

(1957) 03 PAT CK 0020

Patna High Court

Case No: Misc. Judl. Case No. 8 of 1956

Surajdeo Narain Singha and
Others

APPELLANT

Vs

Custodian, Evacuee Property and
Another

RESPONDENT

Date of Decision: March 1, 1957

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 7
- Constitution of India, 1950 - Article 226

Citation: AIR 1958 Patna 29

Hon'ble Judges: Ramaswami, C.J; Kanhaiya Singh, J

Bench: Division Bench

Advocate: B.C. Ghose and A.C. Mitra, for the Appellant; Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

Kanhaiya Singh, J.

On the 2nd January, 1953, the petitioners obtained two registered sale deeds, one from Bibi Anis Fatma and the second from her and her son Abdul Majid in respect of 2.47 acres for Rs. 2000 and Order 39 odd acre, for Rs. 600, respectively, the lands being situate in village Sherpur in the district of Patna. Abdul Majid had been declared evacuee as far back as 1950 and Bibi Anis Fatma on 23-4-1953, under the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Act). The petitioners, it is alleged, learnt of this declaration in respect of Bibi Anis Fatma on 25-7-1953 and filed on the same date an application before the Assistant Custodian, Patna, for confirmation of the said two transfers to them u/s 40 of the Act.

On 21-4-1955 the petitioners made an application to the Assistant Custodian to drop the proceedings for confirmation of the sale on the ground that the disputed properties were not evacuee properties as there was no legal declaration u/s 7 of the Act. The Assistant Custodian rejected the application on the same day on the ground that the application was not maintainable as he had no jurisdiction to review or revise the order passed by another Assistant Custodian having concurrent jurisdiction. He adjourned the confirmation proceedings to 4-5-1955 for hearing.

In the meantime, the petitioners preferred revision to the Custodian against the order of the Assistant Custodian datd 21-4-1955, and by his order dated 2-5-1955 he dismissed the application in revision on the ground that the Assistant Custodian had no jurisdiction to revise the order of another Assistant Custodian and that the application for review of the previous decision was, therefore, incompetent and no revision lay to him against an order on such an incompetent petition. He further pointed Out that even if that application was treated as a revision against the original order declaring the properties of the petitioners' vendors as evacuee properties, the application was barred by time and there were no good reasons to condone the delay and extend the period of limitation.

On 29-6-1955 the Assistant Custodian by his order in the proceedings u/s 40 of the Act refused to confirm the transfers in favour of the petitioners. Against this order, the petitioners took an appeal to the Custodian, who by his order dated 13-9-1955 dismissed the appeal.

2. On 4-1-1956, the petitioners applied to this court for grant of a writ in the nature of certiorari to quash the declaration u/s 7 of the Act and for a mandamus prohibiting the defendants from interfering with the possession of the properties purchased by them.

Their case is that the declaration made by the Assistant Custodian u/s 7 of the Act was ultra vires and illegal because no notice was given to the petitioners and the properties were not specified in the notice that was issued to their vendors.

3. Mr. B. C. Ghose appearing for the petitioners contended that the disputed properties were not evacuee properties and, therefore the transfers in favour of the petitioners did not need confirmation u/s 40 of the Act. He urged that the proceedings instituted by the petitioners u/s 40 of the Act were misconceived and should have been dropped.

His submission is that only those properties vest in the Custodian for the State which are declared to be evacuee properties u/s 7 of the Act and that since in this case the declaration made by the Assistant Custodian u/s 7 of the Act was ultra vires and illegal, the disputed properties did not constitute evacuee properties. He referred to Rule 6 of the Administration of Evacuee Property (Central) Rules 1950, and contended that before making the declaration it was obligatory upon the Assistant Custodian to Issue notice to all persons interested in the property,

mentioning therein as far as practicable the grounds on which the property was sought to be declared evacuee property.

His argument was that in the instant case no notice was given to the petitioners and the notice that was sent to Bibi Anis Fatma did not fulfil the requirements of Section 7 of the Act read with Rule 6 aforesaid. He referred in this connection to the notice which was sent to Bibi Anis Patma, which is Annexure A to the petition. No exception can be taken to the abstract proposition of law propounded by Mr. Ghose. It is true that non-compliance with the provisions of Section 7 of the Act renders the order declaring any property to be evacuee property ultra vires as without jurisdiction.

