

Abdul Qadir (since deceased) by Lrs

Vs

Managing Officer-Cum-Assistant Custodian of Evacuee Property, Jaipur and Others

Civil Appeal No. 2233 of 1969

(N.L. Untwalia, A.D. Koshal JJ)

22.10.1979

JUDGMENT

UNTWALIA, J. –

1. This is an appeal by certificate by Shri Abdul Qadir from the judgment of the Rajasthan High Court dismissing his writ petition. The house in question belonged to one Mohammed Amin Khan. The appellant purchased the house from the said owner on July 10, 1948 for Rs. 12,000. It appears that neither the appellant nor Mohammed Amin Khan was an evacuee within the meaning of the Administration of Evacuee Property Act, 1950, hereinafter called the Evacuee Property Act. But under some mistaken notion probably the appellant was treated as an evacuee and the house was declared as an evacuee property on November 15, 1951, in accordance with the Evacuee Property Act. After such declaration the question that the property was an evacuee property could not be reopened and became final. Upon that footing the appellant filed an application on September 26, 1953 under Section 16(1) of the Evacuee Property Act, as the section stood, for grant of certificate. On October 27, 1956 the Central Government granted a certificate under the unamended provision of law contained in Section 16. Pursuant to the above the appellant made an application to the Assistant Custodian of Evacuee Property for restoration of the house under sub-section (2) of Section 16. The Assistant Custodian, respondent I passed an order on March 18, 1957 restoring the house to the appellant. But before that Shri Ajjumal, respondent 2 had been inducted as a tenant in the house by the Custodian after it was declared as an evacuee property. The appellant was directed to take symbolic possession of the house allowing the said tenant to continue in its occupation on receipt of rent from him.

2. The appellant came to know later that on November 11, 1960 the Central Government passed an order under Section 20-A of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, hereinafter referred to as the Displaced Persons Act, whereby it was ordered that in respect of the house in question action be taken in accordance with the said provision of law. On December 6, 1960 the Central Government ordered that it had revised its order dated November 11, 1960 and the petitioner was entitled to compensation only under Section 20-A of the Displaced Persons Act. In the civil suit filed by the appellant against Ajjumal it transpired that a sale deed had been executed in his favour as he was a displaced person in occupation of the house and the appellant was entitled to compensation only. He, therefore, filed a writ petition in the High Court to challenge the action of the Assistant Custodian, respondent 2 and the Union of India, respondent 3.

3. The writ case was contested by all the respondents and it was asserted that Ajjumal being a sitting allottee had to be rehabilitated and the appellant was entitled to compensation only.

4. The High Court has quoted Section 16 of the Evacuee Property Act as it stood prior to October 22, 1956 and the section as it came into force after that date. It has rightly pointed out that there was a change of procedure in the two provisions. According to Section 16 as it stood before October 22, 1956 the application for certificate was to be made to the Central Government and the Central Government in its discretion was to issue the certificate. On the issuance of such a certificate after following certain procedure the restoration order had to be made by the Custodian of the Evacuee Property. In the present case only a certificate was issued on October 27, 1956. The High Court is right in holding that the certificate so issued in accordance with the old law was not valid. Attempts were made before the High Court to show that the said certificate was issued pursuant to an order alleged to have been made on October 1, 1956. The High Court was not satisfied about the correctness of this new stand. Nothing could be pointed out to us to persuade us to take a view different from the one taken by the High Court in regard to the question of the invalidity of the certificate issued in favour of the appellant on October 27, 1956.

5. There is another difficulty in the way of the appellant and that comes in because of the provision of law contained in Section 20-A of the Displaced Persons Act. The said section also had undergone a change from time to time and at the relevant time sub-section (1) of Section 20-A stood as follows :

(1) Where any evacuee or his heir has made an application under Section 16 of the Evacuee Property Act and the Central Government is of opinion that it is not expedient or practicable to restore the whole or any part of such property to the applicant by reason of the property or part thereof being in occupation of a displaced person or otherwise, then, notwithstanding anything contained in the Evacuee Property Act and this Act, it shall be lawful for the Central Government -

(a) to transfer to the applicant in the lieu of the evacuee property or any part thereof, any immovable property in the compensation pool thereof, being in the opinion of the Central Government as nearly as may be of the value as the evacuee property or, as the case may be, any part thereof, or

(b) to pay to the applicant amount in cash from the compensation pool in lieu of the evacuee property or part thereof as the Central Government having regard to the value of the evacuee property or part thereof may, in the circumstances deem fit.

Explanation - The provisions of this sub-section shall apply, whether or not a certificate for the restoration of the evacuee property has been issued to the applicant sub-section (1) of Section 16 of the Evacuee Property Act, as in force before the commencement of the Administration of Evacuee property (Amendment) Ordinance, 1956, if the evacuee property has not in fact been restored to the applicant.

It would be noticed that the provisions of the Section 20-A(1) have got the overriding effect by virtue of the Explanation appended to it even after a certificate for the restoration of the evacuee property had been issued to the applicant on October 27, 1956. In spite of the certificate it was open to the Central Government not to allow restoration of the house to the appellant and to pay him compensation only. The Central Government has adopted the latter course. Respondent 2, a displaced person, was inducted as a tenant in the property long time back. The property was sold to him also by the Custodian. In such a situation it was just and proper to refuse restoration of the

property to the appellant and to pay him compensation only. But we were informed that the appellant and to pay him compensation payable to the appellant has been determined at a somewhat low figure being in the neighbourhood of the Rs. 8000 only. The appellant had purchased the house for Rs. 12,000 in the year 1948. In what view of the matter we recommend for consideration of the consideration of the government whether it would be possible for them to enhance the amount of compensation at least to the figure of Rs. 12,000. The matter is finally within their jurisdiction and they may decide it as they think it fit and proper to do.

6. For the reason stated above this appeal fails and is dismissed but without costs.

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