Sri Chhugomal Jasharam Bhatija Vs District Judge and Abdul Kadar Uppal

Court: Bombay High Court

Date of Decision: Dec. 1, 1955

Acts Referred: Administration of Evacuee Property Act, 1950 â€" Section 2, 27

Citation: (1956) 58 BOMLR 545

Hon'ble Judges: M.C. Chagla, C.J; Dixit, J

Bench: Division Bench

Judgement

M.C. Chagla, C.J.
This is a reference made to us by the Deputy Custodian General of India u/s 27(2) of the Administration of Evacuee

Property Act, and it raises some interesting questions as to the proper construction of that Act.

2. An order was passed by the Deputy Custodian on October 23, 1952, declaring Mahomed Abdul Kadar Uppal an evacuee and the Deputy

Custodian declared him an evacuee u/s 2(d)(iii) holding that he had, after August 14, 1947, obtained otherwise than by way of purchase or

exchange, right to or interest in or benefit from a property which is treated as evacuee or abandoned property under the law for the time being in

force in Pakistan. Abdul Kadar appealed against this decision to the District Judge of Thana and the District Judge of Thana held that the facts on

which the informants relied had not been established and allowed the appeal. Against that decision the informants went in revision to the Custodian

General and the Custodian General differed from the view taken by the District Judge and made this reference u/s 27(2) to the High Court.

3. The facts on which the informants relied may be briefly stated. It appears that there was a property in Karachi belonging to one Ratanchand and

one Bhagwandas Kripalani had a flat in that property. It was alleged that on October 9, 1947, an allotment order was issued in respect of this flat

in favour of Abdul Kadar. Abdul Kadar occupied this flat as a tenant and paid rent to Ratanchand. Counterfoils of rent receipts were produced by

Ratanchand to show that rent had been paid by Abdul Kadar till March 31,1948. It was also alleged by the informants that Bhagwandas left

Pakistan finally to come to India in May 1948, and Ratanchand finally left Pakistan to come here in March 1948, and it was the case of

Ratanchand that in January 1949 Abdul Kadar paid a sum of Rs. 105 by cheque to him towards the arrears of rent, this amount constituting rent

for three months, and that subsequently Abdul Kadar had not paid any rent to him. As against this the case of Abdul Kadar was that he had been

to Pakistan only twice, September 14, 1948, to October 5, 1948, and December 29, 1948, to January 31, 1949, that he had been living in India

since 1927 and was a citizen of this country and had never migrated to Pakistan. According to him he had a brother by the name of Ashraf who

was in postal service in Pakistan, that he was living in Lahore and serving in Lahore, that he had taken long leave in January 1948, and the flat was

allotted to his brother by the Rent Controller and was never allotted to him. On these facts the Deputy Custodian came to the conclusion that the

flat belonging to Bhagwandas Kripalani was allotted to Abdul Kadar and therefore he came within the ambit of Section 2(d)(iii), The District Judge

on an appreciation of the same evidence came to a contrary conclusion and he held that the informants had failed to establish that the flat of

Bhagwandas had been allotted to Abdul Kadar. The Deputy Custodian General on reviewing the evidence and the materials disagreed with the

District Judge and made this reference to us.

4. The first and the most important question that arises is, what is our jurisdiction on this reference? Section 27(1) confers revisional jurisdiction

upon the Custodian General and that jurisdiction is confined to his satisfying himself as to the legality or propriety of any order passed by an

authority mentioned in the Act, Sub-section (2) provides:

Notwithstanding anything contained in Sub-section (1), where in respect of any proceeding called for under Sub-section (1), the Custodian-

General is of opinion that the District Judge is in error in holding any person not to be an evacuee or any property not to be evacuee property, he

shall not pass any order in relation thereto but shall refer the matter, with his own opinion thereon, to the High Court to which the District Judge is

otherwise subordinate.

It is clear that Section 27(2) prevents the Custodian General from exercising his revisional jurisdiction in a case where the order he is seeking to

revise is the order of the District Judge. In such a case the revisional jurisdiction is to be exercised by the High Court and not by the Custodian

General.