As laid down by their Lordships of the Bombay High Court in [Abdul Majid Haji Mahomed Vs. P.R. Nayak](#), the fulfilment of the two conditions, namely, the condition of notice to the persons interested in the property and the holding of such enquiry into the matters as the circumstances of the case permit, are conditions precedent to the exercise of jurisdiction by the custodian, and if either of these two conditions are not complied with, then the order passed by him u/s 7(i) of the Act would be an order without jurisdiction. In this case however, it has not been shown satisfactorily that the proceedings instituted by the custodian were ultra vires for non-compliance with the provisions of Section 7.

So far as Abdul Majid, one of the vendors is concerned, there is no challenge that he was properly declared to be evacuee and his property evacuee property in 1950. In fact, no reference has been made in the affidavit to the proceedings instituted by the Custodian against Abdul Majid in 1950. It will be recalled that one of the sale deeds in favour of the petitioners was executed by Abdul Majid along with his mother. This sale deed refers to the transfer of Order 39 odd acre. So far as the property covered by this sale is concerned, it cannot, therefore, be said that the declaration was illegal and void for want of jurisdiction.

4. As regards the second sale deed, the only document on which Mr. Ghose relied was the notice issued to Bibi Anis Fatma, which is Annexure A to the petition. There is no dispute that this notice was served on her. The validity of the notice is attacked on the grounds that the properties were not specified in the notice. It is also said that no notice was given to the petitioners. This objection, however, was taken not in the original proceedings initiated by the Custodian u/s 7 of the Act. This objection was raised in the proceedings taken by the petitioners u/s 40 of the Act for confirmation of their transfers.

The full facts connected with the proceedings, therefore, could not be investigated. In fact, in his order dated 13-9-1955 the Custodian expressed his inability to pronounce upon the validity of the notice in the absence of the records of the original proceedings. He has observed :

"Besides the evacuee case record is not before me and as such I am unable to know the circumstances of that case".

If the petitioners were aggrieved by the order of declaration because of infringement of the provisions of S, 7, the proper course for them was to take steps for setting aside of that order in the Original proceedings. It is difficult to hold on the basis of this notice alone that the entire order of the custodian was wholly illegal, in the absence of the circumstances connected with that case. It is likely that another notice was issued in that case. Again, there may be certain circumstances which validated the proceedings, notwithstanding the omission of the ground from the notice.

If the case had rested purely upon this notice, the position might have been different. But, it is difficult to express any concluded opinion upon the validity of the proceedings in the absence of other facts connected with those proceedings. For these reasons, even as regards the land of 2.47 acres covered by the other sale deed, it is difficult to hold that the declaration was ultra vires.

5. Further, the conduct of the petitioners disentitles them to any relief by way of a writ of certiorari. Apart from any other ground, the petitioners cannot succeed, as nearly three years had elapsed before they came to this court. They purchased the properties in January, 1953, and this application was made more than three years after, on 4-1-1956. There was thus undue delay in applying for the writ, and there is no satisfactory explanation for this delay.

The petitioners no doubt stated that they learnt of the invalidity on 21-4-1955, when, while examining the records of case No. 38/VI of 1953 in which Bibi Anis Fatma had been declared evacuee in connection with the proceedings for confirmation u/s 40 of the Act, they discovered that the notice contravened the provision of Section 7 of the Act. The Custodian did not believe this alleged date of knowledge to be correct. He observed that it was impossible to believe that the petitioners would be ignorant of the defects in the notice, although, they had been contesting the proceedings for confirmation of the transfers for about two years. There are no materials on the record to come to a different conclusion.

The observation of the Custodian seems to be well-founded, since it can be safely assumed that before making the application u/s 40 of the Act for confirmation of the transfers, they must have examined the records in which Bibi Anis Fatma was declared evacuee. Not only this, the Custodian further found that the entire transaction was mala fide. That the vendors of the petitioners are evacuees can admit of no doubt whatsoever. Bibi Anis Fatma migrated to Pakistan immediately after the execution of the sale deeds, and the other vendor had already gone over to Pakistan. The Custodian further found that the properties were purchased for inadequate price. It is well to remember that Abdul Majid had been declared evacuee in 1950, and there is no denial on behalf of the petitioners that they were aware of this declaration.

In spite of this, they purchased the properties from Abdul Majid also which is indicative of bad faith. They explained it by saying that he had no interest in the properties and he joined in execution of the sale deed by his mother by way of precaution. The Custodian has found that the sale deed does not prove this. There can, therefore, be no doubt that the entire transaction was vitiated by bad faith. In the circumstances, the petitioners cannot invoke the extraordinary jurisdiction of the court u/s 226 of the Constitution to quash the order declaring the vendors to be evacuees.

6. There is no substance in this case, and the application must be dismissed. In the circumstances of the case, there will be no order for costs.

Ramaswami, C.J.

7. I agree.