GUJARAT HIGH COURT

Ahmedbhai Abdulkadar

Vs.

Custodian of Evacuee

First Appeal No. 267 of 1962, Spl. Civil Suit No. 12 of 1960.

(B.J. Divan and T.U. Mehta, JJ.)

29.04.1970

JUDGMENT

T.U. Mehta, J.

1. This appeal arises out of the suit filed by the appellant to obtain a decree for a declaration that the order passed by the Assistant Custodian, Junagadh on 5th April, 1950 declaring him to be an evacuee and his properties, evacuee properties as illegal, invalid and ultra vires and for an injunction restraining the competent officer, Evacuee Interest from doing certain acts. The said suit was filed in the court of Civil Judge (S. D.) at Junagadh where the same was registered as special Civil Suit No. 12 of 1960.

2. Short facts of the case are that the plaintiff was the owner of one-half share in two immoveable properties one situated at Junagadh and the other at Mangrol. He was also the owner of one-half share in a business concern carried on in the name and style of "Noorbhai Valibhai" at Junagadh. Sometime after the partition of the country i.e. on 12th July, 1949 the plaintiff applied to the First Class Magistrate. Junagadh for a "no objection" certificate on the ground that he wanted to visit Macca on a pilgrimage along with his sister who was to join him from Karachi. It is found from the record of the case that on this application of the plaintiff the magistrate concerned issued a certificate on 18th July, 1949 that the plaintiff was "a *bona fide* subject of Junagadh District". The plaintiff claims that thereafer he went to Macca but on his return he went to Karachi to leave his sister there. According to the plaintiff, his sister thereafter fell ill and therefore he had to stay on at Karachi. During that stay permit system was enforced with the result that he could not return to India soon. According to the plaintiff he was thus detained in Pakistan for about two years and six to nine months.

3. The plaintiff came to India on a temporary permit; but on plaintiff's application dated 7th August, 1953, the Government of Saurastra allowed him to stay in India subject to the condition

that Evacuee proceedings already launched or proposed to be launched would not be affected "and that the plaintiff would have therefore no claim over the properties which are in possession of Assistant Custodian."

4. In the meanwhile i.e., on 17-3-1950 Assistant Custodian, Evacuee Property, Junagadh Division had issued a notice under Section 7 of Ordinance XXVII of 1949 requiring the plaintiff to show cause why orders should not be passed declaring the plaintiff an evacuee and "all his property" as evacuee property. The notice did not give any description of the properties in question and did not also specify the grounds under which he was to be held an evacuee. It is an admitted position that this notice was delivered to plaintiff's son Noormamad on 23-3-1950 and that the Noormamad then sent it to the plaintiff who was at that time at Karachi.

5. The plaintiff did not appear before the Assistant Custodian with the result that on 5-4-1950 he was declared an evacuee and his properties, evacuee properties. Plaintiff filed appeal and revision against this order without any success. Finally competent officer separated the interest of the plaintiff in the properties in question. The immoveable property bearing Ex. 74 at Mangrol was purchased by defendant No. 5 Chellaram (respondent No. 4) and the one bearing E. P. No. 189 at Junagadh was purchased by defendant No. 6 Menghrai Pessumal (Respondent No. 5).

6. In the suit the plaintiff has raised the contention that the notice requiring him to show cause does not comply with the statutory provisions inasmuch as it is not in the prescribed form and hence it is no notice in the eye of law. Therefore, according to the plaintiff, the declaration of his properties as evacuee properties made by the Assistant Custodian on 5th April 1950 is void illegal and invalid. According to the plaintiff the said declaration is invalid also because the said notice is not served personally on him. The plaintiff has further contended that E. P. No. 14 at Mangrol has not been declared an evacuee property and therefore does not vest in the Custodian.

