

(1951) 04 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Ex. First Appeal No. 98 of 1950

Ratan Lal

APPELLANT

Vs

The Custodian of Evacuee

RESPONDENT

Property, Delhi and Another

Date of Decision: April 18, 1951

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 15(2), 17(2), 2
- Civil Procedure Code, 1908 (CPC) - Section 107

Citation: AIR 1953 P&H 134

Hon'ble Judges: Kapur, J

Bench: Single Bench

Advocate: Bhagwat Dayal, for the Appellant; I.D. Dua, for the Respondent

Final Decision: Dismissed

Judgement

Kapur, J.

This is an appeal against an order passed in execution by the Senior Subordinate Judge, Delhi, dismissing the execution petition of Ratan Lal on the ground that Rs. 5,000/- worth of 12 years Post-Office National Savings Certificates deposited by the judgment-debtor with the Central Public Works Department as security were evacuee property.

2. The Custodian Evacuee Property, Delhi, applied to the executing court on 8-10-1949, in which he stated that Nur Mohammad had become an evacuee and the property lying in Court was, therefore, evacuee property. In order to determine whether it is evacuee property or not it is necessary to briefly state the facts of the case. These certificates were deposited with the Central Public Works Department as security. On 12-6-1946, Ratan Lal decree-holder got these 12 year Post Office National Savings Certificates attached at a time when no evacuee legislation existed. On 18-5-1949, the Court was informed that these certificates had been deposited in

the Reserve Bank. It is claimed that these certificates were sold and the cash deposited to the credit of the executing Court, but the Custodian's counsel denies this fact and there is nothing on the record to show one way or the other; at least none has been brought to my notice.

3. On 14-9-1947, "East Punjab Evacuees" (Administration of Property) Ordinance of 1947 was promulgated and in this Ordinance the definition of evacuee property was very exhaustive and included bank deposits. On 13-12-1947, the "East Punjab Evacuees" (Administration of Property) Act, XIV of 1947, was enacted and in the definition of evacuee property cash deposits in banks were excluded. By Section 8 of this Act all property which had vested in the Custodian was held to be exempt from attachment, distress or sale and if any attachment had been made it ceased to have effect if the attachment was after 13-9-1947. This Act was replaced as far as Delhi was concerned by the Administration of Evacuee Property (Chief Commissioners' Provinces) Ordinance, 1949, Ordinance No. XII of 1949. This was published in the Gazette on 13-6-1949. Evacuee property under this Ordinance also did not include cash deposits in banks. By Section 15(2) of this Ordinance any attachment which was subsisting on the commencement of this Ordinance in respect of any evacuee property which had vested in the Custodian ceased to have effect. This Ordinance again was replaced by Central Ordinance No. XXVII of 1949. It came into force on 18-10-1949. Cash deposits in banks continued to be exempted from the definition of evacuee property. By Section 17(2) of this Ordinance any attachment, which was subsisting of, any evacuee property which had vested in the Custodian ceased to have any effect on the commencement of this Ordinance. And this Ordinance was replaced by the Administration of Evacuee Property Act, 1950, which was enacted by the Parliament and was published in the Gazette of India on 18-4-1950. Under this Act property was defined in Section 2(i) :

" "Property" means property of any kind, and includes any right or interest in such property;"

In Section 17(2) it is provided :

"Save as otherwise expressly provided in this Act, any attachment or injunction subsisting on the commencement of this Act in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement * * *

In this state of the law it has to be determined:

- (1) whether postal certificates of the kind which are in dispute are cash deposit in a bank? and
- (2) whether the attachment which had been effected on 12-6-1946, continues to subsist?

4. Taking the first point, i.e., whether the certificates are included in the phrase? "cash deposited in a bank" we have to see what is the nature of property covered by these certificates. The Government Savings Bank Act, Act V of 1873, was enacted to amend the law relating to the payment of deposits in the Government Savings Banks. On the basis of this Act it was argued that a post office, when it receives a deposit, is a bank for the purposes of this case, and reliance was placed on p. 792 of the 1st Volume of Halsbury's Laws of England, Hail-sham Edition, where Post Office Savings Bank is included in the term "Bank". It may be that any cash deposited in Post Office Savings Bank may, and probably will be covered by the phrase "cash deposited in a bank", but this does not resolve the difficulty. The question is, whether Post Office National Savings Certificates are included in that phrase. For this purpose Mr. Bhagwat Dyal relied on the definition of certificates of deposit (in banking) as given in Ramanatha Iyer's Law Lexicon. There it is defined as "a writing acknowledging that the person named has deposited in the bank a specified sum of money". I am unable to hold on this definition alone that 12 Year Post Office National Savings Certificates are included in the words "cash deposited in a bank". Post Office Cash Certificates Act, Act 18 of 1917, came into force on 19-9-1917, and it was enacted for the purpose of restricting the transfer of Post Office 5 year Cash Certificates.

