

## PATNA HIGH COURT

Sharifuddin

Vs

R.P. Singh

Misc. Judicial Case No. 603 of 1955

(Ramaswami, C.J. and Raj Kishore Prasad, J.)

03.09.1956

### JUDGMENT

#### **Raj Kishore Prasad, J.**

1. In this case, the petitioner, Md. Sharfuddin, has moved this Court, under Article 226 of the Constitution of India, for quashing the order, dated the 4th August, 1955, passed by opposite party No. 1 the Custodian of Evacuee Property, Bihar, who has reversed the order, dated the 26th April, 1954, of the Assistant Custodian, Giridih, releasing holdings Nos. 326, 774 and 654, situated in Giridih, as belonging to the petitioner, and declared the above holdings to be evacuee properties.

2. One Abdul Ghani, deceased, had four sons : (1) Qurban Ahmad, (2) Habibul Ahmad, (3) Abdul Rauf and (4) Sharfuddin. He had also four daughters, namely, (1) Khodaizaitul Kobra, (2) Mufida Khatun, (3) Maqbulan, and (4) Naimunnisa. Of the four brothers, petitioner Sharfuddin is still in India, and, the other three brothers, and, two of the sisters, namely, the last two, have migrated to East Pakistan, and they are residing in Dacca.

3. On the 6th April, 1951, Qurban, one of the brothers, who have migrated to Pakistan, filed a petition before the Assistant Custodian of Evacuee Property, Giridih, stating that he with his other brothers, except the present petitioner, had migrated to Pakistan leaving behind the petitioner in charge of the properties, which included the holdings mentioned above, in which all the four brothers had joint interest. The Assistant Custodian, Giridih, on the same day, that is, on the 6th April, 1951, issued notices, under Section 7 (1) of Act 31 of 1950, to the petitioner, and others, directing them to show cause why orders should not be passed declaring the properties as evacuee properties.

4. As the notice issued under Section 7, Clause (1), of the Administration of Evacuee Property Act, 1950 (Act 31 of 1950), hereinafter mentioned as "the Act", has been challenged by the petitioner as invalid and illegal, I reproduce below the notice, which was issued to the petitioner in Form No. 1, under Rule 6. Clause (1) of the Administration of Evacuee Property (Central) Rules, 1950, made by the Central Government, in exercise of the powers, conferred upon them by Section 56 of the Act. These rules will be referred to hereinafter as "the Rules". The notice is

in the following terms :-

"Whereas there is creditable information in possession of the Custodian that you are an evacuee under Clause (iii) of Section 2 (d) of the Administration of Evacuee Property Act on account of the grounds mentioned below :-

And whereas it is desirable to hear you in person; Now, therefore, you are hereby called upon to show cause (with all material evidence on which you wish to rely) why orders should not be passed declaring you an evacuee and all your property as evacuee property under the provisions of the said Act. The hearing of your case is fixed before the undersigned on 10th April, 1951, at 9 A.M. Grounds. That you jointly hold properties lying in Giridih Town, and other parts of Giridih Subdivision, with (1) Captain H.H. Rahman Ghani, Regional Director, Central Regions, Karachi, (2) M.A. Rauf, Inspector of Excise. Shikarpur (West Pakistan), (3) Mr. Monazarui Hasan Ghani, (4) Mr. Qurban Ahmad, (5) and their two sisters, residing at Narayanganj, Dacca, who have moved to Pakistan. It is also reported that you are selling your immovable properties."

5. The petitioner, in pursuance of the above notice, appeared before the Assistant Custodian, Giridih and filed a show cause petition on the 12th April, 1951, claiming that holdings Nos. 326, 774 and 654 belonged exclusively to him, and they were, therefore, not evacuee properties. The case of the petitioner was that holdings Nos. 326 and 774 were gifted by Mst. Gango in favour of the petitioner's mother, Mst. Somaran on the 1st December, 1938, and, she, in her turn, made a gift of these two holdings to the petitioner under an unregistered deed dated the 25th December, 1938, and since then he was in possession thereof. His further case was that holding No. 654 had been given to him in lieu of ornaments allotted to his brothers and sisters.

