

**(1974) 01 AHC CK 0015**

**Allahabad High Court**

**Case No:** Special Appeal No. 277 of 1971

Smt. Masoom Banoo

APPELLANT

Vs

Hari Singh and Others

RESPONDENT

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**Date of Decision:** Jan. 18, 1974

**Acts Referred:**

- Administration of Evacuee Property Act, 1950 - Section 10, 48A
- Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Section 20
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 48(1), 48(2), 49
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 209

**Citation:** AIR 1974 All 462 : (1975) RD 72

**Hon'ble Judges:** Satish Chandra, J; Gulati, J

**Bench:** Division Bench

**Advocate:** Bashir Ahmed, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

Satish Chandra, J.

This appeal arises out of a suit for ejectment of the respondent Hari Singh u/s 209 of the Zamindari Abolition Act.

2. Smt. Masoom Banoo, the plaintiff-appellant and Abu Zafar were the co-tenants in the holding in dispute. Abu Zafar migrated to Pakistan. On 17th November, 1953, his half share in the holding was declared an evacuee property. The Custodian, Evacuee Property, allotted the half share of the evacuee to Hari Singh, respondent.

3. Smt. Masoom Banoo applied for the separation of her interest in this" composite property. The Competent Officer acting under the Evacuee Interest (Separation) Act, 1951, decided to transfer the half evacuee share to the non-evacuee applicant, namely Smt. Masoom Banoo. Accordingly, he executed a deed of sale in her favour on 8th October, 1960. Hari Singh filed an appeal against order of the Competent

Officer transferring the share of Abu Zafar to Smt Masoom Banoo. Meanwhile, the Custodian Evacuee Property appears to have executed a sale deed of the half evacuee share in favour of Hari Singh on 28th December, 1960. Nonetheless the appellate authority dismissed Hari Singh's appeal on 24th February, 1964 on the finding that since the composite property could not be acquired by the State, the Custodian had no jurisdiction to sell it on the settlement side and so the sale in favour of Hari Singh was a nullity and could not affect the validity of the sale deed in favour of Smt. Masoom Banoo. In the same order, however, the appellate authority observed that Hari Singh should apply to the Settlement Commissioner for relief u/s 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. On 12th February, 1963, the Settlement Commissioner appears to have addressed a letter deciding to allow Hari Singh to remain in possession of the evacuee share on payment of Rs. 1,152.77 p. as compensation to Smt. Masoom Banoo. This order of the Settlement Commissioner was, however, subsequently cancelled on 13th April, 1964.

4. Soon after the execution of the sale deed in her favour Smt. Masoom Banoo filed the present suit u/s 209 of the Zamindari Abolition Act for the ejectment of Hari Singh on 24th October, 1962. Hari Singh contested the suit. He pleaded that the suit was barred by limitation. In view of the orders passed by consolidation authorities the suit was incompetent being barred by Section 49 of the Consolidation of Holdings Act. He also claimed that the plaintiff had no title and the defendant was the sirdar of the land.

5. The trial court held that it had jurisdiction to try the suit because after the execution of the sale deed in plaintiff's favour the property ceased to be evacuee property and so the revenue court had jurisdiction to deal with it. It was held that the suit was not barred by limitation and that in view of Section 48-A of the Consolidation of Holdings Act the consolidation authorities had no jurisdiction to adjudicate disputes with regard to title relating to evacuee property. So the suit was not barred by Section 49 of the Consolidation of Holdings Act.

6. On the merits it was held that as a result of the appellate order dated 24th February, 1964 the sale deed in favour of Hari Singh was a nullity and in view of the sale executed in favour of Smt. Masoom Banoo, she was a bhumidhar. Since the property was composite property, it could not have been acquired by the Government and so the Custodian had no jurisdiction to execute a sale deed in regard to it. Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act was inapplicable. The orders purporting to have been passed thereunder permitting Hari Singh to retain possession were ineffective. On these findings the suit was decreed.

7. Hari Singh went up in appeal. The Additional Commissioner affirmed the findings of the trial court. He further held that the Settlement Commissioner's letter dated 12th February, 1963, was subsequently cancelled by him by his letter dated 13th

April, 1964, and so Hari Singh had no title left in the land. The appeal was dismissed. The Board of Revenue confirmed the finding of the Additional Commissioner and dismissed Hari Singh's appeal.