7. As against this, the case of the respondents is that the show cause notice issued by the Assistant Custodian is proper and even if it is believed that the said notice was, in any manner, defective, the said defect does not affect the vesting of the properties in question in view of sub-section (2-A) of Section 8 which was introduced by Administration of Evacuee Property Amendment Act (No. 1 of 1960). The respondents also contend that in view of Sections 28 and 46 of the Administration of Evacuee Property Act, 1950 (which is hereafter referred to as "the Act"), Civil Court has no jurisdiction to try this suit.

8. The learned Judge of the trial Court has accepted the contentions of the respondent-defendants and has found on facts that the plaintiff has failed to prove that he went to Macca in the year 1949 with his sister. During the course of the hearing of this appeal, Sri Mehta, the learned Advocate for the appellant contended that the show cause notice issued by the Assistant Custodian under Section 7 (1) of the Ordinance is without any legal effect because it does not mention any posed to be declared an evacuee and also ground on which the appellant was probe

cause it does not specify or give any description of the properties which were sought to be declared evacuee properties. He drew our attention to the fact that according to the rules framed under Ordinance XXVII of 1949 the said notice should be in the prescribed form No. 1 and should specifically mention the grounds on which the person who is called upon to show cause is proposed to be declared an evacuee. According to Sri Mehta therefore, the notice in question was no notice in the eye of law and hence it did not confer any jurisdiction on the Assistant Custodian to take any further steps in the matter. For this proposition he relied on certain decisions of Bombay and Rajasthan High Courts.

9. Sri Mehta also attacked the validity of the Assistant Custodian's order dated 5th April 1950, on the ground that the notice issued under Section 7 (1) of Ordinance XXVII of 1949 was not personally served upon the appellant. In this connection he drew our attention to the relevant provisions of the Ordinance and the rules framed there under and contended that according to these provisions the Assistant Custodian should have first tried to serve the notice personally upon the appellant and failing to make such a personal service, he should have proceeded to serve by other methods of substituted service. According to Sri Mehta, therefore all the proceedings which the Assistant Custodian adopted for declaring the appellant an evacuee are vitiated.

10. As for the amendment of Section 8 of the Act by the addition of sub-section (2-A), Sri Mehta contended that this amendment of Section 8 applies only to those orders and actions of the Custodian which have been issued under those enactments for the Administration of Evacuee Property, which have been found invalid or defective. In the opinion of Sri Mehta, if the action is taken by the custodian or the Assistant Custodian under the enactment which is neither defective nor invalid, and if such an action is not found to be in conformity with the provisions of law then such an action is not saved by the amendment in question. It was pointed out that the impugned notice, under which the Assistant Custodian called upon the present appellant to show cause why he should not be declared an evacuee and why his property should not be declared eyacuee property was issued under Ordinance XXVII of 1949 which is neither defective nor invalid and therefore the action in question is not saved by sub-section (2-A) of Section 8 which was introduced by the amendment Act No. 1 of 1960.

11. So far as the questions as regards the jurisdiction of the Civil Court to try this suit is concerned, the contention of Sri Mehta was that neither Section 28 nor Section 46 of the Act would act as a bar to the jurisdiction of the Civil Court because here in this suit we are not concerned with any legality or illegality of the action of the Assistant Custodian during the course of the proceedings. According to Sri Mehta once it is held that the notice under Section 7 (1) of the Ordinance XXVII of 1949 is illegal then the very foundation of the exercise of the jurisdiction by the Assistant Custodian is destroyed and therefore what is involved is the question whether the Assistant Custodian had any jurisdiction to act under Ordinance XXVII of 1949 or

the Administration of Evacuee Property Act of 1950. According to Sri Mehta therefore, the jurisdiction of civil court would not be barred in such matters.

