

N. S. Gujral

Vs

Custodian of Evacuee Property & Anr.

Civil Appeal No. 642 of 1966

(R. S. Bachawat, V. Ramaswami-I, G. K. Mitter JJ)

12.09.1967

JUDGMENT

WANCHOO, C.J. -

The appellant obtained a decree of over Rs. 41,000 against Modern Electric Iron and Brass Works, Delhi which was the property of two partners, namely, Mohd. Sabar and Noor Mohd. Butt. in January 1950. He also obtained another decree for over Rs. 95,000 against the same two persons and one more to which proceeding the Custodian of Evacuee Property (hereinafter referred to as the Custodian) had also been made a party. Before, however, the first decree was obtained by the appellant. Mohd. Sabar and Noor Mohd. Butt had in April 1947 executed two deeds of release with respect to their property in favour of their wives. Later Mohd. Sabar and Noor Mohd. Butt and their wives migrated to Pakistan and their properties were declared evacuee properties under the Administration of Evacuee Property Act No. 31 of 1950, (hereinafter referred to as the 1950 Act). Under s. 10 of the 1950-Act the Custodian had the power to pay any debt due from the evacuee to any person subject to rules framed thereunder. Further under the Rules a person to whom an evacuee owed money could apply for registration of his claim and the Custodian could register such claim; but mere registration of a claim did not entitle the claimant to payment, and the Custodian could refuse payment for reasons to be recorded.

The claim of the appellant, based on the first decree passed in his favour, was registered by the Custodian. But in June 1950 the Custodian held that the evacuee property in question in the present case belonged to the wives of the judgment-debtors (namely Mohd. Sabar and Noor Mohd. Butt). He further directed the appellant to go to the civil court to get the release-deeds set aside. On November 28, 1955, the appellant filed the suit out of which the present appeal has arisen in the court of the subordinate Judge First Class, Delhi, claiming that the release-deeds in question were of no effect as being in fraud of the creditors. He claimed a declaration that the building in suit belonged to Mohd. Sabar and Noor Mohd. Butt and not to their wives and that the release-deeds of April 1947 were fictions and fraudulent and intended to defeat and delay the creditors and were not binding on the appellant. He also claimed that the Custodian was bound to open the account of the income of the said building in the names of Mohd. Sabar and Noor Mohd. Butt and the proceeds of the said building were bound to be adjusted against the claims of the appellant.

The suit was resisted by the Custodian and the Union of India. Their case firstly was that the civil court had no jurisdiction to entertain the suit. Secondly, it was pleaded that the property in dispute which was a building in the city of Delhi had been acquired by the Central Government in pursuance of a notification issued on June 3, 1955, under s. 12 of Displaced Persons (Compensation and Rehabilitation) Act, No. 44 of 1954. (hereinafter referred to as the 1954-Act) and therefore the

appellant could not get a declaration to the effect that the proceeds of the suit building should be adjusted against his claim. The appellant had also pleaded in his plaint that the acquisition of the building by the notification of June 3, 1955 was subject to his rights and that in any case the notification and s. 12 of the 1954-Act were ultra vires.

Originally, the trial court dismissed the suit holding that as the property in suit had been acquired by the Central Government by the notification dated June 3, 1955, the appellant could not claim to proceed against the property or its income. The appellant went in appeal and the appellate court remanded the suit on the ground that the appellant's plea that the notification and s. 12 of the 1954-Act were ultra vires had not been decided. When the suit went back for re-trial on this issue, the appellant applied or transfer under Art. 228 of the Constitution to the High Court praying that the constitutional issue be first determined by the High Court. This application was allowed and finally the constitutional question relating to the validity of s. 12 of the 1954 Act was considered by a Division Bench of the High Court. It may be mentioned here that it had been decided by the Subordinate Judge that the civil court had jurisdiction and the matter is not in dispute before us. When the matter came to the High Court, the appellant further challenged the amendment made to the 1950-Act by which cl. (m) of s. 10(2) was amended as ultra vires. Reliance in this connection was placed on Art. 19 of the Constitution and also on Art. 14. The High Court held against the appellant on both points and sent the case back to the trial court for further consideration in the light of its judgment on the constitutional issues that were raised. The appellant then applied to the High Court for grant of a certificate to appeal to this Court, which was refused. Thereupon the appellant applied for and obtained special leave from this Court; and that is how the matter has come up before us.

