

(1960) 04 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 200-D of 1955

Official Receiver of the Estate of
Daulat Ram Surana

APPELLANT

Vs

Deputy Custodian General,
Evacuee, Property and Others

RESPONDENT

Date of Decision: April 18, 1960

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 17, 2(I), 7, 7(1), 8
- Civil Procedure Code, 1908 (CPC) - Section 51
- Constitution of India, 1950 - Article 226, 227
- Provincial Insolvency Act, 1920 - Section 27, 28(1), 28(2), 67

Citation: AIR 1962 P&H 78

Hon'ble Judges: D. Falseaw, J; A.N. Grover, J

Bench: Division Bench

Judgement

Grover, J.

(1) This petition under Articles 226 and 227 of the Constitution has been placed for disposal before a Division Bench in view of the order made by Bishan Narain, J., on 30th July, 1958, expressing the opinion that an important question of law, which affects the interests of a large number of people was involved.

(2) The facts may be shortly stated. A person of the name of Daulat Ram Surana, carried on business, at Delhi, as a Jeweller in the name of Sardar Singh, Daulat Ram. It appears that he got heavily involved in debts and conveyed some properties to his relatives On 14th March, 1950 Nanak Chand and certain other creditors filed a petition for insolvency against the firm and Daulat Ram Surana. On 17th June, 1950, both the firm and Daulat Ram Surana were declared insolvents and the petitioner, who is the official receiver was appointed the receiver of the estate of the insolvents. In August, 1951, the official receiver wanted to sell some items of immovable

property out of the estate of the insolvents, the sale being fixer for 18th August, 1951. Two days prior to that on 16th August, 1951, the Assistant Custodian of Evacuee Property issued a notice u/s 7(1) of the Administration of Evacuee Property Act. 1950, to Daulat Ram Surana and other interested persons to show cause as to why he should not be declared as an evacuees u/s 2(d)(i) of the Act.

The petitioner on coming to know of the aforesaid proceedings appeared before the Assistant Custodian and raised objections to the property of Daulat Ram Surana being declared as evacuee property. On 15th February, 1954, the Assistant Custodian made an order declaring Daulat Ram Suraba, an evacuee and his property, evacuee property. This order was affirmed by the Authorised Deputy Custodian on 4th May, 1955, and a revision filed by the petitioner to the Custodian-General failed on 12th August, 1955. The present petition was then instituted impugning the orders made by the aforesaid authorities.

(3) The first point that was sought to be raised before us by Shri Visvanathan Sastri, the learned counsel for the petitioner, related to the validity of the notice issued u/s 7(1) of the Administration of Evacuee Property Act, 1950. It was, however, not ultimately pressed and the learned counsel confined his submissions largely to two other matters. It was firstly contended that there was a speaking error in the order of the Deputy Custodian-General relating to what he called point No. 2. Under that point the Deputy Custodian-General considered the question whether Daulat Ram a person could be declared an evacuee only if he had left this country after the first day of March, 1947, on account of the setting up of the Dominions of Indian and Pakistan or on account of Civil disturbances or the fear of such disturbances.

The suggestion is that admittedly Daulat Ram Surana had a Muslim mistress, while he was residing in Delhi from whom he had some children. The muslim lady and her children left for Pakistan and Daulat Ram also went there in order to join them and it was not on account of the partition of the country or fear of any disturbances etc., that he left for Pakistan. The Deputy Custodian General examined the material on the record and the relevant circumstances, which had been established and came to a conclusion on a question of fact that Daulat Ram Surana had become an evacuee. It is not possible to hold that there is any apparent or speaking error in that part of the order nor can this Court in these proceedings decide the correctness or otherwise of findings on questions of fact arrived at by the officers of the Custodian Department.

(4) The second matter, however, that has been agitated deserves more serious attention. It is submitted that even if it be assumed as was found that Daulat Ram Surana had become an evacuee sometime in February, 1950, his property could not be declared to be evacuee property after it had vested in the petitioner on adjudication of Daulat Ram Surana as insolvent. Reference in this connection has been made to section 7 under which proceedings for declaring certain property to be evacuee property are initiated. Section 7 is in the following terms :--

"7. Notification of evacuee property :--

1. 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, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

2. Where a notice has been issued under sub-section (1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way, except with the leave of the Custodian and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(3) The Custodian shall, from time to time, notify, either by publication in the Official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1)."

Sub-section (I) of section 8 is also material and must be set out.

"8. Vesting of evacuee property in the Custodian: (1) Any property declared to be evacuee property u/s 7 shall be deemed to have vested in the Custodian for the state.