12. So far as the second point about the service of notice is concerned we find that the notice is personally served upon the appellant and therefore that point should not survive. In this connection we may refer to the deposition of the appellant-Plaintiff Abdul Kadar at Ex. 34. This deposition shows that this notice is produced by the appellant-plaintiff himself from his possession and is thus brought into the record of the case. A further reference to para 13 of his deposition shows that he has admitted therein that when he was in Karachi he was receiving letters from his sons. He further admits that one of his sons namely, Noormamad had informed him about the notice in question but he was not able to leave Pakistan for India for about 4 to 5 months after receiving the said notice. If a reference is made to the original notice it will be found that it was actually delivered to the plaintiff's son Noormamad, who was at Junagadh. It is thus quite apparent that the Assistant Custodian delivered the notice to Noormamad and Noormamad sent the same to his father the plaintiff who was at that time at Karachi. This very notice is subsequently produced by the plaintiff from his possession at the hearing of this case. All these facts go to show that the notice in question was actually received by the plantiff. In other words, the plaintiff was personally served with this notice and therefore his contention that he was not personally served is of no avail to him.

13. As far the contentions of Sri Mehta regarding the validity of the notice issued under Section 7(1) of the Ordinance and bar to the jurisdiction of the civil court to hear this case, it was strenuously urged by him that the High Court of Bombay has held in *Abdul Majid Haji Mahomed v. P. R. Nayak*[1], that the notice under Section 7(1) of Ordinance XXVII of 1949 which does not disclose the grounds for the proposed action or the description of the property sought to be declared an evacuee property is illegal and invalid and does not constitute a proper foundation for assuming the jurisdiction for further proceedings in the matter. Sri Mehta also drew our attention to two decisions of the Rajasthan High Court, namely, *Hafiz Abdul Rahim v. Dy. Custodian*[2], and *Barkatali v. Custodian General of Evacuee Property of India*[3], in support of this argument and contended that if the Assistant Custodian is found to have acted without jurisdiction then there would be no bar to the jurisdiction of the civil court even under Sections 28 and 46 of the Act. As against this, the learned Government Pleader contended that if notice issued by the Assistant Custodian under Section 7(1) is found to be defective for any reason the said defect is merely a procedural defect and does not vitiate the jurisdiction of the Assistant Custodian. According to the learned Government Pleader such a defect in the notice would, at the most, be considered to be an illegality but in view of the provisions of Section 46 (c) of the Act the civil court has got no jurisdiction "to question the legality of any action" taken by the Custodian under the Act. For this proposition, the learned Government Pleader put reliance upon the decision given by the Supreme Court in *Custodian Evacuee Property v. Jafran Begum*[4], The learned Government Pleader further contended that their Lordships of the Supreme Court have in this decision also considered the Bombay decision given in AIR 1951 Bombay 440 (supra) and

have made observations going to suggest that the principle as regards the ouster of the jurisdiction of the civil court which is accepted by the Privy Council in The *Secy. of State v. Mask and Co*[5]*.,* is too widely stated, and therefore ordinarily the principle which should be followed is that the jurisdiction of the civil court is barred to entertain or adjudicate upon the question whether any property is or is not an evacuee property or to question the legality of the action taken by the Custodian under the Act.

14. We find, as shown below, that the legal defects in the show cause notice issued under Section 7 of the Ordinance XXVII of 1949 would be of no help to the appellant in view of the insertion of sub-section (2-A) in Section 8 of the Act and therefore, we are of the opinion that it is not strictly necessary for us to decide the question as regards the jurisdiction of the civil court in this matter or the question as regards the legal effects of the defects pointed out in that notice. For the reasons which follow, we are of the opinion that by insertion of sub-section (2A) in Section 8 of the Act, vesting of the disputed property in the Custodian is made complete and final with retrospective effect in spite of

[1] AIR 1951 Bom 440 [3] AIR 1954 Raj 214 [5]42 Bom LR 767
[2] AIR 1952 Raj 162 [4] AIR 1968 SC 169

the defects which are pointed out in the show cause notice. We shall, therefore, dispose of that point without touching the appellant's contention either with regard to the validity of the notice or with regard to the jurisdiction of the civil court.

15. We have already mentioned above the respective contentions of the parties with regard to sub-section (2A) of Section 8 of the Act.