8. Hari Singh then instituted a writ petition in this Court. A learned single Judge held that in consolidation proceedings Hari Singh was declared to be sirdar of a half share and a chak was prepared in his name in lieu of the plots of which he had been declared to be the sirdar. There was nothing in the Consolidation of Holdings Act which may exclude the evacuee land from consolidation operations or which may prohibit the Custodian from representing the interests of the evacuee or lodging his objection or claiming rights before the consolidation authorities. Sub-section (2) of Section 48-A of the Consolidation of Holdings Act suggests that the land belonging to an evacuee and vesting in the Custodian is also subject to consolidation operations. Section 48-A of that Act did not debar the consolidation authorities from adjudicating the title in respect of evacuee land. Section 49, therefore, barred the present suit. On this view the writ petition was allowed. The order of the Board of Revenue was quashed and the Board was directed to decide the appeal afresh in accordance with law. Aggrieved, the plaintiff has come up in appeal.

9. For the appellant it was urged that the present suit was not barred by Section 49 of the Consolidation of Holdings Act. Learned counsel for the appellant relied upon Section 48-A of that Act. Section 48-A provides:--

"48-A. Special provisions with respect to evacuee property. (1) Notwithstanding anything contained in the foregoing provisions of this Act-

(a) no decision of the Custodian of Evacuee Property (hereinafter in this section referred to as\_ the Custodian) in, relation to title to any land vested in him as evacuee property under the provisions of the Administration of Evacuee Property Act, 1950, shall be called in question and varied or reversed by any officer or authority under this Act; and

(b) nothing in this Act shall be construed as requiring the Custodian to stay any proceedings in relation to title to any such land pending before him on the date of the coming into force of those provisions of this Act under which proceedings in relation to title to land are required to be stayed or as empowering the Consolidation Officer or any other officer or authority to refer for determination of any question of title in relation to such land involved in any proceedings pending before the Custodian on such date.

(2) Where as a result of consolidation operations in any village-

(a) lands which are vested as evacuee property in the Custodian under the provisions of the Administration of Evacuee Property Act, 1950, are included in holdings which are not vested in the Custodian as evacuee property, such lands shall on and from the date of the coming into force of the consolidation scheme,

cease to be so vested in the custodian and the provision of the said Act shall thereupon cease to apply in relation thereto; and

(b) in case of such lands corresponding lands shall be included in holdings which are vested in the Custodian as evacuee property, and such lands shall, on and from the date of the coming into force of consolidation scheme, be deemed to be evacuee property declared as such within the meaning of the aforesaid Act and be vested in the Custodian and the provisions of the said Act shall thereupon apply, so far as may be, in relation to such lands.

10. It will be seen that the consolidation authorities cannot call in question or vary or reverse any decision of the Custodian in relation to title to an evacuee property. The provisions of the Consolidation of Holdings Act requiring such title proceedings to be stayed are not applicable to proceedings before the Custodian. Under Clause (b) of Sub-section (1) the consolidation authorities cannot even refer for determination any question of title in relation to land which is an evacuee property. These provisions clearly exclude the jurisdiction of the consolidation authorities to decide the title to evacuee property.

11. Under Sub-section (2) the consolidation authorities can include evacuee land in the consolidation scheme. If as a result of the enforcement of the consolidation scheme land which had vested in the Custodian of Evacuee Property is included in holdings which are not so vested, then such land ceases to be evacuee property and corresponding land which is allotted in lieu thereof becomes evacuee property. In other words, if during formation of chaks evacuee property is allotted to the chak of a non-evacuee and some land which was till then non-evacuee is included in the chak of the erstwhile holder of evacuee land, then the chak so framed in the name of the holder of the erstwhile evacuee land will become evacuee property and such newly formed chak will be subject to the provisions of the Administration of Evacuee Property Act, 1950. Reading Section 48-A as a whole, it is apparent that consolidation authorities have no jurisdiction to adjudicate questions of title relating to evacuee land, but nonetheless they can deal with evacuee land for the purpose of formation of chaks and the new chak framed in favour of the holder of evacuee land continues subject to the Administration of Evacuee Property Act, 1950. It is apparent that Section 48-A is an exception to Section 49 of the Consolidation of Holdings Act. Further, Section 49 bars declaration and adjudication of rights of tenure-holders in respect of land in regard to which a proceeding could or ought to have been taken under this Act. Section 48-A bars the adjudication of questions of title in relation to evacuee property. So, in relation to evacuee property Section 49 becomes inapplicable. The present suit which was filed to enforce the orders of the Custodian, Evacuee Property, was not barred by Section 49 of the Consolidation of Holdings Act.

