

PUNJAB AND HARYANA HIGH COURT

Firm Sahib Dayal Bakshi Ram

Vs

Assistant Custodian of Evacuees

(Weston and H Singh, JJ.)

13 .05.1952

ORDER

Weston, J.

1. Firm Sahib Dayal-Bakshi Ram of Amritsar, hereinafter referred to as the applicant, applies under Article 226 of the Constitution for the issuance of writs of 'certiorari', prohibition and 'mandamus'.
2. Briefly summarised the facts giving rise to these proceedings are these. On the 24th of June 1948, the Senior Subordinate Judge, Amritsar, decreed with costs the suit of the applicant against Messrs. Ghulam Mustafa-Bahal-ud-Din for rupees 1,585/5/- and future interest. On the 29th of December, 1948, the applicant applied to the Assistant Custodian of Evacuee Property, Amritsar, hereinafter referred to as the respondent No. 1, for the registration of the claim of the applicant for rupees 1,814/10/-, against Messrs. Ghulam Mustafa-Bahal-ud-Din. In January, 1949, the applicant put in a claim for rupees 1,900/- on the basis of debt outstanding against Moosa Ji Ghulam Mohammad Malik in the books of the applicant.
3. On receipt of the claims mentioned in the preceding paragraph respondent No. 1 examined the books of account of the applicant which showed debts due from the applicant to Muslim evacuees. On the 23rd of May, 1951, the applicant received from respondent No. 1 a demand notice for rupees 9,196/13/9 for amounts due from the applicant to the evacuees.
4. On the -28th of May, 1951, the applicant lodged objections with respondent No. 1 wherein it was stated that the 'Munims' of the Custodian Department had wrongly reported that a sum of rupees 9,190/13/9 was due from the applicant to any evacuees--that no amount was due from the applicant to any evacuee, and that in any case, the debt stated to be due to the evacuees was barred by time. On the 15-6-1951, respondent No. 1 disallowed the objections and ordered that the sum of rupees 9,196/13/9 should be paid by the applicant to the Custodian.

5. On the 7th of July, 1951, respondent No. 1 claimed a sum of rupees 618/7/6 from the applicant for amounts due to evacuees. On the 13th of June, 1951, the applicant filed objections with respect to the payment of rupees 618/7/6 but no decision had been given on those objections till the 31st of July, 1951, when the application for writs was filed.

6. On the 25th of June, 1951, respondent No. 1 gave notice to the applicant to deposit with him the sum of rupees 9,196/13/9 within a week of the receipt of the notice, failing which action would be taken under Section 48 of the Administration of Evacuee Property Act, 1950, hereinafter referred to as the Act.

7. In these circumstances the applicant applies for the issuance of writs as stated above.

8. Mr. Amar Nath Grover appearing for the applicant objects that the orders were passed under a piece of legislation which was passed by the Legislature without having legislative competence, that the legislation in question is unconstitutional as violating fundamental rights guaranteed by the Constitution, and that the orders passed are in excess of jurisdiction conferred upon the Custodian.

9. In regard to the first objection it has to be borne in mind that the scheme adopted by the Constitution confers upon Parliament the residuary legislative powers. Under entry 41 of the Concurrent List power is given to Parliament to legislate on "custody, management and disposal of property (including agricultural land) declared by law to be evacuee property." In deciding the objection we must read in entry 41 of the Concurrent List all ancillary and incidental powers necessary for the purpose of legislating upon custody, management and disposal of property declared by law to be evacuee property, for it would be impossible for Parliament to legislate with regard to the custody, management and disposal of evacuee property unless it had the power to decide and determine what property was to be evacuee property. In any case, under entry 97 of List I power is given to Parliament to legislate upon any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists. That being so, there can be no doubt as to legislative competence of Parliament with regard to the subject dealt with in the Act. For authority on this point 'Abdul Majid Haji Mahomed v. P. R. Nayak', 53 Bom. L.R. 621 at p. 638 may be seen.

10. In para No. 12 of the application under Article 226 of the Constitution the applicant maintains:

"By virtue of section 17 of the Administration of Evacuee Property Act as amended by Act XXII of 1951, the petitioner firm is de-

barred from executing the decree against the property of evacuees. It is submitted that the aforesaid section as amended is ultra vires of the Constitution as offending against the

fundamental rights guaranteed by Articles 14, 19 and 31 of the Constitution,"

In the present case no action has been taken against the applicant under section 17 of the Act. That being so, it is wholly unnecessary to examine the validity of section 17 of the Act which is separable from the provisions of the Act under which action has been taken.

