

## **Nasir Ahemed vs Assistant Custodian General, Evacuee ... on 28 March, 1980**

**Equivalent citations: 1980 AIR 1157, 1980 SCR (3) 248, AIR 1980 SUPREME COURT 1157, 1980 ALL. L. J. 546, (1980) 2 S C J 376, (1980) 3 S C C 1, 1980 LAND L R 165, (1980) 3 S C R 248, 1980 UJ (SC) 418, (1980) 1 SCJ 546**

**Author: A.C. Gupta**

**Bench: A.C. Gupta, N.L. Untwalia**

PETITIONER:

NASIR AHMED

Vs.

RESPONDENT:

ASSISTANT CUSTODIAN GENERAL, EVACUEE PROPERTY U.P., LUCKNOWA

DATE OF JUDGMENT 28/03/1980

BENCH:

GUPTA, A.C.

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GUPTA, A.C.

UNTWALIA, N.L.

CITATION:

1980 AIR 1157

1980 SCR (3) 248

1980 SCC (3) 1

ACT:

Administration of Evacuee Property Act, 1950 -Notice issued under, section 2(d)(iii)-Declaration made under section 2(d)(i) and (ii)-Validity of.

HEADNOTE:

A notice under section 7 of the Administration of Evacuee Property Act 1950, was Issued by the Assistant Custodian of Evacuee Property to the appellant and his brother (since deceased) stating that there was "credible information in possession of the Custodian" that they were evacuees under clause (iii) of section 2(d) of the Act and calling upon them to show cause why they would not be declared evacuees and their property as evacuee property The Assistant Custodian eventually declared the appellant and

his brother as evacuees under clauses (i), (ii) & (iii) of section 2(d) of the Act.

The Authorised Deputy Custodian, although he dismissed the appellant's appeal under section 24 of the Act, pointed out that the ground based on clause (iii) of section 2(d) was "very vague" and that the notice was "defective to that extent". The Assistant Custodian General Evacuee Property dismissed the appellant's review petition and the High Court dismissed the writ petition in limine.

Allowing the appeal,

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HELD: The notice and the declaration that followed stating that the appellant was an evacuee under clauses (i) and (ii) of section 2(d) of the Act are invalid. [252E, F]

1. The notice called upon the appellant and his brother to show cause why they should not be declared evacuees under clause (iii) of section 2(d) and the ground mentioned in the notice was also based on that clause, yet the Assistant Custodian found that they were evacuees under clauses (i) and (ii) as well. The Authorised Deputy Custodian held that the ground given in the notice in support of the case based on clause (iii) was vague and the notice was defective so far as that ground was concerned, but that was the only case the appellant was called upon to answer. The foundation of a proceeding under section 7 is a valid notice and an inquiry which travels beyond the bounds of the notice is impermissible and without jurisdiction to that extent. [252D-E]

2. From the facts stated above, it would appear that the Authority concerned did not apply his mind to the relevant material before issuing the notice. The same thing is apparent from another fact. On November 29, 1952 the Deputy Custodian dropped the proceeding seeking to declare the appellant an intending evacuee and that on the same day directed initiation of a proceeding under section 7. Section 7 required the Custodian to form an opinion that the property in question was evacuee property within the meaning of the Act

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before any action under that section was taken. Under rule 6 of the Administration of Evacuee Property (Central) Rules 1950 the Custodian had to be satisfied from information in his possession or otherwise that the property was prima facie evacuee property before a notice was issued. On November 29, 1952 no evidence was found to support a declaration that the appellant was an intending evacuee. There was no material on record to suggest on that very day the authority had before him any evidence to justify initiation of a proceeding to declare the appellant an evacuee and his property as evacuee property. The notice under section 7 appears to have been issued without any basis. The Assistant Custodian General, who found no merit in the reversional application preferred by the appellant,

overlooked these aspects of the case. [252H, 253 A-B]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 512 of 1979.

Appeal from the Judgment and order dated 18-5-1965 of the Allahabad High Court in Civil Writ No. 2945 of 1964.