6. The petitioner on the 1st June, 1951, filed an application before the Assistant Custodian Giridih, for taking oral evidence on the question of gift by his mother to him. This application of the petitioner was rejected on the 14th July, 1951, because the Assistant Custodian held that as there was no document to support the gift he was not prepared to accept the petitioner's contention that the house had been gifted to him. On the 19th July, 1951, the petitioner filed a revision, under Section 26 of the Act, against the above order, to the Deputy Custodian, Hazaribagh. The Deputy Custodian, Hazaribagh, called for the records of the case. Meanwhile, on the 25th July, 1951, the Assistant Custodian, Giridih, declared all the properties, including the disputed properties, as evacuee properties, as defined in Section 2 (f) of the Act.

7. The petitioner's case is that he came to know of the above order of the Assistant Custodian dated the 25th July, 1951, when the properties were notified. The petitioner, therefore, filed a petition before the Deputy Custodian stating the above facts. The Deputy Custodian stayed the proceedings, and, being doubtful about his powers, referred the matter to the Custodian for instructions in the matter. On receipt of the reply of the Custodian, the Deputy Custodian took up the revision filed by the petitioner on the 19th July, 1951, for hearing. The Deputy Custodian on the 30th August, 1952, set aside the order dated the 14th July, 1951, as also the order dated the 25th July, 1951, of the Assistant Custodian, Giridih, declaring the properties to be evacuee properties, and remanded the matter to him to dispose it of in accordance with the provisions of Rule 6 of the Rules after giving an opportunity to the petitioner to adduce evidence in support of his claim.

8. After receipt of the above order of the Deputy Custodian, the Assistant Custodian. Giridih, deputed Mr. R.A. Singh, Magistrate, Giridih, to enquire and report about the matter Mr. R.A. Singh submitted his report. The Assistant Custodian, Giridih, after hearing the petitioner, and, after a consideration of the report of Mr. R. A. Singh, and, the evidence adduced by the petitioner, passed an order on the 26th April, 1954, releasing the three holdings in dispute, namely holdings Nos. 326, 774 and 654, as belonging exclusively to the petitioner, and, held that these properties could not be treated as evacuee properties, and, therefore, they should be expunged from the list of properties proposed to be notified.

9. The Custodian acting under S 26 (1) of the Act, on his own motion, called for the records of the proceedings before the Deputy Custodian, Hazaribagh, which culminated in the order dated the 30th August, 1952, passed by the Deputy Custodian setting aside the order of the Assistant Custodian dated the 25th July, 1951, declaring the properties as evacuee properties. This revision was registered on the 17th June, 1954, by the Custodian. After hearing the petitioner, the Custodian on the 27th January, 1955, dropped the revision, as he held that the order of the Deputy Custodian was perfectly legal and justified, because he had the instructions of the Custodian and he decided the case and remanded the matter after receiving such instructions.

10. Thereafter, opposite party No. 2, Mr. P. Sinha, Assistant Custodian, Headquarters, Patna, filed an appeal before the Custodian, opposite party No. 1, on the 22nd February, 1955, under Section 24 (1) (a), of the Act, against the order of the Assistant Custodian, Giridih, dated the 26th April, 1954, releasing the properties on the ground that they belonged to the petitioner.

11. The above appeal by opposite party No. 2 having been filed beyond thirty days as provided by R. 31 (1) of the Rules, the Custodian condoned the delay under Section 5 of the Limitation Act, 1908, which has been applied to such appeals by R. 31, clause (7), of the Rules, and admitted the appeal.

12. The Custodian, after hearing the parties, including the petitioner, who was respondent before him, and considering his objections passed an order on the 4th August, 1955, overruling the objections of the petitioner, and setting aside the order of the Assistant Custodian, Giridih, dated the 26th April, 1954, and declared the shares of the three brothers of the petitioner in these three disputed holdings to be evacuee properties and, referred the matter to the proper authority for separation of the interest of the petitioner from the shares of his three brothers. The petitioner has now moved this Court under Article 226 of the Constitution against this order of the Custodian and asked for a writ in the nature of certiorari to call up and quash the said order.

