

Lekhraj Satramdas, Lalvani

Vs

Deputy Custodian-Cum-Managing Officer & Others

Civil Appeal Nos. 414-416 of 1963

(M. Hidayatullah, V. Ramaswami – I, A. K. Sarkar JJ)

04.05.1965

JUDGMENT

RAASWAMI J. –

The proprietors of two firms styled "Adam Haji Peer Mohd. Essack" and "Haji Ebrahim Kasim Cochinwala" had, in the year 1947, migrated to Pakistan and both these firms became vested in the Custodian of Evacuee Properties for the State of Madras under s. 8 of the Administration of Evacuee Property Act, 1950, hereinafter referred to as the 1950 Act. On March 6, 1952 the appellant was appointed as Manager of the two firms under s. 10(2) (b) of the 1950 Act. The appellant also furnished security of Rs. 20,000/- before taking possession of the business of the firms as Manager. The order of appointment - Ex. P-1 dated March 6, 1952 states :

"The Custodian approves the proposal of the Deputy Custodian, Malabar that the Management of both the firms of Adam Hajee Peer Muhammad Issack and Hajee Ibrahim Kassam Cochinwala at Kozhikode may be allotted to Sri L. S. Lalvani for the present on the same system as exists now between the Government and the present two managers and on his furnishing a security of Rs. 20,000 to the satisfaction of the Deputy Custodian. The question to outright allotment as contemplated in Custodian General's letter No. 2811/CG/50 dated 20-3-50 will be taken up in due course."

On October 9, 1954 the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was passed which will hereafter be referred to as the 1954 Act. On April 11, 1956 there was an advertisement published in the Press for the sale of the aforesaid evacuee properties. The appellant applied to the Chief Settlement Commissioner for stopping the sale of the two concerns. On April 25, 1956 the Central Government made an order - Ex. P-5 - which states :

"I am directed to state that it has been decided in principle that the aforesaid evacuee concerns will be allotted to you. The terms of allotment will be communicated to you separately. Meanwhile, you will continue to function as the Custodian's Manager for these concerns in terms of section 10(2) (b) of the Administration of Evacuee Property Act, read with Rule 34 of the rules made under the Act."

On June 21, 1956 another letter - P-8 - was written to the appellant by the Custodian of Evacuee Properties which states :

"The Deputy Custodian is informed that the Government of India have decided that

the two evacuee concerns viz., firms of Adam Hajee Peer Mohammed Essack and Hajee Ebrahim Kassam Cochinwala of Kozhikode are to be allotted to the present Manager Shri L. S. Lalvani and ultimately sold to him. He is also informed that until the question of terms and conditions of allotment of the concerns in question is decided Shri Lalvani will continue to function as Custodian's Manager for these concerns in terms of Section 10(2) (b) of the Administration of Evacuee Property Act, 1950 read with rule 34 of the rules made thereunder. The Deputy Custodian is requested to evaluate the business concerns properly after getting prepared a balance sheet of each year of the vesting of the concerns, evaluating the concerns, the Deputy Custodian should keep in view the other assets and liabilities of the concerns and their goodwill etc. His comment and suggestions as to how and by what easy instalments the value of the concerns if sold

The bargain was not concluded and on March 25, 1958 there was an advertisement in the Press about the public auction of the business of the firms. The appellant moved the High Court of Kerala for grant of a writ restraining the District Collector from selling the business of the firms by a public auction. The application was allowed and on June 25, 1959 the Kerala High Court directed the District Collector not to sell the properties of the business of the two firms without an appropriate order of the Chief Settlement Commissioner. The decision of the High Court is based upon the ground that there was no order under the 1954 Act by the Chief Settlement Commissioner for sale of the properties and that in the absence of such an order the sale of the properties cannot take place. It appears that the order of the Chief Settlement Commissioner was subsequently made on September 15, 1959. In pursuance of that order the management of the appellant was terminated and the possession of the business was taken over by t

"Shri L. S. Lalvani is informed that his services as Manager of the business concerns of Adam Haji Peer Mohd. Essack and Haji Ibrahim Kassam, Cochinwala, at Kozhikode, are hereby terminated with immediate effect. He is further required to hand over immediate possession of the premises and the stock-in-trade, account books and other assets of the business including furniture etc."