Danial Latifi and Mrs. Urmila Sirur for the Appellant. Nemo for the Respondent.

The Judgment of the Court was delivered by D GUPTA, J.-A notice issued under section 7 of the Administration of Evacuee Property Act, 1950 (hereinafter called the Act) gives rise to this appeal brought on a certificate granted by the Allahabad High Court on August 18, 1969 under Article 133(1)(a) of the Constitution of India. Sub-section (1) of section 7 states: E "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 as may be prescribed to the persons interested, 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."

Rule 6 of the Administration of Evacuee Property (Central) Rules, 1950 (hereinafter called the Rules) which lays down the manner of inquiry under section 7 provides in sub-rule (1) that where the Custodian is satisfied from information in his possession or otherwise that any property or an interest therein is prima facie evacuee property, he shall cause a notice to be served in the prescribed form on the person claiming title to such property or interest and on any other person or persons whom he considers to be interested in the property. Sub rule (2) of rule 6 says that the notice "shall, as far as practicable, mention the grounds on which the property is sought to be declared evacuee property and shall specify the provision of the Act under which the person claiming any title to, or interest in, such property is alleged 17-189 SCI/80 to be an evacuee". "Evacuee" has been defined in section 2(d) of the Act to include several categories of persons, but for the purpose of this case it is necessary to refer only to first three of them. The relevant part of the definition is as follows:

"2(d) "evacuee" means any person,-

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has, on or after the 1st day of March, 1947, left, any place in a State for any place outside the territories now forming part of India, or

(ii) who is resident in any place now forming part of Pakistan and who for that reason is unable to occupy, supervise or manage in person his property in any part of the territories to which this Act extends, or whose property in any part of the said territories has ceased to be occupied, super vised or managed by any person or is

being occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 14th day of August, 1947, obtained, otherwise than by way of purchase or exchange, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan."

The appellant was declared an evacuee by the Assistant Custodian (Judicial), Deoria. Having failed to have the declaration set aside by the appellate and the revisional authorities under the Act, the appellant moved the High Court by a writ petition challenging the notice under section 7 and the subsequent proceedings based on it. This appeal is from the order of the High Court dismissing the writ petition in limine. The notice in question was issued by the Assistant Custodian, Evacuee Property, Deoria, to the appellant and his brother Bashir Ahmad on March 11, 1954 stating that there was "credible information in possession of the Custodian" that they were evacuees under clause (iii) of section 2(d) of the Act and calling upon them to show cause why orders should not be passed declaring them evacuees and their property as evacuee property. The notice purports to have been issued in accordance with rule 6 which requires a statement of the factual grounds on which the notice is based. The notice in this case appears to be merely a copy of the prescribed form without particulars. The ground stated in the notice reproduces only what the form contains and that is as follows:

"Acquisition of any rights to, interest in or benefit from any evacuee or abandoned property in Pakistan, otherwise than by way of purchase or exchange."

By this order dated December 14, 1955, the Assistant Custodian (Judicial), Deoria, declared the appellant and his brother evacuees under clauses (i), (ii) & (iii) of section 2(d) though in the notice issued it was alleged that the information in possession of the Custodian was that they were evacuees under clause (iii) only. An appeal preferred under section 24 of the Act was dismissed by the Authorised Deputy Custodian on August 30, 1963 who upheld the order of the Assistant Custodian (Judicial). The Authorised Deputy Custodian, however, found that the ground based on clause

(iii) of section 2(d) of the Act was "very vague" and that the notice was "defective to that extent". It has been stated already that the notice issued under rule 6(1) was based only on that ground and clauses (i) and (ii) of section 2(d) were not mentioned at all in that notice. The Assistant Custodian General, Evacuee Property, U.P. to whom the appellant and his brother preferred a revision found no merit in the applicants' case. The Court dismissed in limine the writ petition made by the appellant and his brother Bashir Ahmad on the view that the order of the Assistant Custodian General did not suffer from any error. Bashir Ahmad died after the High Court had disposed of the writ petition, and the appeal before us is by Nasir Ahmad alone.