5. It is conceded by the Advocate General who appears for the Custodian General that the question which is referred to us is a question of fact,

and what we are being asked to do is to interfere with the decision of the District Judge on a finding of fact, and the question is whether we have

jurisdiction to interfere with such a finding of fact. It is difficult to dispute the proposition that a revisional jurisdiction conferred upon the authority to

satisfy itself as to the legality or propriety of any order cannot include the right or the jurisdiction to set aside a finding of fact or interfere with a

question of fact. The expression ""legality or propriety"" occurs in various statutes, it has been judicially considered, and the authorities have clearly

laid down that the jurisdiction conferred by this expression is a revisional jurisdiction and not an appellate jurisdiction to interfere with findings of

fact. Apart from anything else, the very fact that the Legislature has conferred revisional jurisdiction upon the Custodian General and not appellate

jurisdiction must mean that revisional jurisdiction is different from appellate jurisdiction. It cannot possibly be suggested that when the Custodian

General makes this reference to us, appellate jurisdiction is conferred upon us and we become entitled to interfere with findings of fact arrived at by

the Custodian General. The jurisdiction that we can exercise in a reference u/s 27(2) can only be the jurisdiction which the Custodian General

himself can exercise u/s 27(1). That jurisdiction must be confined to satisfy ourselves as to the legality or propriety of the order passed by the

District Judge and that jurisdiction cannot be extended to inquire into the correctness of the decision given by the District Judge on a question of

fact. It is true that in certain cases a decision on facts may be reversed by a revisional authority. But that case only arises when the Court is satisfied

that the decision of the revisional authority is manifestly wrong or is perverse or that there was no evidence whatever to justify the finding of fact.

The Advocate General concedes that in this particular case he cannot characterise the decision of the District Judge either as perverse or as

manifestly wrong or being passed on no evidence at all. If that be the true position, then whatever may be the legal inferences which arise from the

finding of the District Judge, it is not open to us in this reference to interfere with that finding. It may also be pointed out that the Legislature has

advisedly given a right of appeal in certain cases to the District Judge and made that decision final subject to revision. The inquiry held by the

Deputy Custodian to determine whether a particular person against whom notice has been served is or is not an evacuee is not a judicial inquiry in

a proper sense of the term. It is true that in that inquiry he must observe rules of natural justice, but the Deputy Custodian is not a Court and he

does not follow the practice or procedure which is followed in a Court when the Court hears a suit or an application. In this very ease our attention

has been drawn to the fact that the witnesses here called to depose to facts could not be cross-examined by Abdul Kadar"s counsel because that

practice is not permitted by the Deputy Custodian. It is unfortunate that in an inquiry which may result in serious consequences to the person

against whom notice is served, that person has not been given the right to cross-examine the witnesses. Anybody who has anything to do with the

administration of justice knows what an important right cross-examination is in order to test the evidence given by witnesses and in order to find

out the truth. We have found in the notes of evidence serious lacunae which could only be explained on the ground that the inquiry was not a

judicial inquiry. Realising this our Legislature, always conscious of citizen''s rights in important and serious matters, conferred a right of appeal upon

the person aggrieved to the District Judge, and that high judicial officer''s decision on facts was made final, subject to the limited right which this

Court would have on a reference being made by the Custodian General to satisfy ourselves whether his decision was legal or proper.

6. Therefore, in our opinion, on the preliminary point whether we have jurisdiction to question the finding of fact arrived at by the District Judge, we

must hold that we have no such jurisdiction.

7. We may point out in passing that the Advocate General has severely criticised the judgment of the District Judge and has pointed out what

according to him are serious errors in appreciation of the evidence. It may be that another Court may have come to a different conclusion than the

one arrived at by the District Judge on the evidence and materials before him. But we must say that even if we had the jurisdiction to interfere with

the decision of the District Judge, in a case like this we should be extremely loath to do so unless we were satisfied that the decision of the District

Judge was a decision which was so untenable that it should not be permitted to stand. When we realise, as we have pointed out, the handicaps

from which the aggrieved party suffers in an inquiry held by the Deputy Custodian, it would not be right for. us to interfere with the decision of the

District Judge which has been given in his favour. It is true that neither the District Judge nor we have had the benefit of seeing the witnesses, but

that benefit must be considerably discounted when we realise that the inquiry officer has given his decision on facts on evidence led before him

which has not been properly cross-examined upon. It should also be borne in mind that in an inquiry like this the burden must lie upon the informant

to satisfy the District Judge that he has discharged that burden, and in fairness to the District Judge we must say that his decision largely turns upon

this point of view that the burden has not been as properly discharged as it should have been, and in default of that the aggrieved party, viz. Abdul

Kadar, was entitled to succeed.