16. Before taking up the discussion on the legal impact of the insertion of sub-section (2A) in Section 8 of the Act, it would be necessary to state shortly how different enactments as regards the Administration of Evacuee Property were successively repealed by Ordinances and Acts. Prior to the enactment of Ordinance XXVII of 1949, there were State Legislations in different States regarding the Administration of Evacuee Property. However the validity of these State Ordinances on the subject was successfully challenged by some petitioners in *Allahabad High Court Azizun Nisa v. Asstt. Custodian*[6]*,* The grounds for challenge was that there was no entry in the lists in the Seventh Schedule of the Constitution Act, 1935 dealing with evacuee property and therefore it was not competent for the State Legislature to make any enactment as regards the Administration of Evacuee property. Thereafter on 25th August, 1949, Item 31-B relating to evacuees was added to the concurrent list by the Government of India Act (Third Amendment) Act of 1949 and thus this constitutional vacuum was filled up. Thereafter on October 18, 1949 the Governor General promulgated Ordinance XXVII of 1949 called the Administration of Evacuee Property Ordinance. This ordinance repealed all the previous ordinances on the subject. The Ordinance was converted into an Act called Administration of Evacuee Property Act, 1950 (Act 31 of 1950) which was brought into force on 18th April, 1951. By Section 58 of this Act, Ordinance XXVII of 1949 was repealed. Even this Act was subsequently amended by the Administration of Evacuee Property (Amendment) Act 1 of 1960 as from 27th February, 1960.

By this amendment sub-section (2A) was added to Section 8 of the Act with retrospective effect. This sub-section (2A) is in the following terms :

> "(2-A) Without prejudice to the generality of the provisions contained in sub-section (2) all property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in or the invalidity of such law or any judgment, decree, order of any Court, be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such within the meaning of this Act and accordingly any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken."

17. Now the contention of the learned Government Pleader, Sri Desai with regard to this sub-section (2A) is that even if it is believed that the show cause notice issued by the Assistant Custodian under Section 7(1) of the Ordinance XXVII of 1949 was defective, in any manner, the said defect would be of no avail to the appellant-plaintiff in view of the retrospective provisions contained in this sub-section. It was pointed out that Ordinance

[6] AIR 1957 All 561

XXVII of 1949 was one of the enactments repealed by the Act of 1950 and since the appellant's property purported to have vested as evacuee property in the Custodian the said vesting shall be deemed to be valid and the action taken by the Custodian for vesting the said property in him should also be deemed to have been validly and lawfully taken. This argument of the learned Government Pleader was countered by the learned Advocate of the appellant by contending that the provisions of sub-section (2A) of Section 8 apply only to the orders and actions taken under a defective and invalid law regarding the Administration of Evacuee Property. In this connection, Sri Mehta, the learned Advocate of the appellant, drew our attention to the past history of the legislation on the subject of Administration of Evacuee Property and contended that since the previous ordinances which were passed by different States were found to be invalid, in view of the absence of the relevant entry in the lists contained in the Seventh Schedule of Constitution Act of 1935, and since this constitutional lacuna was subsequently filled up by the Government of India Act (Third Amendment) Act of 1949, sub-section (2-A) of Section 8 was enacted only with a view to validate the actions taken under the previous invalid Acts and Ordinances of the States. In support of this contention Sri Mehta, also relied upon the decision given by the Supreme Court in *R. L. Arora v. State of Uttar Pradesh*[7], wherein their Lordships of the Supreme Court have held that while interpreting a provision in a statute the Court has to look at the setting in which the words and provisions are used and the circumstances in which the law came to be passed. Relying upon this decision Sri Mehta, contended that in view of the background of the past Legislation on the subject, sub-section (2A) of Section 8 of the Act should be construed only in the manner in which he wants us to construe the same. According to Sri Mehta, therefore the

invalidity of the show cause notice issued under Section 7 (1) of the Ordinance is not cured and if that is so, the property in question does not vest in the Custodian.