The appellant filed a writ petition in the High Court of Kerala - being O. P. no. 1438 of 1959 for grant of (1) a writ of certiorari for quashing the order dated December 15, 1959 - Ex. P-13 - and the proceedings dated December 18, 1959 - Ex. P-16, (2) a writ of mandamus directing respondents nos. 1 and 2 to hand over possession of the two business concerns including the premises, stock-in-trade all records etc. to the appellant, and (3) a writ of mandamus or appropriate writ or order directing respondents nos. 1 to 3 not to sell by public auction or otherwise the two evacuee business concerns. S. Velu Pillai, J. by his order dated June 8, 1960, granted writ to the appellant as prayed for in prayer (1) & (2) but refused prayer (3) for a writ of mandamus restraining the respondents from selling the business by public auction. Against the order of the Single Judge the respondents filed an appeal being A. S. no. 484 of 1960 before the Division Bench of the High Court. The appellant also preferred an appeal A. S

The first question arising in this case is whether the appellant was lawfully removed from the management of the business by the order of the respondent no. 1 dated December 18, 1959 - Ex. P-13 and P-16. It was submitted on behalf of the appellant that under s. 10(2) (b) of the 1950 Act the Custodian had the power to appoint a Manager for the Evacuee Property for carrying on any business of the evacuee and there was no power conferred by the Act upon the Custodian to remove the Manager so appointed. It was argued by the Counsel on behalf of the appellant that an

indefeasible right of management was conferred upon the appellant because of the order of the Custodian - Ex. P-1 dated March 6, 1952. In our opinion, there is no warrant for this argument. The power of appointment conferred upon the Custodian under s. 10(2) (b) of the 1950 Act confers, by implication, upon the Custodian the power to suspend or dismiss any person appointed. Section 16 of the General Clauses Act states :

"Where by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power."

It is manifest that the management of the appellant with regard to the business concerns can lawfully be terminated by the Deputy Custodian by virtue of s. 10(2) (b) of the 1950 Act read with s. 16 of the General Clauses Act. The principle underlying the section is that the power to terminate is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power.

It was then contended on behalf of the appellant that the order of removal- Ex. P-13 and P-16 - was made by the Management Officer-cum- Deputy Custodian of Evacuee Property of Southern States under the 1954 Act which conferred no power on such an officer to cancel the appointment of a Manager. It was pointed out that the order of removal was made after the provisions of the 1954 Act had come into force. In our opinion, there is no justification for this argument. We shall assume that the Management Officer under the 1954 Act is not the proper authority to cancel the appointment of a Manager but it is not disputed that the provisions of the 1950 Act have not been repealed and still continue to be in force. Under s. 10(2) (b) of the 1950 Act the Deputy Custodian is the proper authority to cancel the appointment of a Manager and the order - Ex. P-13 and P-16 dated December 18, 1959 is, therefore, legally valid. It is true that the order Ex. P-13 and P-16 is signed by Mr. Mathur as "the Managing Officer-cum-Deput

In our opinion, the order of the Deputy Custodian - P-13 and P-16 - removing the appellant from the management of the business is not vitiated by any illegality. But even on the assumption that the order of the Deputy Custodian terminating the management of the appellant is illegal, the appellant is not entitled to move the High Court for grant of a writ in the nature of mandamus under Art. 226 of the Constitution. The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions. In the present case, the appointment of the appellant as a Manager by the Custodian by virtue of his power under s. 10(2) (b) of the 1950 Act is contractual i

"Before mandamus can issue to a public servant it must therefore be shown that a duty towards the applicant has been imposed upon the public servant by statute so that he can be charged thereon, and independently of any duty which as servant he may owe to the Crown, his principal."

A similar view has been expressed by the Calcutta High Court in P. K. Banerjee v. L. J. Simonds (2) A. I. R. 1947 Cal. 307. In our opinion, these cases lay down the correct law on the point.

We pass on to consider the next question presented on behalf of the appellant viz., whether there was a final allotment of the business in favour of the appellant by the Chief Settlement Commissioner. It was contended for the appellant that in view of Ex. P-5 dated April 25, 1956 there was final allotment of the business, though the terms of allotment had to be subsequently determined. In Ex. P-5 the Government of India state that "It has been decided in principle that the aforesaid evacuee concerns should be allotted to you" and the "terms of allotment would be communicated to you separately". Reference was made to Ex. P-8 dated June 21, 1956 wherein it is stated that the Government of India have decided that "the two evacuee concerns viz., firms of Adam Hajee Peer Mohammed Essack and Hajee Ebrahim Kassam Cochinwala of Kozhikode are to be allotted to the present Manager Shri L. S. Lalvani and ultimately sold to him". It is also mentioned in the letter that "until the question of terms and conditions of allo

In our opinion, there is no merit in these appeals which are accordingly dismissed with costs.

Appeals dismissed.

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