

## Niadar Vs Deputy Director of Consolidation and Others

**Court:** Allahabad High Court

**Date of Decision:** Sept. 30, 1986

**Acts Referred:** Administration of Evacuee Property Act, 1950 " Section 2, 24, 27, 4, 46

Constitution of India, 1950 " Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 48A, 48A(2), 9A(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 210

**Citation:** (1987) 1 AWC 35 : (1987) RD 17

**Hon'ble Judges:** B.L. Yadav, J

**Bench:** Single Bench

**Advocate:** Tej Ram, T.N. Porwar, V.K.S. Chaudhary and Yatindra Singh, for the Appellant; A.N. Bhargava and G.P. Bhargava and S.C., for the Respondent

**Final Decision:** Dismissed

### Judgement

B.L. Yadav, J.

By this petition under Article 226 of the Constitution of India the orders dated 21-9-74, 24-8-71 and 26-3-68 passed by

the Deputy Director of Consolidation, Assistant Settlement Officer (Consolidation) and the Consolidation Officer respectively, are sought to be

quashed.

2. The facts of the case are few and simple. Plot No. 574-A was recorded as Sir of one Kazi Abdul Salam and Plot No. 574-B and 575 were

recorded as Sir of Smt. Hiyatunnisa. But in the basic year these plots were entered as Bhumidhari of one Suraj Bali, Respondent No. 4. The

Petitioner filed an objection u/s 9-A(2) of the U.P. Consolidation of Holdings Act claiming sirdari rights on the basis of possession since 1357

Fasli, i.e. prior to the enforcement of UP ZA and LR Act. These plots were, in fact entered in the name of one Deo Saran on the basis of a sale

deed executed in his favour in 1942. The basic year entries in the name of Respondent No. 4 were sought to be expunged.

3. Respondent No. 4 Suraj Bali denied the objection of the Petitioner alleging that Custodian declared the land in dispute as evacuee under the

proceedings u/s 7 of the Administration of Evacuee Properties Act, 1950 (for short the Act), and he has purchased the land from the Custodian on

the basis of a sale certificate and he became Bhumidhar. The Petitioner has got no right or title nor Deo Saran has any light or title. As a

consequence of the land in dispute having vested in the Custodian the same was put to auction and Respondent No. 4 purchased it and

consequently a sale certificate was issued in his name and since then he is in possession as Bhumidhar and was correctly recorded in the basic year

In case the Petitioner was feeling aggrieved by the sale certificate in the name of Respondent No. 4 he should have preferred an appeal u/s 24 of

the Act or a revision to the Custodian General u/s 27. But he did not do so and those orders passed by the Custodian became final. The

jurisdiction of any Civil or Revenue Court was barred by Section 46 of the Act and jurisdiction of consolidation authorities was barred by Section

48-A of the U.P. Consolidation of Holdings Act, 1953. All the consolidation authorities have decided the case against the Petitioner and in favour

of Respondent No. 4.

4. Learned Counsel for the Petitioner urged that in 1942 Deo Saran had obtained a sale deed from the proprietors of the plots in dispute and the

Petitioner came in possession since 1357 Fasli and matured rights u/s 210 of the UP ZA and LR Act. It was further urged that one Smt.

Hiyatunnisa, who was recorded over plot Nos. 574-B and 575, did not leave India, hence there was no question of her land being declared

evacuee. The name of Respondent No. 4 was illegally entered in revenue papers consequent upon the order of Assistant Custodian dated 29-2-

60. It was further urged that the orders passed under the Act were illegal and could be challenged before the consolidation authorities. But latter

failed to decide the same stating that they have no jurisdiction in view of Section 48-A of the U.P. Consolidation of Holdings Act. Reliance was

placed on Abdul Majid Haji Mahomed Vs. P.R. Nayak, and on Bai Mariyam Haji Ali Mohammad v. The Asstt. Custodian AIR 1952 Sau. 1.

5. Learned Counsel for Respondent No. 4, on the other hand urged that the order passed by the Custodian became final and in case the Petitioner

was feeling aggrieved either with the order of Custodian or with the sale certificate in favour of Respondent No. 4, he should have preferred an

appeal u/s 24 or a revision u/s 27 of the Act. But he did not do so and the said order cannot be challenged. Any civil or revenue suit to challenge

the order of the Custodian was barred by Section 46 of the Act. Further u/s 48-A of the U.P. Consolidation of Holdings Act it has been clearly

provided that the orders passed by the Custodian cannot be challenged before the consolidation authorities. One of the factum of presence or

absence of Smt. Hiyatunnisa on the relevant date must have been challenged by the Petitioner when the proceedings under the Act were in

progress.