In 1944 Post Office National Savings Certificates Ordinance, Ordinance XLII of 1944, was promulgated on 9-9-1944. It applied to Post Office 12 years National Savings Certificates which were issued in pursuance of the Notification of the Government of India in the Finance Department dated 4-9-1943, and a restriction was placed on the transfer of these "certificates by Section 3 by which no transfer could be valid without the, previous consent in writing of an officer of the Post Office who was authorised by the Central Government. Then rules were authorised to be made by Section 6 by which maximum limits of holding were to be prescribed and some other rules were also made which are not relevant to the point in issue before me. If these Post Office National Savings Certificates started under a Notification of the Government of India and they could not be transferred except u/s 33 of this Ordinance and a maximum limit of holding could be prescribed, it is not possible to hold that they are "cash deposited in a bank".

5. The next question to be determined will be whether the attachment which was effected on 12-6-1946 still subsists. Under Ordinance No. XII of 1949, and replaced, as it was, by Ordinance No. XXVII of 1949, no attachment could subsist if the evacuee property had vested in the Custodian, and this was the law under the Punjab Act, 1947, also.

6. u/s 40 of the Central Ordinance, Ordinance No. XII of 1949, the East Punjab Evacuees' Act, 1947, as in force in Ajmer-Merwara and Delhi, was repealed and under Central Ordinance No. XXVII of 1949 by Section 55 Ordinance No. XII of 1949 was repealed and by the 3rd sub-section of this section this Ordinance was given a retrospective effect.

7. On 7-10-1949, the Custodian filed an application in which he claimed that these certificates were evacuee property and that the property of Nur Mohammad had vested in him and, therefore, he was entitled to receive the property and execution could not proceed. He had definitely alleged that the property had vested in him. In the reply of the decree-holder dated 8-10-1949, he did not challenge the fact that the property had vested in the Custodian nor that it was evacuee property. All that he said was, that the Custodian did not become the owner of the property, that he was only a holder on behalf of the beneficiaries and rightful owners and that the money was there for distribution amongst the rightful persons. These being the pleadings, which were filed at a time when Ordinance No. XII of 1949 was in existence, the attachment must be held to have ceased to have effect u/s 15(2) of that Ordinance, and on its replacement by Ordinance No. XXVII of 1949, by Section 17(2) of that Ordinance. The order of the executing Court was passed on 11-2-1950, when Ordinance No. XXVII of 1949 was in force, and, therefore, at that time no attachment was subsisting as the property had vested in the Custodian, the property not being governed by the words "cash deposited in a bank", as I have held already.

8. At the time when this appeal is being heard the Parliament has enacted the Administration of Evacuee Property Act which came into force on 18-4-1950. It was observed by Varadachariar, J., in -- "Lachmeshwar Prasad v. Keshwar Lal 1940 F C R 84 at p. 103:

".....the hearing of an appeal is under the processual law of this country in the nature of a re-hearing * * * * It is also on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognised that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

At p. 104 his Lordship said.

".....and it was observed by Lord Thankerton in the course of the argument that the duty of a Court is to administer the law of the land at the date when the Court is administering it."

Thus it is my duty to refer to the changes in the law and to apply them to the facts of the case before me. At the time of the hearing of the appeal the new Act has come into force and under this Act property, as I have said before, includes all kinds of property, including cash deposited in a bank, and, therefore, even if the contention of the appellant were to be correct that Post Office National Savings Certificates are "cash deposited in a bank" they still will be evacuee property, and, u/s 17 (2) of the Act as all the property has vested in the Custodian the attachment of 1946 ceases to have effect. I am, therefore, of the opinion that this appeal must fail and I dismiss it with costs throughout.