13. Mr. M. Ayub, who appeared for the petitioner, has contended, in the first place, that the appeal before the Custodian - Appeal No. 132 of 1955 - against the order of the Assistant Custodian dated the 26th April, 1954, by opposite party No. 2, the Assistant Custodian, Headquarters. Patna, was incompetent, because he was not a "person aggrieved" within the meaning of Section 24 (1) of the Act. and, as such, the order passed by the Custodian on the 4th August, 1955, was without jurisdiction.

14. Section 24 (1) (a) of the Act is in the following terms :-

"24. (1) Any person aggrieved by an order under Section 7, Section 16 or Section 40 may prefer an appeal in such manner and within such time as may be prescribed -

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian;

\* \* \* "

15. The argument put forward by Mr. Ayub in support of his above contention is that Mr. P. Sinha, Assistant Custodian, Headquarters, Patna, opposite party No. 2, was not a private party, but a departmental head, and, as such, he had no locus standi to come up in appeal under Section 24 (1) (a) of the Act, in that, he cannot be considered to be a "person aggrieved" within the meaning of sub-section (1) of Section 24 of the Act. In support of his contention, he has relied on a Single Judge decision of the East Punjab High Court in *Messrs. Thakar Das Pyare Lal v. Custodian, Evacuees Property, East Punjab, Julundur<sup>1</sup>*, in which in considering Section 30 of the East Punjab Evacuee Property (Administration) Ordinance, which is equivalent to Section 24 of the Act, it was held that no one has a right to appeal under Section 30 of the Ordinance unless he can show that a decision has been pronounced against him, which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. In other words, the words "aggrieved person" in Section 30 of the Ordinance do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. In my opinion, this decision has no application to the present case, because in that case the appeal was not by the person in charge of the Custodian Department as is in the present case. In the Punjab case, an allotment made in favour of a person by the Provincial Government had been cancelled by the Custodian under Section 10 of the Ordinance, and, therefore, it was held that it could not be said that such a person had been wrongfully deprived of anything to which he was legally entitled, and, as such, he had no locus standi to go up in appeal.

16. In order to decide the question whether Mr. P. Sinha, opposite party No. 2 had the locus standi to go up in appeal to the Custodian under Section 24 (1) (a) of the Act, against the order dated the 26th April, 1954, of the Assistant Custodian, Giridih, releasing the disputed holdings, it is necessary, at first, to know the scheme of the Act.

17. Under Section 7 of the Act read with Rule 6 of the Rules, where the Custodian is satisfied from information in his possession, or otherwise, that any property, or an interest therein, is prima facie evacuee property, he shall cause a notice to be served in form No. 1 on the person claiming title to such property or interest, and on any other person or persons, whom he considers to be interested in the property. Upon the first information by a person that a certain property is an evacuee property, when the Custodian starts an enquiry into the truth and validity of the information under Rule 6 of the Rules, the first informant puts in a reply to the written statement of the owner of the property and also adduces evidence in support of his information, and, if the Custodian, ultimately, decides that the property is an evacuee property, then a notification under Section 7 (3) of the Act is published in the official gazette, or in such other manner as may be prescribed declaring such properties to be evacuee properties. When any property is declared to be evacuee property under Section 7, it vests in the Custodian under Section 8 of the Act. Section 9 gives power to the Custodian to take possession of evacuee property vested in him. Section 10 defines the powers and duties of the Custodian for the purpose of securing, administering, preserving and managing such evacuee property. Section 10 (2) (q) provides that the Custodian

may delegate, by general or special order, all or any of his functions under the Act to such officers or persons as he thinks fit. Section 6 (3) gives power to the State Government, by general or special order, to provide for the distribution of work among Additional, Deputy and Assistant Custodians to discharge the duties imposed on them by, or under the Act, under the general superintendence and control of the Custodian for the State.

