

The Union of India and Others

Vs

Mohanlal Ishwar Dass Panchal and Another

Civil Appeal No. 557 of 1966

(K. S. Hegde. A. N. Grover JJ)

31.08.1970

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from the judgment of A Division Bench of the Gujarat High Court in Special Civil Application No. 1055 of 1965 on its file.
2. The 1st respondent herein is the Chairman of the Board of Directors of Kathiawar Industries Ltd. The Custodian of Evacuee Properties sought to proceed against that company under Section 10(2)(11) of the Administration of Evacuee Property Act, 1950 (to be hereinafter referred to as the 'Act'). The 1st respondent challenged those proceedings before the High Court of Gujarat by means of a petition under Article 226 of the Constitution. The High Court has allowed that petition and quashed the impugned proceedings. Hence this appeal.
3. The issued capital of Kathiawar Industries Ltd., is Rs. 5 lakhs. The total number of shares subscribed, preferential as well as ordinary are 1,21,961. One of the shareholders of that company is a company by name Bhawani Investment Company Ltd. That company held 12,100 shares. The case of the appellants is that all the shareholders of Bhawani Investment Co. Ltd., had become evacuees and therefore the Bhawani Investment Co. Ltd. has become an evacuee property. The 1st respondent denied the fact that all the shareholders of Bhawani Investment Co. Ltd., had become evacuees. That issue had not been gone into by the High Court. The High Court has assumed for the purpose of this case that all the shareholders of Bhawani Investment Co. Ltd., had become evacuees but it opined that that fact cannot make the Bhawani Investment Co. Ltd., an evacuee property. It observed that an incorporated company has a personality of its own different from that of its shareholders and that personality does not disappear with the transfer of the shares of its shareholders.
4. The appellants sought to take over the management of Kathiawar Industries Ltd., on the ground that more than 51 per cent. of the shares of that company had vested in the custodian of Evacuee Property. Admittedly if the property of the Bhawani Investment Co. Ltd., is held not to be an evacuee property then all the shares of that company cannot automatically vest in the Custodian. Only the shares of the evacuee shareholders can vest in him. The 1st respondent has challenged the right of the Custodian to claim to take over the management of Kathiawar Industries Ltd., on various grounds. The High Court has not adjudicated upon most of those grounds because it was of the opinion that its decision as regards the shares of Bhawani Investment Co. Ltd., coupled with the decision of that High Court in another proceeding as regards another block of shares is sufficient to take the case out of the purview of Section 10(2)(ii) of the Act. Hence all that we have to consider in

this appeal is whether the High Court was right in holding that even if all the shareholders of Bhawani Investment Co. Ltd., had become evacuees, the property of that company cannot be held to have vested in the Custodian. For the purpose of this appeal, we shall proceed on the basis that all the shareholders of Bhawani Investment Co. Ltd., had become evacuees at the relevant time and on that basis proceed to examine whether the property of that company had vested in the Custodian of Evacuee Property.

5. The case for the appellants is that all the shareholders of the Bhawani Investment Co. Ltd., had become evacuee prior to July 19, 1951. This is clear from a notice issued by the Assistant Custodian to the Bhawani Investment Co. Ltd., on July 19, 1951. That is also the view taken by the Custodian General. Whether this assumption on the part of those authorities is correct or not is a matter that has to be decided by the High Court. The High Court has not decided that question. Therefore we shall assume for the purpose of this appeal that all of them had become evacuees sometime prior to July 19, 1951.

6. Section 2(f) of the Act as originally enacted defined "evacuee property" thus :

" 'evacuee property' means any property of any evacuee (whether held by him as owner or as trustee or as a beneficiary or as a tenant or in any other capacity, and includes any property which has been obtained by any person from an evacuee after the August 14, 1947, by any mode of transfer which is not effective by reason of the provision contained in Section 40) but does not include -

(i) any ornament and any wearing apparel, cooking vessels, or other household effect in the immediate possession of an evacuee :

(ii) any property belonging to joint stock company the registered office of which was situated before the August 15, 1947 in any place now forming part of Pakistan and continues to be so situated after the said date."

7. That section was amended by Section 2(1-A) of the amending Act of 1951. Section 2 of the amending Act reads :

"In clause (f) of Section 2 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the said Act), after sub-clause (1), the following sub-clause shall be inserted and shall be deemed always to have been inserted namely :

(1-A) belonging to a joint stock company of which not less than fifty-one per cent. of the shares are held by evacuees, notwithstanding that the registered office of such company is situated in any part of the territories to which this Act extends or"

8. In view of this clause if the Custodian of Evacuee Property held 51 per cent. or more of the shares of any company then the property of that company became an evacuee property. This definition was given retrospective effect. In view of this provisions the property of Bhawani Investment Co., Ltd., must be held to have become evacuee property.

9. By Act 11 of 1953, the Act was further amended. That amending Act also amended clause 2(f) and the definition of the "evacuee property" was substantially altered. The new definition does not take in the contents of Section 2(f)(1-A) referred to earlier. The provisions of the amending Act 1953 were not given retrospective effect. Therefore it follows that the shares of the company which

had already vested in the Custodian under the law as it stood before 1953 were not divested. The 1953 Act incorporated an additional clause in Section 10(2) of the Act. After Section 10(2)(i) a new clause 10(2)(ii) was added. That clause reads :

"In any case where the evacuee property which has vested in the Custodian consists of fifty one per cent. or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company :

Provided that the Custodian shall not take charge of such management of the company except with the previous approval of the Central Government."

10. It may be noted that this clause was not given retrospective effect.

11. The learned Judges of the High Court while deciding the case under appeal did not advert to the definition of the "Evacuee property" after the same was amended in 1951 which definition as seen earlier was in force till the Act was further amended in 1953. Evidently their attention was not invited to that definition. In view of that definition, if the contention of the appellants that all or even a substantial portion of the shareholders of the Bhawani Investment Co. Ltd., had become evacuees before 1953 is correct then the property of that company must be held to have become an evacuee property. In that view, it is unnecessary to consider the broader question whether under law a limited company can be an evacuee. In this case we are not concerned with the "evacuee", we are only concerned with "evacuee property".

12. For the reasons mentioned above we allow this appeal, set aside the judgment of the High Court and remit the case to that Court for deciding the other questions arising for decision. The costs of this appeal shall be costs in the cause.

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