The same two points which were urged before the High Court have been raised before us on behalf of the appellant. So far as the first point relating to the invalidity of the amendment to s. 10(2)(m) is concerned, the matter is now of academic interest in view of the decision of this Court in *Raja Bhanupratap Singh v. Assistant Custodian Evacuee Property U.P.* ([1966] 1 S.C.R. 304). It was held by the Court that "the power to pay the evacuee's debts was derived from under cls. (m) and (n) of s. 10(2). Therefore the deletion from cl. (m) of the Custodians' power to pay the debts, by the Amending Act of 1956, and the consequential deletion of r. 22 of the Rules framed under the Act, by which a machinery was provided for exercising that power did not affect the power which is conferred by s. 10(2)(n) and by sub s. (1). The power to administer, under s. 10(1) is not merely a power to manage on behalf of the evacuee so as to authorise the Custodian only to recover and collect the assets of evacuee; it includes power to discharge his obligations as well, to pay such debts which, in the opinion of the Custodian, are binding upon the evacuee". This Court further held that the decree of the civil court was not decisive of the question whether a person making a claim was entitled to the money claimed by him; it was for the Custodian to determine whether he was so entitled. In view of this decision it is unnecessary to express any opinion as to the invalidity of the amendment of cl. (m) of s. 10(2) for the amendment made no difference to the legal position as the power of the Custodian to pay the debts of the evacuee still remained unimpaired. If he was of opinion that the debts were genuine, he could pay them.

This brings us to the main question that has been argued in the present appeal, namely, that s. 12 of the 1954-Act is invalid because it is an infringement of the right to hold property which the appellant has under Art. 19(1)(f) of the Constitution and is not saved as a reasonable restriction thereon. The argument is put namely, *Mohd. Sabar and Noor Mohd. Butt*. On the basis of the loan, he had obtained a decree in January 1950. He had the power to execute that decree against the property of his judgment debtors. By taking away the property of the judgment-debtors, after they

had become evacuees and by vesting that property free from all encumbrances in the Central Government under s. 12 of the 1954-Act, the appellant's right to proceed against that property had disappeared. Therefore s. 12 of the 1954-Act was violative of Art. 19(1)(f), as the appellant's holding of the decree had been rendered illusory. Reliance in this connection is placed on four decisions of the Supreme Court of the United States of America, namely, (i) *Von Hoffman v. The City of Quincy* (18 L.Ed. Wallace 403), (ii) *Ranger v. City of New Orleans*, (26 U.S. S.C.R. 132) (iii) *Peirce Coombes v. Milton E. Getz* (56 L.Ed. 866) and (iv) *W. B. Worthen Co. v. Mrs. W. D. Thomas* (76 L.Ed. 1344).

Before we consider the argument raised before us we may say at once that the four cases on which reliance has been placed on behalf of the appellant are entirely beside the point and of no assistance. These cases were based on a provision in Art. 1, s. 10 of the American Constitution which inter alia lays down that "no State shall..... pass any law impairing the obligation of contracts.....". There is no such provision in our Constitution and therefore the appellant cannot be heard to say that as s. 12 of the 1954-Act impairs the obligation of the contract between him and the two evacuees, the section is bad.

Now let us turn to the argument based on Art. 19(1)(f). It is clear to us that the argument as put forward on behalf of the appellant is fallacious and untenable. Section 12 of the 1954-Act does not in any manner effect the decree held by the appellant against Mohd. Sabar and Noor Mohd. Butt. all that it provides is that property, which upto the time the Act of 1954 was passed, was in law the property of the evacuees, though it was under the administration of the Custodian and vested in him for the purpose under the 1950-Act, would on a notification issued under s. 12 of the 1954-Act become the property of the Central Government and the right, title, interest of the evacuee in such property would thereupon be extinguished and the property shall vest absolutely in the Central Government free from all encumbrances. At no time did the appellant have any right whatsoever in the property which vested in the Central Government on the issue of the notification under s. 12. It may be that if the owners had not become evacuees and if the property had not been declared evacuee property, the appellant might have proceeded against that property in execution of his decree. It may also be that he cannot do so now after the said notification under s. 12. But s. 12 does not in our opinion interfere with the appellant's right to acquire, hold and dispose of his property, namely the decrees against Mohd. Sabar and Nor Mohd. Butt. As the appellant had no interest in the property in suit, the fact that it was acquired by the Central Government by a notification under s. 12 of the 1954 Act did not in any way affect the appellant's right to acquire, hold and dispose of his property. In the circumstances, the appellant cannot claim protection under Art. 19(1)(f) at all with respect to the property in suit and it is not necessary to consider whether s. 12 could be saved under Art. 19(5). We therefore agree with the High Court that the appellant cannot claim that s. 12 is ultra vires Art. 19(1)(f) and therefore the notification made thereunder affects his fundamental right to acquire, hold and dispose of property.