8. An important point of law has also been raised in this reference-strictly that only arises if we do not accept the decision of the District Judge-,

but the District Judge himself has considered this question of law and he has held that even on the facts as alleged by the informants Abdul Kadar

cannot be deemed to be an evacuee within the meaning of Section 2(d)(iii). We have already set out that Sub-section and it is clear that the

mischief aimed at in that Sub-section is that an evacuee is a person who was depriving a person in Pakistan, who was compelled to leave his

country owing to the serious situation prevailing there, of his property without paying for that property. In other words, if a person in Pakistan who

becomes an evacuee by the law of that land loses his property or the enjoyment of his property without any consideration being paid for it, the

person who deprives him of the property, if he is subject to the law of our country and if our law can reach him, is declared an evacuee and his

property here becomes evacuee property. It is giving effect to a fair and just principle that if you take away property of an evacuee in Pakistan,

you must suffer by having your own property here declared evacuee property. It is bearing in mind this principle that we must construe this section.

9. The admitted facts here are that Bhagwandas Kripalani was a tenant of Ratanchand. He himself has said, and the learned District Judge has

accepted that fact, that in September 1947 he opted for India and his flat was allotted- we assume for the purpose of this argument-to Abdul

Kadar on October 9, 1947. The view taken by the Deputy Custodian General is that on October 9, 1947, Abdul Kadar obtained the tenancy

rights of Bhagwandas without paying anything for the tenancy rights and thereby brought himself within the ambit of Section 2(d)(iii). It is clear that

if the rights of the evacuee are paid for either by purchase or by exchange, then the obtaining of the rights of the evacuee does not bring the person

obtaining those rights within the ambit of this Sub-section. Therefore, it would seem that the right to or interest in or benefit from any property

referred to in this Sub-section must be a right, interest or benefit which must be capable of being purchased or exchanged. The question is whether

on the relevant date Bhagwandas had any right to or interest in or benefit from any property which could be purchased or exchanged. One might

go even further and ask the question whether on the relevant date Bhagwandas had any right to or interest in or benefit from any property, because

really the two questions are identical. If Bhagwandas had no right to or interest in or benefit from any property, then there was no right, interest or

benefit which could be purchased or exchanged. It is clear from the record that the allotment order was made by the Rent Controller in Karachi

acting under the Rent Control Act. Therefore, on October 9, 1947, as a result of the allotment order which was issued under the ordinary law of

the land, Bhagwandas had no tenancy rights left in him which could be exchanged or purchased by anyone. It is equally clear that what Abdul

Kadar obtained on October 9,1947, was no right or interest of Bhagwandas in any property. He obtained the flat as a result of the allotment order

which terminated the tenancy of Bhagwandas. According to Ratanchand, he paid rent for his flat, otherwise it might have been said that he

obtained a right or interest in property belonging to Ratanchand without paying for it. But it is nobody''s case that Abdul Kadar displaced

Katanchand in his property and thereby came within the mischief of Section 2(d)(iii). It is difficult to understand how it is possible to urge that as far

as Bhagwandas was concerned he was being deprived of any right in property. As we have already pointed out, he himself had opted for India a

month earlier. He was giving up his tenancy by reason of that option, and whether he was giving up that tenancy or not, he was required by law to

give up possession by reason of the provisions of the Rent Control Act to which our attention has been drawn. Therefore, Abdul Kadar came in

possession of this flat not as a result of any action he took against Bhagwandas, not as a result of any deprivation by him of Bhagwandas'' interest

in the property, but as a result of Bhagwandas being deprived of the flat by an order issued by the legal authority of the land under the law

prevalent in that land at that time. So the possession of Abdul Kadar cannot be attributed to his obtaining anything from Bhagwandas, but it must

be attributed to the allotment order issued by the proper authority. In the taking possession of the flat there was no privity whatever of any sort

between Bhagwandas and Abdul Kadar. His right emanated from a document which he obtained from the proper authority. It is clear, therefore,

that on the facts as alleged by the informants and as found by the Deputy Custodian, the case of Abdul Kadar does not fall within the definition of

Section 2(d)(iii).

