

PUNJAB AND HARYANA HIGH COURT

Custodian General 'P' Block

Vs

Rikhi Ram Sardar Lal

(A Bhandari C.J, D Falshaw, J.)

24.09.1959

JUDGMENT

A Bhandari, C.J.

(1) This appeal under Clause 10 of the Letters Patent raises the question whether the administrative authorities were justified in holding that mortgagee rights in a certain plot of land are evacuee property.

(2) On 3-3-1947 one Rikhi Ram mortgaged a plot of land measuring 45 kanals with one Ferozed-Din for a sum of Rs. 3,750/-. Owing to the communal disturbances which broke out in the Punjab in the year 1947, the mortgagee fled to Pakistan the mortgagor resumed possession of the mortgaged property. A notice was later issued to the mortgagor to appear before the Assistant Custodian and show cause why the mortgagee rights created by him on 3-3-1947 should not be declared to be evacuee property. The mortgagor denied the mortgage, but when he was confronted with the registered deed of mortgage he was constrained to admit that he had created the mortgage. He stated, however, that he had repaid the money to the mortgagee on 5-5-1947 and had obtained a receipt in respect of the same. The Assistant Custodian came to the conclusion that payment had not been proved and that the receipt which was produced by the mortgagor was a forged document. He accordingly held that the mortgage was valid and subsisting and that the mortgagee rights in the land were evacuee property. The decision of the Assistant Custodian was upheld by the Additional Custodian and later by the Deputy Custodian-General.

(3) The mortgagor who was dissatisfied with the order of the Deputy Custodian-General, presented a petition under Art. 226 of the Constitution principally on the ground that it was not within the competence of the administrative department to determine questions of title. Three authorities were cited in support of this contention. In *Parit Shah Sadashiv Firm v. Asst. Custodian of Evacuee Property, Amritsar*, AIR 1953 Punj 21, a Division Bench of this Court held that the Custodian has no power of deciding questions whether a debt is or is not barred by time or of ordering the recovery of such a debt. A similar view was taken in *J. M. Messey v. Custodian, Evacuee Property, Punjab, Simla*, 1955-57 Pun LR 59. In *Custodian-General of Evacuee Property, New Delhi v. Harnam Singh*¹, a Division Bench of this Court held that the Custodian of Evacuee Property has no jurisdiction to assess damages for use and occupation of

property and to recover them as arrears of land revenue under the provisions of S. 48 of the Administration of Evacuee Property Act. In view of these authorities the learned Single Judge allowed the petition and quashed the orders of the administrative authorities concerned. The Custodian of Evacuee Property is dissatisfied with this order and has come to this Court in appeal.

(4) The view taken by the learned Single Judge appears to me to be wholly misconceived. A Court or a tribunal for the transaction of judicial or quasi-judicial business can be created either by the Constitution or by the Legislature. It owes its existence to a legislative enactment and can exercise only such jurisdiction and powers as the instrument by which it is created chooses to confer upon it. The extent of the jurisdiction can be determined by the provisions of the statute by which the Court or tribunal has been created or by the provisions of the statute by which jurisdiction has been defined. Broadly speaking a Court or Tribunal has power to deal with such matters as are clearly within its jurisdiction and to do such things as are reasonably necessary for the administration of justice within the scope of its jurisdiction. It is open to the Legislature to vest exclusive jurisdiction on a certain Court or Tribunal over a specified class of cases and when the statute contains words of exclusion, the said Court or Tribunal, and no other authority, has power to determine controversies arising out of the said class of cases. As "jurisdiction" is the power to hear and determine the subject-matter in controversy, the jurisdiction of a Court or Tribunal depends upon its right to enter upon the enquiry at all and not upon the correctness or otherwise of the conclusions at which it may eventually arrive. If the law confers the power to adjudicate upon the subject-matter of a given litigation, then and then alone can the Court or Tribunal, as the case may be, have jurisdiction.

(5) Section 7 of the Administrative of Evacuee Property Act provides that where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed 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. Section 46 enacts that save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine. Here the Legislature has conferred upon the Custodian the power and imposed upon him the duty, to decide whether a certain property is or is not evacuee property. It has prescribed the manner in which the power to adjudicate is to be exercised. It has declared expressly that the authority to try and determine this question shall vest in the Custodian and not in the ordinary civil or revenue Courts. It has stated clearly that the Custodian's jurisdiction shall be exclusive.

(6) The administrative officers have come to the conclusion that the mortgagee rights vesting in Feroze-ud-Din fall within the ambit of the expression "evacuee property" and it seems to me that this decision is manifestly correct. The authorities on which reliance was placed by the learned Single Judge, do not appear to me to apply to the facts of this case. They were concerned mainly with the interpretation of the provisions of S. 48 of the Administration of Evacuee Property Act which declares that the decision of the Custodian as to a sum due to the State Government or to the Custodian under the provisions of this Act shall be final.

(7) As the power to decide whether a certain property is or is not evacuee property vests in the

Custodian and not in the Courts, I would allow the appeal, set aside the order of the learned Single Judge and restore that of the Deputy Custodian-General.

Falshaw, J.

(8) I agree.

(9) Appeal allowed.

Cases Referred.

1956-58 Pun LR 490