12. For the respondent reliance was placed upon *Rakesh Kumar v Board of Revenue* 1972 All WR 338 where it was held that defence raising questions the acceptance of

which will mean the setting aside and cancellation or ignorance of entries made in consolidation proceedings will be barred by Section 49. This case is inapplicable. There is nothing on the record or in the averments made in the writ petition that the consolidation authorities adjudicated the title of the parties in regard to the evacuee land. No order made by the consolidation authorities upholding the title of Hari Singh respondent has been filed. Paragraph 19 of the writ petition merely states that in the year 1956 the consolidation of holdings proceedings were started and a chak was prepared in the name of the petitioner. The formation of a chak in the name of the petitioner who was in possession of evacuee property when the consolidation proceedings commenced was, as already noticed, justified but that did not entail or imply recognition of any title in the respondent. The question of title could be decided only by the Custodian.

13. Learned counsel for the respondent further submitted that the respondent Hari Singh was a lessee of the plots in dispute. He was not liable to ejection without the determination of his lessee rights. In the writ petition it has been alleged that the Custodian, Evacuee Property, let out the evacuee share of Abu Zafar to the respondent Hari Singh for a period of two years from 13th September, 1952, and that the same was let out again on 11th March, 1954. It has not been stated that this letting out created a monthly or yearly tenancy. No document of lease has been produced. In paragraph 1 of the additional pleas made in his written statement the respondent Hari Singh stated that he was allotted the land by the Custodian. In [Amar Singh Vs. Custodian, Evacuee Property, Punjab](#), it has been held that the allottees from the Custodian have no enforceable interest in the land. It cannot hence be said that the allotment or the letting out of the evacuee share to the respondent Hari Singh created any tangible interest in the land. When the land was transferred by the Competent Officer to the appellant the appellant became its owner. The respondent Hari Singh having no enforceable interest in it was liable to be ejected whenever the owner chose to eject him. With the institution of the suit u/s 209 whatever inchoate rights Hari Singh had to remain in possession terminated.

14. It was then submitted that the possession of the respondent was adverse to the appellant and the suit was barred by limitation. There is no substance in this plea. On his own showing the respondent was in possession in virtue of an allotment or lease by the Custodian. He was, therefore, in possession with the permission of the Custodian. His possession could not be adverse to the Custodian. The Custodian transferred proprietary rights in the land to the appellant on 8-10-1962. In virtue of this sale possession of the respondent would be deemed to be with the permission of the appellant with effect from 8th October, 1962. The suit was filed on 24th October, 1962. Even if by some line of reasoning the nature of the respondent's possession could be said to have become adverse from 8th October, 1962, onwards, the suit having been filed within a few days of that event was within time and the respondent did not mature any rights by virtue of his adverse possession.

15. In the end learned counsel for the respondent urged that there was no evidence on the record to show that the sale deed in his favour had been cancelled. This argument was repelled by the Board of Revenue. The Board observed that the Additional Commissioner had mentioned the exact number of the letter and that it could not be said that he did so without seeing the letter. The letter might have been misplaced after the decision of the appeal by the Additional Commissioner. In our opinion, there is no error of law in the view taken by the Board of Revenue. The letter of cancellation appears to have been produced when the appeal was pending before the Commissioner. In his judgment the Commissioner says that the order of the Settlement Commissioner was subsequently cancelled by his letter dated April 30, 1964. Simply because the letter is missing from the file it cannot be held that no such document was produced in evidence. The property was admittedly composite property. It could not have been acquired by the Central Government. There was hence no question of its being transferred validly to the respondent Hari Singh. Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was inapplicable to the facts of the case. The sale deed executed by the Settlement Commissioner in favour of the respondent was without jurisdiction and void. The revenue authorities were, in our opinion, justified in decreeing the suit.

16. In the result, the appeal succeeds and is allowed. The judgment of the learned single Judge is set aside. The writ petition is dismissed with costs.