11. In para No. 11 of the application under Article 226 of the Constitution the applicant maintains :

"That Section 48 would be ultra vires of the Constitution as violating the fundamental rights guaranteed by Article 14 if it can be interpreted to mean that the Custodian can adjudicate upon the debts which may be due to an evacuee without the matter being decided under the ordinary law of the land and without a judicial determination by a competent Court."

12. In plain English Section 48 of the Act provides that any sum due to the State Government or to the Custodian under the provisions of the Act may be recovered as if it were an arrear of land revenue. Clearly, Section 48 of the Act does not deal with the powers of the Custodian to adjudicate upon the debts which may be due to an evacuee from a non-evacuee. That being so, the point raised in, para No. 11 of the application does not require serious examination. *In 'M. B. Namazi v. Deputy Custodian of Evacuee Property, Madras'*¹, and in *'Abdul Majid v. P. R. Nayak'*². similar point came up for consideration and it was held that the provisions of the Act with which we are concerned in these proceedings were not void as violating the fundamental rights guaranteed by the Constitution. Indeed, in these proceedings the complaint of the applicant is that the orders passed by respondent No. 1 are in excess of jurisdiction conferred upon him. Clearly, the unlawful administration by the Custodian of the provisions of the Act does not affect the constitutional validity of the Act.

13. On the merits of the case the questions that arise for decision are (1) whether it was within the competence of respondent No. 1 to investigate and declare the debts in question to be evacuee property and (2) whether having declared the debts in question to be evacuee property the Custodian can recover the debts in question under Section 48 of the Act.

14. In proceedings before respondent No. 1 the applicant objected to the recovery of the debts alleging inter alia that the debts were barred by time. In disallowing the objections the Custodian thought that the questions whether debts are due from the applicant to the evacuees and whether the debts are barred by limitation are questions exclusively triable by the Custodian. In this connection the Custodian maintains that Section 4 of the Act expressly overrides the provisions of laws inconsistent with the provisions of the Act and that questions of limitation do not arise in proceedings under Section 48 of the Act.

15. In order to appreciate the points raised by the applicant the relevant provisions of the Act

may be examined. Clearly, the scheme of the Act in respect of what is called evacuee property is a scheme for the management and administration of such property. Sub-section (1) of Section 7 of the Act provides that where the Custodian is of opinion that any property is evacuee property within the meaning of the Act, he may, after causing notice thereof to be given in the manner prescribed by Rule 6 of the Administration of Evacuee Property (Central) Rules 1950, to the persons interested, and after holding such enquiry into the matter as the circumstances of the case permit pass an order declaring any such property to be evacuee property. Indisputably a debt due from a non-evacuee to an evacuee is evacuee property under Section 2(f) of the Act and the Custodian is authorized to hold an enquiry into the matter and pass an order declaring any such debt to be evacuee property, whether the debt be time barred or not. Section 28 of the Indian Limitation Act does not apply to suits for the possession of property which cannot be recovered in specie e.g. debts whether ordinary or judgment debts. That being so in the case of a time-barred debt the remedy is barred but the right is not extinguished and an agreement to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits is enforceable by law. On this last point Section 25 of the Contract Act may be seen. Clearly, a time barred debt comes within the definition occurring in Section 2(i) of the Act. Section 2(i) of the Act reads:

"(i). "Property" means property of any kind and includes any right or interest in such property."

16. In 'M.B. Namazi v Dep. Custodian of Evacuee Property, Madras', (1951) 2 Mad. L.J. 1 it was said:

"The Ordinance no doubt declares the order of the Custodian declaring any property to be evacuee property as final. That might be so in one sense, i.e., if any property belongs to a person who has been declared to be an evacuee within the meaning of the definition in the Ordinance then the Custodian's order would be final. But does the finality amount to an adjudication on title in case there is any dispute? Take for instance the case where a property is declared to be evacuee property on the assumption that it belongs to A who is an evacuee. Does it mean that someone else cannot say that the property really does not belong to the evacuee but belongs to himself who is not an evacuee? I am inclined to hold that the order of the Custodian under Section 7 of the Ordinance is not final in case of disputed title."

