Saeed had, before the order appealed from was made, transferred to Pakistan a substantial portion of his assets situated in Jaipur which is part of the territories to which this Act extends. It is further not in dispute that this transfer was made before he was declared an intending evacuee.

The first contention raised on behalf of the appellant was that this transfer having been made before the declaration was made is not available for consideration for the purpose of an order under s. 22(b). The contention is clearly unwarranted. On a normal grammatical construction of the words used by the legislature it is abundantly clear that the transfer to Pakistan of a substantial portion of the assets shall be deemed to be one of the circumstances prescribed under clause (b) irrespective of

whether the transfer took place before the declaration as intending evacuee was made or after such declaration. What is necessary is that the circumstance must relate to any person in respect of whom a declaration that he is an intending evacuee has been made. There is nothing to justify the conclusion that the circumstances in order that they may be taken into consideration must also come into existence after the declaration was made. Indeed the scheme of the legislation appears to be that the fact that any portion of a person's assets has been transferred to Pakistan is sufficient to make him liable to a declaration that he is an intending evacuee; but he becomes liable to the further declaration that his property is evacuee property, where it appears that what was transferred forms a substantial portion of his assets. In some cases it may happen that what was transferred before his declaration as an intending evacuee formed a small part of his assets. In such a case if later on other portions of his assets were transferred to Pakistan and the two transfers together amount to a transfer of a substantial portion of his assets, his property will be liable to be declared as evacuee property. It will be difficult to find any logic in the argument that when what was transferred before his declaration as intending evacuee was itself a substantial portion of his assets, such liability should not fasten. Quite apart however from the question of logic or reasonableness it is quite clear from the language used in the section that the legislature intended such circumstance of transfer of a substantial portion of assets to be available for consideration for the purpose of an order under s. 22(b) whether or not the transfer took place before the person was declared as an intending evacuee or afterwards.

It was next urged that in any case it would be proper for the Custodian to take other circumstances including the later conduct of the intending evacuee to decide whether or not he should declare his property to be evacuee property. It is unnecessary for us to consider whether it is open to the Custodian to consider such other circumstances. The section however gives a Custodian the authority to declare the property of a person who has been declared an intending evacuee to be evacuee property whenever the existence of any of the circumstances prescribed as constituting a preparation for his migrating to Pakistan is established. Where, as in the present case, a Custodian in exercise of such authority has given such a declaration there is no reason for saying that the declaration has been improperly made.

In our opinion, the High Court was right in setting aside the order of the District Judge and in directing the Custodian-General or the Deputy Custodian-General to dispose of the matter in accordance with the views expressed by the High Court that on the facts proved in the case the order made by the Deputy Custodian declaring Dr. Mohammad Saeed's property as evacuee property was right. The order made by the Deputy Custodian-General in compliance with the directions given by the High Court cannot therefore be assailed.

The appeal is accordingly dismissed with costs.

</html