(a) in the case of property of an evacuee as defined in sub-clause (I) of clause (d) of section 2 from the date on which he leaves or left any place outside the territories now forming part of India;

(b) in the case of the property of an evacuee as defined in sub-clause (ii) of clause (d) of section 2, from the 15th day of August, 1947; and

(c) in the case of any other property, from the date of the notice given under sub-section (1) of section 7 in respect thereof".

While examining these provisions the definition of "evacuee property" as given in section 2(f) has also to be borne in mind. According to that definition (as substituted by amending Act II of 1953), "evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property, which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer, which is not effective by reason of the provisions contained in section 40, but does not include.....".

Mr. Sastri submits that before any notice can be issued u/s 7(1) or any declaration can be made that property is evacuee property under sections 7 and 8, it must belong to an evacuee and if it has passed out of his hands by operation of law and not by transfer inter vivos and if it has ceased to be his property and is vested in a receiver under the provisions of the Provincial Insolvency Act, it cannot be declared to be evacuee property.

(5) In order to decide the contention that has been canvassed by Mr. Sastri it is necessary first to consider the effect of an adjudication order on the rights of the insolvent in the property. Now, an adjudication order is made u/s 27 of the Provincial Insolvency Act, 1920, and its effect is provided for in section 28, sub-section (2) of which is to the effect that on the making of an order of adjudication, the whole of the property on the insolvent shall vest in the Court or in a receiver and shall become divisible among the creditors. Section 59 gives the duties and powers of the receiver. He is, with all convenient speed, to realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose he may sell all or any part of the property of the insolvent and do all other things stated in that section.

Section 67 provides that the insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by the Act, and of the expenses of the proceedings taken thereunder. In *Ram Rattan v. Fazal Haq*, (1939) 41 PLR 816: (AIR 1939 Lah 346) Bhide, J., expressed the view that when a person has become an insolvent his property becomes vested in the receiver and it is the receiver and not the insolvent, who is the owner, but the property vests in the receiver for the purposes of the Act and its administration by the receiver is subject to the provisions of that Act. In *Amrita Lal Ghose v. Narain Chandra* AIR 1919 Cal 781, it was observed that a receiver under the Provincial Insolvency Act was exactly in the same position as the trustee in bankruptcy. The whole property of the insolvent was vested in him and he was owner of the property until he was discharged. In *Arjun Das Kundu Vs. Marchia Telini*, R. C. Mitter, J., stated the position thus--

"It follows, therefore, that an insolvent has no title in the properties in which he had beneficial rights at the date of the presentation of the application or which was acquired subsequently by him at any time before his absolute discharge. All such properties vest in the Court or in the Receiver appointed by the Court." The Deputy Custodian-General in his order referred to the observations of Farwell, J., in *Bird v. Philpoot*, 1900 1 Ch 222 at p. 228, According to that learned Judge, under the Bankruptcy Act, the trustee takes all the bankrupt's property for an absolute estate in law, but for limited purposes namely, for the payment of the creditors under the bankruptcy, and that bankruptcy only--payment of principal and interest, and all the costs of the bankrupt, of the surplus. The bankrupt has a right to the surplus a right which he can dispose of by will or deed or otherwise during the pendency of the first bankruptcy, even before the surplus is ascertained, although such disposition will of course be ineffectual unless in the event there is a surplus upon which it can operate.

The position that emerges is that once the property has vested in the official receiver the insolvent is left with no rights, whatsoever, except a right to any surplus which may ultimately remain out of his estate and that right is also conferred

expressly by section 67. Even where the insolvent becomes entitled to some property after the order of adjudication though section 28(1) lays down that the insolvent should assist the official receiver to collect the estate, the insolvent cannot maintain any proceedings for the recovery of the property. As has been observed by Bose, C. J., (as he then was) in *kisan Sitaram v. Sitaram Tulsiram*. AIR 1951 Nag 241, an order of adjudication denudes the insolvent of all right, title and interest to and in the property and this continues during the whole period of the insolvency. It is as if the law had effected a transfer of title from the insolvent to the receiver.

(6) It has next to be seen what would be the effect of an adjudication order and the consequent vesting of the entire property of the insolvent in the official receiver prior to the taking of proceedings u/s 7 of the Administration of Evacuee Property Act, 1950. The property had certainly passed out of the possession of the insolvent by operation of law and not by transfer *inter vivos*. It has also ceased to be his property and that vested in the receiver under the provisions of the Provincial Insolvency Act.