18. In order to appreciate these contentions raised by the parties it is necessary to scrutinize the provisions of sub-section (2A) of the Act. This sub-section is already quoted by us above and a bare reference to it shows that, by and large it can be divided into two parts. The first part thereof enacts a deeming provision and says that all property which purports to have vested as evacuee property under the repealed law should be deemed for all purposes to have validly vested in the Custodian. According to this first part, this deeming provision should apply "notwithstanding any defect in or the invalidity of such repealed law". Thus the first part of the sub-section makes a reference to the repealed law. The second part of the sub-section is the result or the consequence of the first part, because it says that in accordance with the deemed validity of the repealed law; "any order made or other action taken by the Custodian" in relation to the property in question should also be deemed to have been validly and lawfully made or taken. Thus the second part of the sub-section speaks about the validity of the orders passed under the repealed law and provides for a deeming clause about the validity of the same. It is thus apparent that all the enactments as well as the orders passed under those enactments before the application of the Act of 1950, have been protected by this sub-section by creating a legal fiction as regards their validity. Obviously therefore, the sub-section seeks to protect the invalidity in the legislation as well as in the orders passed under only of the enactments which are repealed by the Act of 1950.

19. In support of his contention, Sri Mehta, the learned Advocate of the appellant puts

[7] AIR 1964 SC 1230

emphasis on the non obstante clause of the section namely, "notwithstanding any defect in or the invalidity of, such law or any judgment, decree, order of any Court," and points out that this clause gives its colour even to the operative portion of the sub-section and therefore, the only manner in which the whole of the sub-section can be construed is to hold that the sub-section wants to validate the defect or invalidity only of the invalid laws which prevailed before the application of the Act, and the orders passed or actions taken under such invalid laws. We find it impossible to accept this argument for the simple reason that the plain reading of the operative part of sub-section leaves us in no doubt that the sub-section wants to validate the vesting of the property irrespective of the consideration whether such vesting was under an invalid or a valid law. This would be apparent if sub-section is read without the non obstante clause. Reading the same without the non obstante clause it would be as under :

> "Without prejudice to the generality of the provisions contained in sub-section (2), all property which under any law repealed hereby purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall be deemed for all purposes to have validly vested in that person....."

This operative portion, therefore, shows very clearly and unequivocally that the legislature

intended to validate all vesting of property which purported to have vested as evacuee property under the repealed law. The use of the expression "purports to have vested" shows that the legislature meant that property which did not legally vest in the Custodian under the provisions of the repealed law on account of some legal defect either in procedure or otherwise must be deemed to have legally vested. Thus it is quite apparent from the operative part of the section that it wanted to validate the apparent vesting which did not possess the necessary legal import irrespective of the consideration whether this apparent vesting was under a valid enactment or under invalid enactment. The function of the non obstante clause which begins with the expression "notwithstanding" is merely to emphasize the deeming clause. By using this non obstante clause the legislature wanted to provide that the deeming clause regarding validity would come into effect even if it is found that the law, under which the vesting was previously made was defective or invalid. What Sri. Mehta tries to do is to cut down the legal effect of the operative portion of the section, because according to him the operative portion of the section should take its meaning from the mention of the defective and invalid legislation made in the non obstante clause. No approach of this type would be justified if it is borne in mind that non obstante clauses like this are enacted by the legislature mainly ex abundanti cautela i.e. out of abundant caution. In the case of The *Dominion of India v. Srinbai A. Irani*[8], their Lordships of the Supreme Court have held that although ordinarily there should be a close approximation between the non obstante clause and the operative part of the section the non obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. Their Lordships have further held in that case that if the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof, a non obstante clause cannot cut down that construction and restrict the scope of its operation. In such cases, in view of their Lordships the non obstante clause has to be read as clarifying the whole portion and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by

[8](1955) 1 SCR 206 at pp. 210 and 213 : (AIR 1954 SC 596 at pp. 598 and 599)

way of limiting the ambit and scope of the operative part of the enactment. The function of the non obstante clause appearing in a Section of a statute is explained by this Court in *Bai Hajrabibi v. Sk. Hamed Husein*[9], wherein Bhagwati J. (as he then was) has also taken a similar view. In view of this position of law, we are unable to agree with Mr. Mehta that the function of the operative portion of sub-section (2A) is in any manner limited by the non obstante clause and if this is so there is nothing in sub-section (2A) which would suggest that it applies only to those repealed laws which are found defective or invalid. Under the circumstances, even the orders made and actions taken by the Custodian regarding vesting of the property would be valid actions.