18. Mr. P. Sinha, opposite party No 2, was the Assistant Custodian, Headquarters, Patna, in charge of the Custodian Department for the State of Bihar, obviously appointed under Section 6 (3) of the Act. Opposite party No. 2, therefore, was the person in charge of evacuee properties, which vested in the Custodian, under Section 8 of the Act, and, as such, it was his duty to take possession of such property and to administer and manage such properties. Under the scheme of the Act, it is obvious that the Custodian has to take charge of an evacuee property and to administer it as long it is not released under Section 16 of the Act. In the present case admittedly on the application of the first informant Qurban, he and his two brothers were evacuees within the meaning of Section 2 (d) of the Act. In such circumstances, it was the duty of the Custodian, in whom the properties vested under Section 8 of the Act, after the notification under Section 7 (3) of the Act, to take charge of all the properties of the evacuees, and, to administer them properly. When, therefore, the petitioner made a claim to some of the properties of the evacuees, claiming adversely to the evacuees, it was obviously the duty of opposite party No. 2, as the Assistant Custodian, Headquarters, in charge of the evacuee properties in the State, on behalf of the Custodian, to look after the interest of the evacuees. When therefore, the Assistant Custodian, Giridih, on the 26th April, 1954, released the disputed holdings, on the ground that they were not evacuee properties, as they belonged exclusively to the petitioner, opposite party No. 2 certainly was a "person aggrieved" by the order of the Assistant Custodian, Giridih, and as such entitled to carry an appeal to the Custodian, who has been constituted an appellate Court, under Section 24 (1) (a) of the Act, on behalf of the Custodian Department as representing the evacuees. It is not necessary in such a case that the departmental head should have suffered a personal loss, because obviously he had no personal interest in the matter, except in his official capacity.

19. Section 24 confers a right of appeal on "any person aggrieved" against an order under Section 7, Section 16 or Section 40 of the Act, to prefer an appeal in the manner provided by Rule 31 of the Rules. The words used are "any person aggrieved". These words are of the widest amplitude, and, therefore, they are wide enough to include even a person of the position of opposite party No. 2. Mr. Ayub wants us to read the words "who has suffered any personal loss" after the words "any person aggrieved" in Section 24 (1) of the Act. In my opinion the words sought to be introduced in Section 24 (1) of the Act cannot possibly and legitimately be introduced into it. As observed by Lord Brougham, in *Crawford v. Spooner*<sup>2</sup>,

"The construction of the Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the Legislature; we cannot aid the Legislature's defective phrasing of the Act; we cannot add, and mend, and, by construction, make up deficiencies which are left there. If the Legislature did intend that which it has not expressed clearly, much more, if the Legislature intended something very differently; if the Legislature intended something pretty nearly the opposite of what is said, it is not for Judges to invent something which they do not meet within the words of the text (aiding their construction of the text always, of course, by the context); it is not

for them so to supply a meaning, for in reality, it would be supplying it; the true way in these cases is to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered; and, therefore, if any other meaning was intended than that which the words purport plainly to import, then let another Act supply that meaning and supply the defect in the previous Act."

We have, therefore, to take the words "any person aggrieved" as they are. These words unconditioned and unfettered as they are, mean that any person, whether he be the first informant, or the claimant, or the objector, or the Department or the officer-in-charge of the Custodian Department, if he considers himself aggrieved, by an order passed under Section 7, S 16 or Section 40, he has a right of appeal under Section 24(1) of the Act. In my opinion, therefore, opposite party No. 2, Mr. P. Sinha, was certainly a "person aggrieved", within the meaning of Section 24(1) of the Act, and, as such, he had the locus standi to go up in appeal to the Custodian under Section 24(1) (a) of the Act, against the order of the Assistant Custodian Giridih, passed on the 26th April, 1954. The first contention of Mr. Ayub is, therefore, overruled.