In *Basir-ul-huq and Others Vs. The State of West Bengal*, it has been laid down that the effect of section 7 and 8 of the aforesaid enactment is that the Custodian gets dominion over the property only after the declaration is made that the property is evacuee property, that declaration follows upon the enquiry u/s 7, but until the proceeding is taken u/s 7 there is no vesting of the property and consequently no right in the Custodian to take possession of it. Where, therefore the alleged evacuee died before the declaration, the Custodian could not take possession after the death of the alleged evacuee when the property has passed into the hands of the heirs. The enquiry u/s 7 was a condition precedent to the making of a declaration u/s 8 and the right of the Custodian to exercise dominion over the property did not arise until the declaration was made. The following observations at page 303 in paragraph 22 are noteworthy :--

"It was contended before us that the Act aims at fixing the nature of the property from a particular date and that the proceedings taken are against the property and not against the person. This argument is fallacious. There can be no property evacuee or otherwise unless there is a person, who owns that property. It is the property of the owner which is declared to be evacuee property by reason of the fact that he is subject to disability on certain grounds. The definition of evacuee property in the Act, begins by saying "property in which an evacuee has any right or interest in any capacity". The Act also shows that the property unless and until the person claiming interest in it has been given notice".

In view of what has been stated above and the law as laid down by their Lordships of the Supreme Court it must be held that as soon as the order of adjudication was made in 17th June, 1950, the property of the insolvent vested in the official receiver for the purposes mentioned in the Provincial Insolvency Act and as this happened by operation of law it was not open to the Custodian to issue any notice on 16th

August, 1951, u/s 7(1) of the Administration of Evacuee Property Act, 1950, and thereafter declare the entire property to be evacuee property. Section 8(1)(a) would not have any effect in these circumstances.

(7) On behalf of the respondents it has been contended that section 17 of the aforesaid Act, read with section 4 would render the effect of an adjudication order and the vesting of the property of the insolvent in the receiver inoperative and ineffectual. According to sec.17 which relates to exemption of evacuee property from processes of the Court, no evacuee property which was vested in the Custodian is liable to be proceeded against in any manner whatsoever in execution of any decree or order of any Court or other authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of the Administration of Evacuee Property (Amendment) Act, 1951, shall cease to have effect on such commencement and shall be deemed to be void. The appointment of a receiver in the context of section 17 can have reference only to an order made in execution of a decree.

Section 51 of the CPC provides that the Court can inter alia order execution of a decree by appointing a receiver. Such an order would under the provisions of section 17(1) become ineffective and void, but an order made under the Provincial Insolvency Act, to which no reference is made in the aforesaid section will not be affected. Sub-section (2) of section 17 makes it abundantly clear that the processes and orders which were rendered void and inoperative by section 17(1) could only relate to those issued or made in execution of any decree or order of a Court. The entire history of section 17, which has been fully discussed by a Full Bench of this Court in *Durga Parshad v. Custodian of Evacuee Property Block Ex. F. A. No. 54 of 1952 D/- 10-2-1960; (AIR 1960 Punj 341 (FB))* to which I was a party shows that section 17 was meant to deal with processes and orders made pursuant to the execution of a decree or order of a Court.

The learned counsel for the respondents realising the infirmities in his argument based on section 17 appeared to rely more on section 4 which provides that the provisions of the Administration of Evacuee Property Act, 1950, and the rules and order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law. Section 4 is, however, not intended to confer any more or higher powers on the Custodian than are to be found in the provisions of the Act. All that it means is that if there is inconsistency between the provisions of the Act or the rules framed thereunder or any other law for time being in force, then the provisions of the Act, or the rules must prevail notwithstanding such inconsistency.

This provision, however, has no applicability to the facts of the present case. If the notice u/s 7(1) had been issued by the Custodian prior to the order of adjudication under the Provincial Insolvency Act, then on the insolvent's property being declared

evacuee property it would have vested in the Custodian and not in the receiver by virtue of section 4, but as the property had already vested in the receiver before any action was taken under the Administration of Evacuee Property Act by the Custodian, it could not be declared to be evacuee property at all, nor could the receiver be divested of whatever had vested in him.

(8) For all the reasons given above, this petition must succeed and the orders made by the Custodian Department that the entire property of Daulat Ram Surana, the insolvent, vest in the custodian are hereby quashed by a writ of certiorari. In view of the nature of the points involved the parties will be left to bear their own costs.

Falshaw, J.

(9) I agree.

HE/J./D.H.Z.

(10) Petition allowed.