20. The legal impact of sub-section (2A) of Section 8 of the Act has been considered by their Lordships of the Supreme Court in *Azimunnissa v. The Dy. Custodian, Evacuee Property, District Deoria*[10], Explaining the use of the word "purport", their Lordships in that case have made the

following observations :

> "The word "purport" has many shades of meaning. It means fictitious, what appears on the face of the instrument; the apparent and not the legal import and therefore any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable; *Dicker v. Angerstein*[11], Purporting is therefore indicative of what appears on the face of it or is apparent even though in law it may not be so. This means that at the time when the Act purported to vest the property in dispute in the Custodian even though the power was not exercisable. Section 8 (2A) by giving a retrospective effect to Section 8(2A) of the Act makes the vesting as if it was vesting under Section 8(2A) of the Act and therefore the attack on the ground of invalidity cannot be sustained."

These observations clearly repel the appellant's contention that the Assistant Custodian had no power to order the vesting of the property in him under the provisions of Ordinance XXVII of 1949 in view of the fact that the show cause notice issued by him was not in accordance with law. According to the above observations even if it is believed that the show cause notice was defective and that no further action on such defective notice could have been taken by the Assistant Custodian the deeming clause of sub-section (2A) would come into force because the property "purported" to have vested in the Custodian under the provisions of Ordinance XXVII of 1949. Speaking of the total effect of sub-section (2A) of Section 8, their Lordships of the Supreme Court have made further observations as under in Azimunnissa's case AIR 1961 Supreme Court 365.

> "The effect of Section 8 (2A) is that what purported to have vested under Section 8 (2) of Ordinance XXVII of 1949 and which is to be deemed to be vested under Section 8 of the Act which repealed that Ordinance, notwithstanding any invalidity in the original vesting or any decree or order of the Court shall be deemed to be evacuee property validly vested in the Custodian and any order made by the Custodian in relation to the property shall be deemed to be valid. Thus retrospective effect is given to the Act to validate (1) what purports to be vested; (2) removes all defects or invalidity in the vesting or fictional vesting under

[9] (1963) 4 Guj LR 483
[10] AIR 1961 SC 365
[11] 3 Ch D 600 at P. 603

> Section 8 (2) of Ordinance XXVII of 1949 or Section 8 (2) of the Act which repealed the Ordinance; (3) makes the decrees and judgments to the contrary of any court in regard to the vesting ineffective; (4) makes the property evacuee property by its deeming effect; (5) validates all orders passed by the custodian in regard to the property."

These observations should, in our opinion, completely settle the point in controversy. However,

