

SUPREME COURT OF INDIA

Raja Mohammed Amir Mohammed Khan

Vs.

S.N. Menon Secretary Commerce Min.

(Altamas Kabir, Cyriac Joseph and Surinder Singh Nijjar JJ.)

19.07.2011

JUDGMENT

1. Let this matter not be treated as having been heard in part by the Bench comprising Altamas Kabir and Cyriac Joseph, JJ. and let it be taken up by the Regular Bench.

2. I.A. No. 49 of 2010, has been filed by Raja Mohammed Amir Mohammed Khan, in Contempt Petition No. 87 of 2006, which had been filed in C.A. No. 2501 of 2002, and disposed of by the order dated 6th March, 2009. Since certain problems had arisen with regard to the implementation of the judgment and order dated 21st October, 2005, certain clarifications were sought for and on 8th September, 2006, it had been directed as follows:

These special leave petitions are disposed of with the clarification that persons who were inducted/allotted properties by the Custodian or who came in possession after 1965 i.e. on or after declaring the property of Raja Mahamudabad as enemy property and appointment of the custodian have to vacate the properties in their possession. Persons claiming possession prior to the appointment of the Custodian declaring the property of Raja Mahamudabad, father of the Respondent, as enemy property, based on duly authenticated tenancy created by the then Raja Mahamudabad or his General Power of Attorney shall not be covered by this Court's judgment passed in Civil Appeal No. 2501 of 2002 dated October 21, 2005, titled Union of India and Anr. v. Raja Mohammed Amir Mohammad Khan reported in (2005) 6 SCC 696.

3. In order to give effect to the same, a former Judge of this Court, the Hon'ble Mr. Justice D.P. Wadhwa, was entrusted by this Court with the task of deciding as to which of the claimants or other applicants were in actual possession of the premises under their occupation on or prior to 11th September, 1965, when the Estate of the late Raja came to be vested in the Custodian. Such decision was required to be taken on the basis of the materials to be made available to the Hon'ble Judge or on the strength of the affidavits and other documents, which had been made available to the Custodian or were to be made available by the parties, together with affidavits and other documents filed before Justice Goswami and such other documents, which might be supplied by the applicants of the Estate of the late Raja or by the State of U.P. It was made very clear that the Hon'ble Judge would not be required to embark upon a judicial determination of the rights of the claimants in arriving at his decision.

4. Pursuant to the above; Justice D.P. Wadhwa (retired), took up the matter and ultimately filed his Report dated 17th December, 2009. The same has been made Annexure A-4 to I.A. No. 49 of 2010. At the very beginning of the Report, His Lordship set out the parameters within which the matter was to be decided by him. The said parameters very correctly reflect the directions which are contained in our aforesaid order. In fact, in point No. 3, Justice Wadhwa has very clearly recorded that he would not be required to embark upon a judicial determination of the rights of the claimants in arriving at his decision. Thereafter, His Lordship accepted those persons as tenants of the Estate of the late Raja, who were admitted to have been inducted in the premises in question by the erstwhile Raja. As far as the other occupants of the various premises are concerned, they were shown to be in occupation of the respective portions of the property in the Estate of late Raja on or before 11th September, 1965, when the Estate of Raja came to be vested in the Custodian, presumably on the basis of the materials before His Lordship.

5. As indicated hereinbefore, I.A. No. 49 of 2010, has been filed by Raja Mohammed Amir Mohammed Khan, who had succeeded before the Bombay High Court and, thereafter, before this Court and was held to be the sole heir of the late Raja to succeed to his Estate, for setting aside the Report submitted by Justice Wadhwa. It may not be out of place to mention that in the judgment dated 21st October, 2005, this Court had directed the Custodian to hand over possession of the properties comprising the Estate of the late Raja to the applicant.

6. Mr. Chandra Udai Singh, learned senior counsel appearing in support of the application, has pointed out several discrepancies between the materials on record

and the list of tenants as on 11th September, 1965, prepared by Justice D.P. Wadhwa. Unfortunately, none of the submissions, made before us on behalf of any of the parties are reflected in the Report filed by Justice D.P. Wadhwa. We are not, therefore, in a position to understand what prompted Justice D.P. Wadhwa to declare that the persons included in the list had been inducted into the Estate of the late Raja prior to 11th September, 1965.

7. It is quite possible that Justice Wadhwa understood our direction not to embark upon a judicial determination of the rights of the claimants in arriving at His Lordship's decision to mean that No. determination, even with regard to the facts, was required to be reflected in His Lordship's report. However, in the absence of such determination on facts, we are not in a position to appreciate the stand taken by any of the parties and, in particular, that of the applicant.

8. Accordingly, having heard learned Counsel for all the parties, we pass the following order:

(1) Since the Report of Justice D.P. Wadhwa (retired) dated 17th December, 2009, does not reflect the basis on which the list of tenants as on 11th September, 1965 had been prepared, the said Report cannot be accepted in the manner in which it has been presented. Accordingly, Justice D.P. Wadhwa (retired), is requested to consider the matter afresh.

(2) The Custodian of Enemy Property, who is the Respondent No. 2 herein, is directed to file an affidavit before Justice D.P. Wadhwa, within a period of four weeks, disclosing the number of tenants inducted by him or his agents in the concerned five properties in Lucknow between 11.9.1965 and as on date, with supporting documents. Mr. Justice D.P. Wadhwa is requested to consider the matter afresh on the basis of the affidavit to be affirmed and filed by the Custodian, as also written submissions, that may be filed on behalf of the parties. The parties will be at liberty to obtain copies of the affidavit to be affirmed by the Custodian, either from him or his learned Counsel, and to file their written submissions in respect thereof, within four weeks' thereafter.

(3) Justice D.P. Wadhwa (retired) is requested to file his fresh Report in terms of the aforesaid observations within three months from the date of communication of this order.

(4) The Custodian shall arrange to send the records, which have-been filed by him in this Court, to Justice D.P. Wadhwa, within a week from date.

(5) In the Report to be filed in terms of this order, Justice D.P. Wadhwa, is also requested to indicate the materials relied on by him in respect of each occupant and to indicate the reasons for either rejecting or accepting his claim of having been inducted as a tenant of the Estate of the late Raja. The various orders, which have been passed in this matter from time to time and, in particular, the order dated 8th September, 2006, quoted hereinbefore, may be kept in mind when the matter is considered afresh.

(6) The arrangement regarding payment of Justice Wadhwa's fees and expenses, shall be the same, as contained in the order dated 6th March, 2009.

9. Mr. Justice D.P. Wadhwa (retired) is requested to submit his fresh Report on or before 2nd November, 2011.

10. Let this matter be listed again on 9th November, 2011, to consider the fresh Report to be submitted.