10. The Advocate-General has contended that even though an allotment order might have been issued and even though the flat might have been,

requisitioned, Bhagwandas had tenancy rights still left in him which rights ""were taken over by Abdul Kadar without paying anything. It is suggested

that the rights that Bhagwandas had were rights which would arise if the premises were derequisitioned. The Advocate-General has relied on a

decision of Mr. Justice Coyajee in Tarabai Jivanlal v. Padamchand (1949) 51 Bom. L.R. 797, where the learned Judge held that where

Government requisitions premises, under statutory powers, in the occupation of a tenant, the tenancy does not thereby come to an end. On

derequisitioning of the premises by Government, the tenant is entitled to the possession of the premises. That decision does not apply to the facts of

this case because here the requisitioning was not for purposes of defence under the Defence of India Act, but this requisition is under the Karachi

Act which is similar to our Land Requisition Act. In the second place, the English decisions on which reliance has been placed by Mr. Justice

Coyajee and on which reliance has also been placed by the Advocate-General, deal with cases where there was a lease for a term and the lessee

was disturbed in his enjoyment before the lease had expired, and it may be that in a case like that the lessee may continue to be liable to his lessor

for the payment of rent and may seek compensation from the Government authorities for depriving him of his possession. But the position here is

entirely different. It is not the case of Bhagwandas being disturbed in his enjoyment of his flat. If he had opted for India and if he wanted to leave

the flat, then it would be a case of actual vacancy or legal vacancy. Therefore, the requisitioning authority was really requisitioning property

belonging to Ratanchand and not any right of Bhagwandas. Hence, the only party who would be entitled to compensation against the requisitioning

authority would be Ratanchand and not Bhagwandas. The real question which we have to decide is whether on October 9, 1947, Bhagwandas

had any subsisting right to enjoy this property, which right was interfered with by Abdul Kadar. If Bhagwandas had such a right, then undoubtedly

Abdul Kadar did not pay anything to Bhagwandas for that right and Abdul Kadar would come within the mischief of Section 2(d)(iii). But if we

take the view that on the allotment order being passed, no right of enjoyment to this property was left in Bhagwandas, then it is difficult to

understand why Abdul Kadar was expected to pay anything to Bhagwandas for the right which he obtained and which right he did not obtain from

Bhagwandas for the simple reason that Bhagwandas had no such right left in him.

11. The District Judge has also taken the view that the property which has been seized must be evacuee property at the date when it is seized. We

are unable to accept that view. As rightly pointed out by the Deputy Custodian General, the expression which is used in this Sub-section is ""which

is treated as evacuee or abandoned property under any law for the time being in force in Pakistan"" and not ""which was treated"". Therefore, if any

property is taken hold of after August 14, 1947, and that property is subsequently declared to be evacuee property, even so the person, if he

seizes that property without paying for it or without giving any other property in exchange for it, would come within the ambit of Section 2(d)(iii).

12. Therefore, in our opinion, the reference must fail on the preliminary ground that we have no jurisdiction to interfere with the finding of fact

arrived at by the District Judge. We are also of the opinion that even if we were to go into the question of fact and accept the view of the Deputy

Custodian General that the flat belonging to Bhagwandas Kripalani was allotted to Abdul Kadar on October 9, 1947, even so the case of Abdul

Kadar cannot fall u/s 2(d)(iii) and he cannot be declared an evacuee.

13. The result is that the reference must be rejected. The petitioner to pay the cost of Abdul Kadar. No order as to costs of the other parties.