17. Section 7 of the Administration of Evacuee Property Ordinance, 1949, corresponded to Section 7 of the Act. That being so, the decision given under Section 7 of the Ordinance would govern cases under Section 1 of the Act. In the present case it is, however, not necessary to express any opinion on the point that the order of the Custodian under Section 7 of the Act is not final in case of disputed title, for the case of the applicant is that the debts shown in the books of the applicant as due to evacuees are barred by time. That being so, the question that really arises for decision is whether it is within the competence of the Custodian to investigate whether a debt

due from a non-evacuee to an evacuee which has been declared to be evacuee property is or is not barred by time. Section 7 of the Act gives the Custodian no such power, for the only order that the Custodian can pass under Section 7 of the Act is an order declaring any property to be evacuee property. In other words, the Custodian may declare a property to be evacuee property and if he acts within the powers conferred upon him no civil Court, save as otherwise expressly provided in the Act, shall entertain or adjudicate upon any question whether that property is or is not evacuee property. Sections 7 and 46 of the Act in my opinion, do not empower the Custodian to decide the further question whether a debt due from a non-evacuee to an evacuee is or is not time-barred.

18. Mr. Suri appearing for the Custodian maintains that the Custodian was right in proceeding against the applicant under Section 48 of the Act. In this connection reliance is placed upon Sections 4 and 48 of the Act.

19. Section 1 of the Act provides inter alia that the provisions of the Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. In order to bring the case within Section 4 of the Act the Custodian has to show that the provisions of the Act and of the rules and orders made thereunder are inconsistent with the provisions of the Indian Limitation Act, 1908. In other words it has to be shown that the provisions of Sections 4, 9 and 48 of the Act conflict directly with the provisions of the Indian Limitation Act which prescribe limitation for the recovery of debts. On this point what I said (Soni J. concurring) in 'Custodian Evacuee Property v. Simla Banking and Industrial Co.', 53 Pun. L.R. 184, may be seen. No such inconsistency exists between the two Acts with the result that they can stand together at the same time. That being so, Section 4 of the Act does not support the case of the Custodian.

20. Section 48 of the Act provides that any sum due to the State Government or the Custodian under the provisions of the Act may be recovered as if it were an arrear of land revenue. Section 10(2)(i) of the Act empowers the Custodian to take such action as may be necessary for the recovery of any debt due to the evacuee. In plain English Section 48 of the Act deals with the recovery of sums due to the State Government or the Custodian while Section 10(2) (i) and (j) of the Act, deals with the recovery of debts due to the evacuee. Clearly, Section 48 of the Act does not deal with the recovery of debts due to the evacuee. Again, Sections 7 and 48 of the Act do not empower the Custodian to revive remedies barred by limitation or to create new remedies. Indeed, Section 4 of the Act preserves all laws for the time being in force unless they conflict with the provisions of the Act and the provisions contained in Section 10(2) (i) and (j) of the Act show that in such cases the Custodian should go to a civil Court for the determination of the dispute. For these reasons, I find that the Custodian has no power to proceed against the applicant under Section 48 of the Act for the recovery of the debts when the applicant objects to the recovery of those debts inter alia on the ground that the debts are barred by time.

21. In the result, I confirm the rule issued by the Court on the 1st of August, 1951, and direct the Custodian to forbear from proceeding against the applicant under Section 48 of the Act for the recovery of debts which the Custodian maintains are payable from the applicant to Muslim evacuees.

22. Having regard to the circumstances of the case, I leave the parties to bear their own costs.

Weston, C.J.

23. I agree and would put my conclusions in these words. I accept that a time-barred debt may be considered to be property in its widest sense as appears to be intended by the definition in Clause (i) of Section 2 of the Evacuee Property Act, 1950. It is said in Salmond's Jurisprudence, Tenth Edition, at page 232:

"Although a legal right is commonly accompanied by the power of instituting legal proceedings for the enforcement of it, this is not invariably the case, and does not pertain to the essence of the conception. * * * there are classes of legal rights which are not enforceable by any legal process; for example, debts barred by prescription or the lapse of time."

24. I accept that an order under Section 7 of the Act declaring a debt to be evacuee property is within the competence of the Custodian, whether the debt be time-barred or not. There is nothing in this, however, which requires either that the Custodian has jurisdiction to determine a disputed question whether a debt is time-barred or not, or that, as has been urged, the Custodian can recover a debt admittedly time-barred and is an authority entirely outside the law of limitation. Clauses (i) and (j) of Section 10(2) of the Act show sufficiently that the scheme of the Act is not that the Custodian should have powers above all laws, and Section 4 of the Act in no way requires such a conclusion. Section 48 no doubt gives a summary remedy for recovery of sums due to the State Government or to the Custodian, but I have no hesitation in accepting that the powers given by this section must be restricted to sums otherwise legally recoverable. I agree therefore with the order proposed by my learned brother.

Cases Referred.

1(1951) 2 Mad. L.J. 1
253 Bom. L.R. 621