Further the argument that s. 12 is bad under Art. 14 has also no force. The contention under this head is that the creditors who have decrees against non-evacuees can execute their decrees against the properties of non-evacuees, but the creditors having decrees against evacuees cannot execute them against their properties after they had vested in the Central Government by a notification under s. 12 of the 1954 Act; and this amounts to discrimination under Art. 14. But it is well-settled that the Constitution does not contemplate equality of all laws or application of all laws equally to every person. There is a clear classification between evacuee property and non-evacuee property. There is a clear nexus between the object to be achieved by the enactment of the 1954-Act, namely, rehabilitation of evacuees from Pakistan and the provision in s. 12 by which the property of

evacuees in India is to be utilised for such rehabilitation. There is therefore no infringement of Art. 14 in the circumstances.

Lastly it is urged on behalf of the appellant on the basis of the decision of this Court in Raja Bhanupratap Singh ([1966 1 S.C.R. 304) that the appellant was entitled to ask the Custodian to consider his case under s. 10(2)(n) read with s. 10(1) of the 1950-Act, and for that purpose it is necessary to decide the main question raised in the suit, namely, that the release-deeds of 1947 in favour of the wives were of no effect and therefore the property, though evacuee property, was the property of the judgment-debtors of the appellant, namely, Mohd. Sabar and Noor. Mohd. Butt. It is also pointed out that the notification of June 3, 1955 was only with respect to immovable property and there was nothing to show that the Central Government had issued a notification under s. 14(1)(b) of the 1954-Act relating to cash balance, if any, lying with the Custodian on the date the property was acquired. It is urged that all that the notification of June 3, 1955 means is that as from that date no action could be taken against the property in suit or its income. But if there was any money with the Custodian on the date of vesting and if no order had been passed in respect thereof under s. 14(1)(b), the appellant would be entitled to ask the Custodian to consider whether he should be paid anything out of the moneys lying with the Custodian provided he could establish that the property was the property of his judgment-debtors, namely, Mohd. Sabar and Noor Mohd. Butt and not of their wives. The declaration that the appellant sought was wide in terms in as much as he claimed that he was entitled to have his claim adjusted against the proceeds of the said building and these process will include any income of a period before the date of vesting under the notification under s. 12. It is urged that as such it is necessary to decide the issue whether the release deeds if April 1947 were fictitious and fraudulent intended to defeat and delay the creditors and therefore the property belonged to Mohd. Sabar and Noor Mohd. Butt. If that is held in his favour by the civil courts he would be entitled to go to the Custodian and ask him to pass an order in his favour under s. 10(2)(n) read with s. 10(1) and pay him out of the moneys lying with him on the date the property vested in the Central Government under the notification under s. 12.

We are of opinion that there is force in this contention. Though the appellant cannot claim to proceed against the property in suit or its income after the date on which it vested in the Central Government by virtue of the notification under s. 12 he can ask the Custodian to pay him out of the moneys lying with him on the date of such vesting if he can satisfy him in the manner provided in s. 10(2)(n) read with s. 10(1) of the 1950 - Act. We therefore direct that when the case goes back to the trial court as ordered by the High Court, the trial court will decide the issue whether the deeds of release of April, 1947 are fictions and fraudulent intended to defeat and delay the creditors and not binding on the appellant. If the trial court decides in favour of the appellant it will then be open to him to approach the Custodian under s. 10(2)(n) read with s. 10(1) for such orders as the Custodian thinks fit to pass with respect to moneys, if any, lying with him on the date of vesting. It may be mentioned that learned counsel for the appellant submitted that this property in fact vested in the Central Government by some notification in 1958 and not by the notification dated June 3, 1955, as mentioned in the plaint. On the other side it has been submitted that some orders have been passed by the Central Government under s. 14(1)(b). These are matters which may require to be gone into by the trial court and for that purpose it may be necessary to amend the plaint and the written statement, and this we permit.

We therefore dismiss the appeal subject to the observations made above. In the circumstances we order parties to bear their own costs of this Court's also of the High Court. Costs of other courts will abide the final result.

Appeal dismissed.

V.P.S.

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