6. Having heard the learned Counsel for the parties I am of the view that the submissions made on behalf of the Petitioner have got no substance.

The first point for determination is as to whether the order passed by the Custodian declaring the land as evacuee property can be challenged

before the consolidation authorities. Suffice it to say that u/s 7 of the Act a notification is made about certain land being declared as evacuee

property and notices are issued to the concerned tenure holders that in case they dispute, they should file objections. The Petitioner did not file

objection. In any case, the Petitioner should have filed an appeal or revision u/s 24 or 27 of the Act. But that was also not done. The land in

dispute being declared as evacuee property became final in all respects. The sale certificate was issued in favour of the Respondent No. 4. That

was also not challenged by the Petitioner. As regards the cases relied upon on behalf of the Petitioner, Abdul Majid Haji Mohammad v. P.R.

Nayak (Supra) and Bai Mariyam Haji Ali Mohammad v. The Asstt. Custodian (Supra) are the cases on different facts and principles. In those

cases the Court has ruled that if orders of the Custodian are without jurisdiction, they can be challenged by filing a suit in civil or revenue Court and

Section 46 (Forty six) of the Act would not operate as a bar. But in the instant case the order of the Custodian was not without jurisdiction, hence

the bar of Section 46 (Forty six) would be operative. Hence the sale certificate issued in the name of Respondent No. 4 and the order of the

Custodian became final and the same cannot be challenged either by filing a civil or revenue suit.

7. The next point is as to what is the effect of the provisions of Section 48-A of the U.P. Consolidation of Holdings Act, 1953 on the order passed

by the Custodian. It has to be seen as to whether the consolidation authorities have jurisdiction to decide the validity or otherwise of the orders

passed by the Custodian etc. under the Act. It is better to set out relevant portion of Section 48-A of the U.P. Consolidation of Holdings Act,

which is as under:

48-A. Special provisions with respect to evacuee property.--(1) Notwithstanding anything contained in the fore-going 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 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 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 to any proceedings pending

before the custodian on such date.

8. A bare reading of the aforesaid provision makes it clear that no decision of the Custodian of Evacuee Property can be challenged before the

Consolidation authorities nor the Custodian shall stay the proceedings pending before him simply because in respect of those plots consolidation

proceedings have commenced. There is slightly different provisions u/s 48-A(2)(Forty eight A, Two) of the U.P. Consolidation of Holdings Act

that if any land as evacuee property can be exchanged during consolidation operation with other land and if it is done, the land given to the

Custodian in exchange would be deemed to be evacuee property, whereas the land so far evacuee property given in the holding of the some tenure

holder would cease to remain evacuee property. But the decision given by the Custodian, Deputy Custodian or Assistant Custodian cannot be

challenged before the consolidation authorities.

9. In case Sections 2(d), the definition of "evacuee", 4 (four), 7 (seven), 24 (twenty four), 27 (twenty seven) and 46 (forty six) of the Act are read

together, the intention of the legislature becomes apparent. The intention was that in respect of such matters the Administration of Evacuee

Properties Act was a complete Code. u/s 7 what are the properties which could be determined as evacuee property-has been provided. Section

24 provides for forum of appeal and Section 27 is about Revision. Section 46 provides that in respect of any property or right or interest in any

property or whether any particular property is or is not evacuee property the jurisdiction of Civil or Revenue Court is barred. In other words any

person cannot challenge the order of Custodian u/s 7 by filing a civil or revenue suit. If he has to challenge the order of Custodian in reference to

any land held as evacuee, he has to do so within the frame work of the Act and not separately or otherwise. See also Custodian Evacuee

Property, Punjab v. Jafran Begum 1968 SC 169; Ram Gopal Reddy v. Addl. Custodian Evacuee Property 1966 SC 1438.

10. As regards the next point that the Petitioner became Sirdar u/s 210 of the UP ZA and LR Act and has been in possession since 1357 Fasli,

this aspect of the matter has been considered by the consolidation authorities and it has been held that the Petitioner was not in possession nor he

has matured sirdari rights. This is a finding of fact based on appraisal of evidence on record and need not be interfered with in the writ jurisdiction.

11. In view of what has been stated here-in-before, the petition lacks merit and deserves to be dismissed.

12. In the result, the petition fails and it is accordingly dismissed with cost.