20. Mr. Ayub has, next, contended that the reason given by the Custodian in the final order, condoning the delay in filing the appeal by opposite party No. 2 before him under Section 5 of the Limitation Act read with Rule 31(7) of the Rules is not a sufficient cause in law under Section 5 of the Limitation Act, and, as such, the appeal should be treated as time barred and incompetent. In my opinion, there is no substance in this contention as well. The Custodian has dealt with this objection in his order dated the 4th August 1955. He has said that the order of the Assistant Custodian

passed on the 26th April, 1954, came to the notice of the Custodian Department on the 17th June, 1954, when a revision was taken up by him against the order of the Deputy Custodian, and, when this revision was decided on the 27th of January, 1955, the Custodian Department through opposite party No 2 filed the appeal on the 22nd February, 1955. The custodian has further said that Mr. P. Sinha, opposite party No. 2, obviously did not file this appeal either as he was awaiting the decision of the revision case, because if the revision case had been decided against the petitioner, the order of the Assistant Custodian dated the 26th April, 1954, would have been set aside, and, there would have been no necessity of filing the appeal. But as the revision case was decided in favour of the petitioner, the appeal was filed. On a consideration of these facts, the Custodian, therefore, condoned the delay in filing the appeal. The mere fact that at the time of the admission of the appeal, for condoning the delay, no reason has been given in the order, is no ground to hold that the reason given subsequently when an objection to the maintainability of the appeal was taken up by the petitioner is not a sufficient cause in law under Section 5 of the Limitation Act.

At the time of the admission of the appeal, the admission matter was heard ex parte, and, therefore, it was not necessary for the Custodian to give any reason, if he did not like to do so. But he had to be satisfied and he was satisfied, and, therefore, he condoned the delay and admitted the appeal, but at the final hearing of the appeal, when an objection on this account was taken before him by the petitioner, he dealt with the matter in detail. I, therefore, find no error of law in the order of the Custodian condoning the delay in filing the appeal under Section 5 of the Limitation Act read with Rule 31(7) of the Rules, which can entitle this Court to interfere on this

writ application.

21. It has been, then argued by Mr. Ayub that the order of the Custodian declaring the properties to be evacuee properties on the 4th August, 1955, was without jurisdiction and the entire proceeding is void, because under Section 7A of the Act, no property could be declared to be evacuee property on or after the 7th May, 1954, notwithstanding anything contained in this Act. The contention, therefore, is that as no property could be declared evacuee property on or after the 7th of May, 1954, the order of the Custodian passed on the 4th August, 1955, which has the effect of making a fresh declaration under Section 7(3) of the Act that the disputed properties would be treated as evacuee properties is without jurisdiction. He has further argued that proviso (a) to Section 7A has no application to the present case, because on the 4th August, 1955, no proceeding was pending.

22. In order to decide this question, it is necessary to quote below Section 7A of the Act :

"7A. Property not to be declared evacuee property on or after 7th May, 1954 - Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954 :

Provided that nothing contained in this section shall apply to

(a) any property in respect of which proceedings are 'pending' on the 7th day of May, 1954 for declaring such property to be evacuee property; and

(b) the property of any person who on account of the setting up Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident of Pakistan;"

23. This new Section 7A was added by Section 4 of Act 42 of 1954. This came into effect on the 7th May, 1954, and, by virtue of this Evacuee Property law ceased to operate, excepting in cases where the cause of action arose before the 7th of May, 1954. Except, therefore, in respect of the proceedings pending on the 7th May, 1954, no fresh notice under Section 7 of the Act could be issued after the 7th May, 1954. It is contended that proviso (a) to Section 7A has no application, because the order passed by the Assistant Custodian on the 26th April, 1954, became final on the 27th May, 1954, when no appeal within the period of limitation provided by Rule 31(1) of the Rules was filed by any person, or even by opposite party No. 2, and, as such, after the 27th May, 1954, it cannot be said that any proceeding in respect of the disputed holdings was pending on the 7th May, 1954, when Section 7A came into effect, so as to enable the Custodian on the 4th August, 1955, to declare the disputed properties as evacuee properties, by reversing the order of the Assistant Custodian, Giridih, dated the 26th April, 1954. In my opinion, this argument is unsound, and, I cannot accept it. The preamble of the Act provides for the administration of the evacuee property and for certain matters connected therewith. Evacuee properties, therefore, as long as they are not released under Section 16 of the Act, continue to be such and the proceedings taken in respect of such evacuee properties must be deemed to be pending. In the present case, when the appeal filed by opposite party No. 2 on the 22nd February, 1955, was admitted by the Custodian, it became effective, and, therefore, the proceeding in respect of the disputed properties which terminated on the 26th April 1954, by virtue of the order of the

