

Bhanwar Lal and Another

Vs

Regional Settlement Commissioner, Jaipur, Cum- Custodian of Evacuee Property & Others

Civil Appeal No. 244 of 1965

(R. S. Bachawat, Raghuvar Dayal, K. Subha Rao JJ)

06.05.1965

JUDGMENT

RAGHUBAR DAYAL, J. –

Ibrahim and Khurshed, brothers, sons of Paneh Ali, Isak and Baggu, sons of Jawaye, owned Khasra No. 26, measuring 20 bighas, at village Alipore, Tehsil Hanumangarh. They migrated to Pakistan. The Assistant Custodian of Evacuee Property, Hanumangarh, issued notice under s. 7(1) of the Administration of Evacuee Property Act, 1950 (Act XXXI of 1950) hereinafter called the Act, to these persons and also to Hazari, son of Chuni and Magha, son of Kana, stating therein that Ibrahim and others had gone to Pakistan and that Hazari and Magha were in illegal possession of the land. They were all required to show cause why the land be not declared evacuee property. The notice was affixed at a conspicuous place in village Alipore. The notice could not be served on Hazari and Magha as they had died long before the issue of notice in 1955.

No objections were filed and on April 7, 1955 the Assistant Custodian declared Ibrahim, Khurshed, Isak and Baggu evacuees and the aforesaid property evacuee property. Bhanwar Lal, son of Hazari and Rati Ram, grandson of Magha, filed a petition under Art. 226 of the Constitution in the Rajasthan High Court for the quashing of the order dated April 7, 1955 and for restraining the Regional Settlement Commissioner, Jaipur, the Managing Officer of acquired Evacuee Property, Ganganagar, the Tehsildar, Hanumangarh, from interfering with their possession over the property declared to be evacuee property. They alleged that one Paneh Mohamad, father of Ibrahim and Khurshed, had mortgaged this property to Hazari and Magha in 1931, that the mortgagees had been in possession of the property, that they did not get any notice of the proceedings taken by the Assistant Custodian and were informed of his order in 1959 by their tenants in the land in suit when the allottees of the land were taking steps to recover possession.

Section 7(1) of the Act reads :

"Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property."

The Custodian can form his opinion about any property having become evacuee property on the basis of information available to him. It has been so held in Abdul Hakim Khan v. The Regional Settlement Commissioner (1) [1962] 1 S. C. R. 1531. He can issue notice to the persons interested

also on the basis of information available to him. He is not expected to hold a general inquiry of the persons interested in the alleged evacuee property. In the present case it appears that the village records about the land in suit which is agricultural, recorded the names of Hazari and Magha as mortgagees and that the Assistant Custodian could consider them to be the persons interested. He could have had no information whether these mortgagees who resided at some other place were alive or not. He complied with the requirements of sub-s. (1) of s. 7 to give a notice to Hazari and Magha. The notice however was ineffective and not good as Hazari and Magha had died long before. The question then arises whether the further proceed

The interest of Ibrahim and others, the evacuees of the property in suit which was under mortgage, consisted of the equity of redemption in the property. It is this interest of theirs which could be declared evacuee property and the order of the Assistant Custodian dated April 7, 1955, declaring the aforesaid property to be evacuee property, really amounts to an order declaring the right of Ibrahim and other in the equity of redemption evacuee property. The order cannot affect the mortgagee rights as Ibrahim and others had no interest in the mortgagee rights.

It follows that the impugned order does not affect the rights of the appellants if any as mortgagees. The non-issue of the notice to the appellants therefore is of no consequence as the order subsequently passed without the issue of the notice to them does not affect their interest.

Reference in this connection may again be made to Abdul Hakim Khan's case (1) [1962] 1 S. C. R. 531. In that case a number of persons had shares in certain property. Some of them migrated to Pakistan. The notice under s. 7(1) was issued to one of those persons who had not migrated of Pakistan. The Custodian declared the property of those who had migrated to be evacuee property and specified their share in the property. The other co-shares except the one to whom the notice was issued, challenged the validity of the order passed under s. 11 of the Evacuee Interest (Separation) Act, 1951 (Act LXIV of 1951), vesting the entire property in the Custodian. This Court held that the objectors could not challenge the validity of the order under s. 7 of the Act as it did not affect their rights in the property. Similarly it can be said that the appellants in this case cannot challenge the validity of the proceedings on the notice issued by the Assistant Custodian and the order of the Assistant Custodian declaring the p

By virtue of the order dated April 7, 1955, this rights of the evacuees in the property in suit vest in the Custodian and those rights, as stated earlier, consist of the rights of equity of redemption. This means that the Custodian holds the property subject to the mortgagee rights, if any, of the appellants.

It has been conceded by Mr. Prem appearing for the respondents, that no action has been taken under the Evacuee Interest (Separation) Act, 1951. Section 10 of this Act empowers the competent officer to take all necessary measures for the purpose of separating the interest of the evacuees from those of the claimants in any composite property which, inter alia, means any property which or in which an interest has been declared to be evacuee property or has vested in the Custodian under the Act and in which the interest of the evacuee is subject to mortgage in any form in favour of a person not being an evacuee. It is only after such separation of the interests of the evacuee and the claimants in the composite property that the evacuee interest gets vested in the Custodian free from all encumbrances. It follows that so long as proper action under the Evacuee interest Separation Act is not taken to separate the interest of the evacuees and the appellants who claim to be mortgagees, the Custodian cannot take any

The result then is that we dismiss the appeal and confirm the order of the Court below with respect to the validity of the order of the Assistant Custodian dated April 7, 1955. We allow the appeal with respect to the prayer for restraining the Regional Settlement Commissioner and others, respondents 1 to 3, from interfering with the possession of the appellants or their tenants. We order the parties to bear their own costs throughout.

Appeal partly allowed.

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