It is necessary to state a few more facts. It appears that several years before the present notice under section 7 of the Act was issued, on November 22, 1949 when the Administration of Evacuee Property ordinance, 1949, replaced by the Act in 1950 was in force, a notice was issued to the appellant and

his brothers including Bashir Ahmad by Deputy Custodian of Evacuee Property, Deoria, Uttar Pradesh, . alleging that they were transferring their movable and immovable ; properties to Pakistan and stating that for this reason they were being considered as evacuees and their property was being treated as evacuee property. The notice invited objections from them, if any, within 30 days. At the instance of District Magistrate, Deoria, a similar notice was issued to the appellant and his brothers by the authority in District Chapra in the State of Bihar where also they had some properties, asking them to show cause why they should not be declared or intending evacuees. The Act had then come into force and this notice was issued under section 19 of the Act. Section 19 provided for issue of notice to a person before declaring him an "intending evacuees". The Act as originally passed contained in clause (e) of section. 2 a definition of "intending evacuee" as meaning a person who had transferred after August 14, 1947 any of his assets to Pakistan. Section 19 was repealed and clause (e) of section 2 was deleted in 1953. On enquiry it was found that there was no reliable evidence to justify a declaration that the appellant and his brothers were intending evacuees and the Deputy Custodian, Chapra, dropped the proceeding on May 24, 1952. On November 29, 1952 the Deputy Custodian, Deoria, also dropped the proceeding started upon the notice issued by him, but on the same day he initiated a proceeding under section 7 of the Act against the appellant and his brother Bashir Ahmad that ended in the declaration challenged in this appeal.

The facts stated above clearly show that the notice and the declaration that followed are both invalid. The notice called upon the appellant and his brother to show cause why they should not be declared evacuees under clause (iii) of section 2(d) of the Act and the ground mentioned in the notice was also based on that clause, yet the Assistant Custodian found that they were evacuees under clauses (i) and (ii) as well. The Authorised Deputy Custodian held that the ground given in the notice in support of the case based on clause (iii) was vague and the notice was defective so far as that ground was concerned, but that was the only case the appellant was called upon to answer. The foundation of a proceeding under section 7 is a valid notice and an inquiry which travels beyond the bounds of the notice is impermissible and without jurisdiction to that extent. Therefore the declaration that the appellant was an evacuee under clauses (i) and (ii) of section 2(d) of the Act must be held invalid.

Under rule 6 the notice under section 7 must be issued in the prescribed form and contain the grounds on which the property is sought to be declared evacuee property. As stated earlier, the notice that was issued in this case merely reproduced the form without mentioning the particulars on which the case against the appellant was based. It was. essential to state the particulars to enable the appellant to answer the case against him. Clearly therefore the notice did not comply with rule 6 and could not provide a foundation for the proceedings that followed.

What is said in the preceding paragraph makes it plain that the authority concerned did not apply his mind to the relevant material before issuing the notice. The same thing is apparent from another fact. It has been stated that on November 29, 1952 the Deputy Custodian, Deoria, dropped the proceeding seeking to declare the appellant an intending evacuee and that on the same day he directed the initiation of a proceeding under section 7. Section 7 required the Custodian to form an opinion that the property in question is evacuee property within the meaning of the Act before any action under that section is taken. Also, under rule 6 the Custodian has to be satisfied from

information in his possession or otherwise that the property is prima facie evacuee property before a notice is issued. On November 29, 1952 no evidence was found to support a declaration that the appellant was an intending evacuee. There is no material on record to suggest that on that very day the authority had before him any evidence to justify the initiation of a proceeding to declare the appellant an evacuee and his property as evacuee property. The notice under section 7 thus appears to have been issued without any basis. The Assistant Custodian General who found no merit in the revisional application preferred by the appellant overlooked these aspects of the case. We are therefore unable to agree with the High Court that the Assistant Custodian General's order did not suffer from any error.

We allow this appeal and quash the notice issued to the appellant on March 11, 1954 and all subsequent proceedings based on it. The respondents have not appeared to contest the appeal; there will be no order as to costs.

P.B.R.

Appeal allowed .