Assistant Custodian releasing these properties revived, and the appeal filed against that order made the appeal a continuance of the proceeding which had been started earlier on the 6th April, 1951. In my opinion, therefore, the proceeding which was started on the 6th April, 1951, in respect of the disputed properties must be deemed to be pending on the 7th May, 1954, so as to attract the provisions of proviso (a) to Section 7A of the Act; and, as such, the Custodian had the jurisdiction to set aside the order of the Assistant Custodian, Giridih, passed on the 26th April, 1954, and to declare the disputed properties to be evacuee properties. In my opinion, therefore, the order of the Custodian dated the 4th August, 1955, cannot be attacked on this ground also.

24. Finally, it has been argued by Mr. Ayub that the entire proceeding started in the present case is void, because the initial notice issued under Section 7 of the Act is illegal, inasmuch as there are defects in the notice which materially affected the jurisdiction of the Assistant Custodian to proceed in the matter. His contention is that it is the notice under Section 7 of the Act, which is the foundation of the jurisdiction of the Assistant Custodian, and, as such, if the notice is illegal, the entire proceeding is void ab initio.

25. The defects in the notice pointed out by Mr. Ayub are that : (1) instead of Section 2(d)(i), it mentions Section 2(d)(iii), (2) it does not give the grounds as required by Rule 6(2) of the Rules, and (3) it does not specify the properties which are sought to be declared evacuee properties. In support of the contention, he has relied on a Division Bench decision of the Bombay High Court in *Abdul Majid v. P.R. Nayak*<sup>3</sup>, in which it was held that where the notice does not mention any grounds whatsoever on which the property of a person is sought to be declared evacuee property, the notice is not in compliance with Section 7(1), and to that extent one of the two conditions precedent for the making of the order by the Custodian has not been complied with, and, therefore, the order is without jurisdiction. It was further held that it is incumbent upon the Custodian not to state the grounds merely by reproducing the section, but to state them with sufficient particularity in order to convey to the person against whom the notice is served as to the reasons which have led the Custodian to form the opinion which he has to form under Section 7(1) of the Ordinance. In my opinion, the above decision has no application to the present case inasmuch as in the Bombay case the notice which was served by the Custodian was in the following words :

"I hereby call upon you to appear and show cause with ail material evidence why orders should not be passed declaring you an evacuee under clauses (i), (ii) and (iii) of Section 2(d) of the Administration of Evacuee Property Ordinance of 1949 and all your properties as evacuee property under the provisions of the said ordinance."

It will, therefore, be noticed that the above notice did not give the grounds at all why the property of the petitioner of that case was sought to be declared evacuee property, although the three clauses of Section 2(d) were set out in the notice. In those circumstances, it was held that inasmuch as the notice did not mention any grounds whatsoever on which the property of that petitioner was sought to be declared evacuee property, the notice was not in compliance with Section 7(1) of the Ordinance, and, therefore, the order of the Custodian was without jurisdiction. In the present case, however, we find from the notice that the grounds have been mentioned in the notice, which has been set out in the earlier part of this judgment. The grounds given are as follows :

"That you jointly hold properties lying in Giridih Town, and other parts of Giridih Subdivision, with (1) Captain H.H. Rahman Ghani, Regional Director, Central Regions, Karachi, (2) M.A. Rauf, Inspector of Excise, Shikarpur (West Pakistan), (3) Mr. Monazarul Hasan Ghani, (4) Mr. Qurban Ahmad, (5) and their two sisters residing at Narayanganj, Dacca, who have moved to Pakistan. It is also reported that you are selling your immovable properties."

It cannot, therefore, be said that no ground whatsoever was given in the notice in the present case as was done in the Bombay case. The question whether those grounds are sufficient, or not, is a question which could have been agitated before the Custodian, but that was not done obviously because those grounds were considered sufficient compliance of Rule 6(2) of the Rules.

