

PUNJAB AND HARYANA HIGH COURT

Custodian General of Evacuee

Vs

Harnam Singh

(Bhandari, C.J. B Narain, J.)

09.08.1956

JUDGMENT

Biiandari, C.J.

1. This petition raises the question whether the Custodian of Evacuee Property is at liberty to assess damages for use and occupation of property and to recover them as arrears of land revenue under the provisions of Section 48 of the Administration of Evacuee Property Act.

2. Towards the end of 1947 the Custodian of Evacuee Property invited tenders for the annual lease of a flour-mill owned by one Abdul Latif who had migrated to Pakistan. The tender of S. Harnam Singh petitioner for a sum of Rs. 7, 300/- per annum was accepted by the Custodian on the 16th January 1948 and possession of the flour-mill was delivered to him on the 23rd January 1948. In view of certain instructions which were later received from higher authorities this tender was rejected on the 27th February 1948 and the mill was sealed by the officers of the Rehabilitation Department on the 16th July 1948.

3. On the 20th March 1950 the Assistant Collector of Ambala issued a writ of demand under Section 68 of the Land Revenue Act requiring the petitioner to pay a sum of Rs. 7,221/8/- on account of arrears of rent of the factory in question. The petitioner preferred an appeal against this writ of demand and on the 5th May 1950 the Additional Custodian held that although the petitioner was not a lessee of the premises and was not liable to pay any rent therefor, he was liable to pay compensation for use and occupation of the property for the period that he had actually worked the factory. As there was no evidence on the file to show whether the petitioner had worked the factory and if so for what period, the Additional Custodian appointed the Inspector of Rehabilitation as commissioner to report on the matter. The Inspector reported that the petitioner had remained in occupation of the premises from the 23rd January 1948 to the 31st December 1948, that he was liable to pay Rs. 3,600/- for use and occupation of the factory and that the petitioner had removed machinery of the value of Rs. 5,000/-. The Additional Custodian did not accept this report and he accordingly directed the Assistant Custodian (Commercial) to

proceed to Jagadhari and to hold an enquiry in the presence of the petitioner. The Assistant custodian submitted a report in which he expressed the view that the petitioner was liable to pay rent for the period 23rd January 1948 to the 16th July 1949 when the factory was sealed. The Additional Custodian accepted in this report in the absence of the petitioner and held him liable to pay a larger amount than was originally demanded from him. The petitioner presented a revision petition to the Custodian-General which was rejected in limine on the 26th June 1952. Having failed to obtain the relief to which he considered himself entitled the petitioner presented the present petition under Article 226 of the Constitution.

4. The learned Judge before whom the petition came up for hearing held that as the petitioner had denied his liability to pay anything to the Custodian, the matters in controversy between the parties should have been referred for decision to an independent tribunal and that it was not within the competence of the Custodian to issue a writ of demand. The State is dissatisfied with the order and has preferred an appeal under Clause 10 of the Letters Patent.

5. Section 48 of the Administration of Evacuee Property Act is in the following terms –

"48 (1) Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrear of land revenue.

(2) For the purposes of Sub-section (1) the decision of the Custodian as to the sum payable to the State Government or to the Custodian shall be final."

A perusal of this section makes it quite clear that a sum of money can be recovered as arrears of land revenue if both the following conditions concur, namely (1) that the sum is due to the State Government or to the Custodian, and (2) that this sum is due under the provisions of the Act.

6. The expression "due" is defined by Webster to mean that which is owed; that which custom, statute or law requires to be paid and by Worcester that which anyone has a right to demand, claim or possess; that which can justly be required. A debt or other obligation is due when it is legally enforceable, i. e. when the creditor has a right to demand payment and to enforce collection (*Etz v. Perhman* 143 A 548 at P. 549: 13 Words and Phrases 442 (A)). The summary remedy provided by Section 48 for the recovery of sums due to the State Government or to the Custodian must, in my opinion, be restricted to sums legally recoverable, i. e. sums which are admitted or proved to be due and cannot be extended to sums which are alleged or claimed to be due.

7. But a question at once arises whether the sum which is now being demanded from the petitioner can be legally recovered from him. The Advocate-General contends that Section 48 confers full power on the Custodian to decide whether a certain sum of money is due to the State Government or to the Custodian and that the decision of the Custodian in this matter is final and conclusive. He has a right to demand payment of the amount and to enforce the collection thereof

in exactly the same manner as an Income-Tax Officer can recover arrears of income-tax or a Revenue officer can recover arrears of land revenue. If the petitioner questions his liability to pay the amount demanded of him, he should follow the procedure prescribed by Section 78 of the Land Revenue Act, make payment under protest and later bring a suit in a civil Court for the recovery of the amount so paid. It is contended that if this procedure is followed the ultimate decision in the dispute between the Custodian and the petitioner would be that of a civil Court and not that of the Custodian.

8. The petitioner, on the other hand, submits that a genuine dispute has arisen between the parties as to whether the petitioner was liable to pay the amount which was being demanded from him. There is a dispute whether the relationship of landlord and tenant exists between the parties; there is a dispute in regard to the period for which the petitioner occupied the premises; there is a dispute in regard to the rate at which compensation should be assessed and there is a dispute whether the petitioner did or did not remove any machinery from the factory. It is contended that these disputes between the Custodian and the petitioner could not be decided by the Custodian, for the Custodian cannot be permitted to be a judge in his own cause and cannot be allowed to decide controversies in the outcome of which he is personally interested.

9. There can be no doubt in regard to the correctness of the submission put forward by the petitioner. It is a fundamental principle of law that every person who receives an injury is entitled to claim the protection of the Courts. Broadly speaking, the Courts alone have the power to decide justiciable controversies both on questions of fact as well as of law; they alone can protect the rights and interests of individual citizens and they alone have power to hear, determine and to enforce. Indeed Section 9 of the Code of Civil Procedure provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits in which their cognizance is either expressly or impliedly barred. The Administration of Evacuee Property Act does not appear to bar the jurisdiction of ordinary Courts or to transfer the determination of rights and liabilities from ordinary Courts to executive officers. It is not a fiscal measure like the Income-Tax Act or the Land Revenue Act in which the Income-Tax Officer or the Revenue Officer is charged with the duty of producing revenue for the State. It was designed primarily to provide for the preservation, management and control of evacuee property. The Legislature could never have intended under a general enactment like the present, to deprive the Courts of the jurisdiction which they possess in such cases and to empower the Custodian to adjudicate on the controversies which arise between him and the members of the public on disputed questions about the amount of compensation which should be recovered for use and occupation of property. The Custodian has no power to determine disputed questions of title *Namazi v. Deputy Custodian of Evacuee Property Madras*¹, (or to determine whether a debt is barred by time or not *Sahib Dayal-Bakshi Ram v. Asst Custodian of Evacuee Property, Amritsar*². or to recover any debt under Section 48 when the debtor declares that the debt is barred by time, *Parite-shah Sadashiv v Asst. Custodian of Evacuee Property, Amritsar*³,

10. As the amount which is being demanded from the petitioner has not been admitted or proved to be due from him and as the amount is not due under the provisions of the Act, in my opinion that it was not within the power of the Custodian to direct the Assistant Collector, Ambala, to issue a writ of demand. I would accordingly uphold the order of the learned Single Judge and dismiss the appeal with costs.

Bishan Narain, J.

11. I agree.

Cases Referred.

11951) 2 Mad LJ 1: (AIR 1951 Mad 930) (B)

254 Pun LR 313 : (AIR 1952 Punj-389) (C)

3 54 PLR 468: (AIR 1933 Punj 21) (D)