

Mohd. Fiazuddin Khan

Vs

Govt. of India and Others

Civil Appeal No. 2409 of 1968

(M. H. Beg, R. S. Sarkaria, P. N. Shinghal JJ)

25.11.1975

JUDGMENT

SHINGHAL, J. -

1. This appeal by certificate is directed against the judgment of the High Court of Andhra Pradesh dated July 19, 1968. It is not in dispute that appellant Mohd. Fiazuddin Khan is a citizen of India, and was declared an evacuee by an order of the Deputy Custodian of Evacuee Property, Hyderabad, dated September 18, 1951. His property, consisting of a building and 350 acres of land, was declared to be evacuee property. The Custodian of Evacuee Property issued a notice to the appellant on April 5, 1961 calling upon him to surrender possession of the property. That was followed by a notification dated January 20, 1962, of the Central Government, under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter referred to as the Act, by which that government acquired all properties which had been declared to be evacuee properties, for a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation. The appellant, challenged the aforesaid notification as unconstitutional and applied for a writ of certiorari on a proper construction of Sections 12 and 15 of the Act. In its impugned judgment, the High Court has taken the view that on publication of the notification under Section 12(1) of the Act, the right, title and interest of the evacuee was extinguished in the evacuee property and it vested absolutely in the Central Government free from all encumbrances. That, in the view of the High Court, was unconditional, and was not made to depend upon the fixation or payment of compensation under Section 13, notwithstanding the fact that the principles for payment of compensation had not been agreed upon between the Governments of India and Pakistan and had not therefore been fixed. It has also been held that the words "or otherwise" in Article 31(5)(b)(iii) of the Constitution are sufficiently wide and the protection of the article extends to the relevant provisions of the Act so that there could be no successful challenge on the basis of Article 31(2). The evacuee feels aggrieved and has filed the present appeal.

2. It has been argued by Counsel for the appellant that the view taken by the High Court is not correct, and that acquisition of the appellant's property under Section 12 of the Act was not immune from challenge under Article 31(5)(b)(iii) of the Constitution because no compensation had been paid or was proposed to be paid for the acquired property.

3. It will be recalled that a notification was issued by the Central Government under Section 12 of the Act to acquire the property of the appellant for rehabilitation of displaced persons. That notification was published in the gazette and, by virtue of sub-section (2) of that section, the right, title and interest of the appellant in that property (which was admittedly evacuee property) was extinguished and the property vested "absolutely in the Central Government free from all

encumbrances". Section 13 of the Act provides for the payment of compensation for such acquisition.

in accordance with such principles and in such manner as may be agreed upon between the Governments of India and Pakistan.

Section 14 of the Act goes further and provides for the constitution of a compensation pool. The appellant has, however, been deprived of the benefit of these provisions because it is the admitted case of the parties that the agreement envisaged by Section 12 has not been arrived at so far between the two governments. Even so, that would not, in our opinion, justify the argument of Counsel for the appellant that clause (2) of Article 31 of the Constitution would become applicable, for clause (5)(b)(iii) of that article expressly provides as follows :

(5) Nothing in clause (2) shall affect ...

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(b) the provisions of any law which the State may hereafter make . .

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(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country or otherwise, with respect to property declared by law to be evacuee property.

It would thus appear that clause (2) of Article 31 will not avail the appellant because there is an express provision in clause (5) that it shall not affect the provisions of any law which the State Government may make either in pursuance of an agreement with the Government of any other country "or otherwise". So even in the absence of an agreement with the Government of Pakistan, it was permissible for the State to make the Act, and its provisions would not be affected by anything contained in clause (2) of Article 31 of the Constitution. It would follow that there is nothing wrong with the view that compensation would have been payable to the appellant under Section 13 of the Act, in accordance with such principles and in such manner as might have been agreed upon between the Governments of India and Pakistan, but not otherwise. The appellant is therefore not entitled to claim such compensation in the absence of the agreement, and there is nothing wrong with the conclusion arrived at by the High Court in the impugned judgment.

4. The Counsel for the appellant tried to argue that the evacuee property in question could not have vested in the Central Government until compensation for its acquisition had been determined and paid. The argument is however quite futile in face of the clear provision of sub-section (2) of Section 12 of the Act that on the publication of the notification under sub-section (1), the right, title and interest of the evacuee shall be extinguished in the evacuee property and it "shall vest absolutely in the Central Government free from all encumbrances".

5. There is thus no force in this appeal and it is dismissed but, in the circumstances of the case, without any order as to the costs.

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