26. It is true that the particulars of the property which the Custodian sought to notify are not stated in the notice, but no prejudice thereby has been caused to the petitioner inasmuch as he had an opportunity to contest this notice before the Assistant Custodian, and, ultimately, before the Custodian, and, as a matter of fact, he did contest them, and, therefore, it cannot be said that he was not aware of the particulars of the properties which the Custodian sought to notify. In the petition which was filed by Qurban before the Assistant Custodian, Bihar, under Section 7 of the Act, the various properties were specified which according to the first informant, were evacuee properties. The petitioner claims only three of the holdings out of these evacuee properties as his own, and, therefore, it cannot be said that the non-mention of the particulars of the properties in the notice has caused any prejudice to the petitioner. It was, at the best, a defect, which did not go to the root of the jurisdiction of the Custodian nor made the proceeding without jurisdiction. It was a mere clerical error or irregularity at the best, and, therefore, it was not an illegality at all.

27. Likewise, the mention of a wrong section was also a mere defect which amounted to a mere irregularity, and not an illegality at all. Section 2(d)(i) and (ii) of the Act applied to the case, but obviously by mistake and through inadvertence, Section 2(d)(iii) was mentioned in the notice instead of Section 2(d)(i) and (ii) of the Act. In my opinion this defect also is a mere irregularity, and not an illegality at all.

28. The contention of Mr. Ayub that the service of the notice under Section 7 is the foundation of the jurisdiction of the Custodian is entirely misconceived, and cannot be accepted. Section 7 requires, in the first place that the Custodian should form an opinion that there is some property which is evacuee property within the meaning of the Act, and, in order that he should form that opinion he would also have to form an opinion that the person whose property he wishes to proceed against is an evacuee within the meaning of the Act, because evacuee property is property in which an evacuee has any right or interest. " Having formed that opinion, two conditions have got to be satisfied before he can issue an order declaring any property to be evacuee property, and those two conditions are that he must give a notice in such manner as may be prescribed to the persons interested in the property, and the second condition is that he must hold such inquiry into the matters as the circumstances of the case permit. These two conditions are conditions precedent to the exercise of his jurisdiction, and if either of these two conditions is not complied with then the order passed by him under Section 7(1) would be an order without

jurisdiction. Under Section 7(1) the two conditions are not merely procedural in character, but they are substantive conditions laid down by the Legislature as a safeguard for the citizens and those conditions must strictly be complied with. The moment the Custodian is satisfied with the above two conditions, he gets jurisdiction to start a proceeding under Section 7(1) of the Act. He, thereafter, issues a notice under Section 7(1) of the Act, and starts an enquiry into the truth and validity of the information in the manner provided by Rule 6 of the Rules. The notice which is issued under Section 7(1) is to be in Form No. 1, as required by Rule 6(1) of the Rules. Rule 6(2) of the Rules provided that the notice shall, as far as practicable, mention the grounds on which the property is sought to be declared evacuee property and shall specify the provision of the Act under which the person claiming any title to, or interest in, such property is alleged to be an evacuee. We, therefore, find that the issuing of the notice is only a matter of procedure, and not the foundation of jurisdiction of the Custodian. The Custodian gets jurisdiction the moment the two conditions envisaged in the opening words of Section 7(1), which have been stated above, are satisfied, and not after on the issue of the notice under Section 7(1) of the Act. The evacuee proceedings commence no doubt with the issue of a notice under Section 7(1) of the Act, but the issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Custodian to declare any property as an evacuee property. The jurisdiction to make such a declaration under Section 7(3) of the Act that such properties are evacuee properties are not conditional on the validity of the notice under Section 7(1) of the Act

29. For the reasons given above, I find that there is no merit in this application; and therefore, it fails. The rule is accordingly discharged with costs, as the petitioner has not been able to make out any case for issue of any writ to the opposite party. Hearing fee Rs. 100/-.

**Ramaswami, C.J.**

30. I agree.

Rule discharged.

Cases Referred.

<sup>1</sup> AIR 1950 EP 175

<sup>2</sup>(1846) 6 Moore PC 1 : 13 ER 582 at p.585

<sup>3</sup> AIR 1951 Bom 440