Sri Mehta contended that these observations should be construed to have been made only in view of the historical background which shows that the previous State Ordinances were found to be unconstitutional and the constitutional lacuna was required to be filled in by the Third Amendment Act of 1949. It was here that he put reliance upon R. L. Arora's case AIR 1964 Supreme Court 1230 (supra). In the case of R. L. Arora, their Lordships of the Supreme Court have taken a view that a literal interpretation is not the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. Their Lordships have further held that it is permissible to control the wide language used in a statute if that is possible by looking to the setting in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made. It is difficult to find how these observations of their Lordships would be of any help to the appellant in support of the view which is canvassed by Sri Mehta. The observations are of general character and are not specifically applicable to the interpretation of sub-section (2A) of Section 8 of the Act. It is no doubt true that mere literal interpretation of the language used in a statute is not always correct and that, if necessary the language used in a statute can be controlled if such a control is justified by reference to the intention of the legislature in enacting the statute. It is also true that, if the court finds that there is something implicit behind the words which are actually used in the statute which would control the apparent literal meaning of those words, then it would also be open to the court to give the true and proper meaning to those words with a view to bring about the implicit meaning, but all these generalizations regarding the principles about the interpretation of a statute are of no practical utility in considering whether the interpretation which is canvassed by Sri Mehta is acceptable or not for the simple reason that the plain reading of sub-section (2) leaves us in no doubt about the fact that sub-section (2A) applies to all repealed enactments whether these enactments were initially invalid or not. In our opinion therefore, the plain reading of sub-section (2) admits of no other interpretation even if it is believed that sub-section (2A) was added to Section 8 of the Act in context of the invalidation of different State Ordinances regarding Administration of Evacuee Property. In our opinion, there is no conflict between the implicit and explicit meanings of the words used in the section and we do not think that the section uses a wide language which requires to be controlled by the real intention of the legislature in enacting the provisions in question. We, therefore, hold that the decision given by their Lordships of the Supreme Court in the case of R. L. Arora, AIR 1964 Supreme Court 1230 is of no relevance to the point in question.

21. We find that the view taken by their Lordships of the Supreme Court in the case of Azimunnissa, AIR 1961 Supreme Court 365 is subsequently affirmed by the same Court in *Haji Esmail Noor Mohammad and Co. v. Competent Officer, Lucknow*[12], We find that this latter decision of the Supreme Court merely affirms the principles stated by their Lordships in the case of Azimunnissa and does not throw any more light on the point. Sri. Mehta however, contended

that even this latter decision shows that the legal impact of the addition of sub-section (2A) in Section 8 of the Act is confined only to those enactments which were defective or invalid before they were repealed by the Act of 1950. We, however find no justification for such a view because in this latter decision, their Lordships of the Supreme Court have said nothing which would further explain or detract from the previous decision given in the case of Azimunnissa.

22. Lastly, Sri Mehta contended that if sub-section (2A) is interpreted in the manner in which we propose to interpret the same, it would result in rendering the provisions of this sub-section unconstitutional inasmuch as these provisions would be contravening the provisions of Article 14 of the Constitution. It was contended that if the court is called upon to choose between two alternative interpretations then only that interpretation should be accepted which would not invalidate the law in question. We find absolutely no substance even in this submission of the learned advocate of the appellant. In the first place we do not think that sub-section (2A) of Section 8 is liable to two equally effective alternative interpretations. In our opinion, this sub-section can be interpreted only in the manner in which we propose to interpret it. Secondly, it is difficult to comprehend how the manner in which we construe this sub-section would render it unconstitutional. Article 14 of the Constitution provides for equality before law and says that the State shall not deny to any person equality before law or equal protection of laws within the territory of India. If it is held that sub-section (2A) seeks to validate all the orders and actions taken by the Custodian under the repealed laws, it is difficult to comprehend how the appellant's right to equality before law or equal protection of law is taken away. The effect of the validation of the vesting of the evacuee property made under the repealed law would act equally with regard to all persons whose property rights are similarly affected under the repealed laws. Therefore, the deeming clauses contained in sub-section (2A) do not make any discrimination between the persons covered by the same category. What sub-section (2A) seeks to remedy is merely the procedural aspect and does not touch the appellant's right to be treated equally or to get equal protection under the relevant provisions of the law relating to the Administration of Evacuee Property. Under these circumstances, we see no force even in this contention of Sri. Mehta.

23. The result, therefore, we find that even if it is believed that the show cause notice issued by the Assistant Custodian under Section 7 of the Ordinance XXVII of 1949 was defective and that the civil court had jurisdiction to try and dispose of this suit, the appellant cannot succeed in challenging the vesting of the property in view of the insertion of sub-section (2A) in Section 8 of the Act. In that view of the matter, this appeal must fail. The same is therefore dismissed with costs.

Appeal dismissed.

[12] AIR 1967 SC 1244